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### Introduction

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## Introduction

Govert den Hartogh

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

Let me introduce the theme of this collection by means of an example. Should the state aim at changing patterns of consumptive behaviour in order to achieve the aim of sustainable development?

Present behavioural patterns 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 carbon monoxide contributes to the production of photochemical smog in the cities, and to the impairment of the vitality of forests, and the emission of carbon dioxide brings about a mondial change of climate of a magnitude not yet known. 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 pollutes 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 price and improving frequency and quality of service, it can introduce proper infrastructural measures to stimulate walking or the use of bicycles, 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 merely provide information about

options and their effects, others 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 are not aimed at changing the cost-benefit balance as such, but at changing general preferences, e.g. the preference for following quickly changing 'life-style'-trends.<sup>1</sup>

It is almost universally accepted that the protection of the environment is a task of the state. But the policy options discussed do not only depend on the uncontroversial value of 'the environment', they also depend on controversial specifications of that value and on controversial rankings of it in relation to the aims pursued by people in their private lives. Is it justifiable for the state to act on such controversial values, and, if so, to what extent? That is the question we intend to consider in this book.

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

The question is central to the interpretation and evaluation of liberalism as a political morality. Our approach will be distinctive in some ways, but in order to identify these distinctive aspects we must begin by addressing the question in its general form.

In almost every political society the area of proper political concern is restricted in some way or another. Even if the Prince rules supreme by the grace of God, he is supposed to exercise his authority for the good of the people, and not for his own good. There is, perhaps, nothing he categorically should not do, but on the other hand, for anything he could do, there certainly are reasons for which he should not do it. (Even if no-one but God can call him to account.)

Liberal-democratic conceptions of political society can be characterised by the specific way in which they want to restrict the area of proper political concern. According to these conceptions, there are some actions of state officials which can never be legitimate, e.g. keeping a person imprisoned without a proper trial. But the most characteristic restrictions again operate on the range of acceptable reasons. As John Locke suggested, the Magistrate may order that children be washed with water if he understands such washing to be

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<sup>1</sup> Cf. Schermer, 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.

profitable to the curing or preventing of any disease, but not for the purification of their souls.<sup>2</sup>

This area of proper political concern is usually called "the public domain", and everything it excludes "the private domain". Our question concerns the extent of the private domain. These terms, however, have other connotations as well, and this is the cause of some confusion in political theory. The private domain in our sense, for example, is not identical with the sphere of domestic and family life; it may include to some extent the spheres of private enterprise, of voluntary association, of media of communication, *etcetera*. But to identify the private domain with any such spheres of activity is in itself misleading, for in each of these spheres the state may on occasion intervene legitimately. What the state is forbidden to do is, indeed, sometimes, to do certain things, but, usually, to do them for certain reasons.

On one influential interpretation of the political morality of liberal-democratic societies, the private domain should be co-extensive with the free pursuit, by individuals and associations of individuals, of conceptions of the good life. The only legitimate reasons for the state to interfere in this pursuit is the prevention of harm and, possibly, of offence to others.<sup>3</sup> Never should state action be motivated by the aim of implementing one particular conception of the good life. This does not mean that legitimate state action will not affect, or will not affect unequally, the extent to which particular conceptions of the good life can be implemented. Any policy whatsoever is bound to benefit some ideals more than others. For instance, an inherently implausible world view may not survive its exposure to freedom of criticism. But such differential effects should never be *intended*. The relevant principle of neutrality is neutrality of aim, not of effect.<sup>4</sup> Liberalism, on this understanding, wants to

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<sup>2</sup> Locke, 1689 (1983: 40).

<sup>3</sup> On the relevant concept of offence see Feinberg, 1985: ch. 7. One cannot be said to be 'offended' by everyone one disapproves of, e.g. another person's sexual behaviour in private.

<sup>4</sup> Or as Kymlicka(1989b: 884) calls it: justificatory, not consequential neutrality. For a more extensive discussion of the distinction, see Achterberg, 'Transgenic Animals and Liberal Democracy', section 1, cf. Visser 't Hooft, \*\*. Rawls has mistakenly been thought to subscribe to neutrality of effect, e.g. by Raz (1986: 117ff); but see Rawls (1993: 191-4). On distributive issues the distinction is related to the distinction between resourcist and welfarist conceptions of justice. A welfaristic interpretation of neutrality would mean treating all conceptions of the good life as so many individual preferences, and then

exclude perfectionist considerations from the area of political concern.

This is the mainstream view (Rawls<sup>5</sup>, Nozick, Dworkin, Ackerman, Feinberg, Richards, Gauthier, Larmore, Lloyd Thomas, Kymlicka, Nagel, Gutmann, Waldron, Van Parijs).<sup>6</sup> These authors, however, differ in their reasons for adhering to the neutrality principle, and, partly as a consequence, also in the extent to which they really want to outlaw every perfectionist consideration, and succeed in doing so.

To begin with, many of them<sup>7</sup> quite openly concede liberalism to be a form of perfectionism itself, for the essential aspect of the good life they believe to be promoted by its institutions is individual autonomy. Autonomy, however, is a peculiar value. 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>8</sup>. It is therefore possible to accept autonomy as a second-order value<sup>9</sup> and to proclaim neutrality concerning first-order values at the same time. And it seems that the liberal love of autonomy should indeed be neutral in this limited way. Liberalism wants to endow people with exercisable rights, but

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aiming at any measure (maximum overall, equal distribution etc.) of preference-satisfaction. That would amount to a form of consequential neutrality.

<sup>5</sup> Rawls 1971. In his general retreat from controversial views, Rawls 1993, 213-6, 247-54, has restricted the range and scope of the neutrality principle in several ways.

<sup>6</sup> Nozick 1974, 272-3, Dworkin 1985, 222; 1989•; 1990•; less ambitiously: Dworkin 1993, 157, cf. Achterberg \*\*; Ackerman 1980, 11-2, 356-71; Gauthier 1986, 350-1; Feinberg 1987, 249-75 {• ev. ook plaats in Legal Moralism}; Larmore 1987, 42-47; 1990•; Lloyd Thomas 1988, 1-2; Nagel 1987• {ook plaats in Equality and Partiality?}; Kymlicka 1989, 76-85, 95-7; 1990•; Gutmann 1985, 313• {verwerpt ze neutraliteit in Democratic Education?}, Waldron 1989• (andere plaatsen in Liberal Rights? In 1987 ontkend, cf. note 51); Van Parijs•. The first explicit formulation seems to be Dworkin's. According to Barry 1990, 7, the pedigree of the principle is to be found in the American constitutional jurisprudence of the Warren court.

<sup>7</sup> E.g. Nozick, Dworkin, Feinberg and Kymlicka, but not Rawls, Nagel and Larmore. 'Political liberalism' doesn't subscribe to autonomy as an ideal of the good life, but only as a relevant ideal for organizing the 'political domain'. On the distinction Hampton 170ff• {Feinberg-Festschrift}

<sup>8</sup> For this concept, see Rawls 1993, 13f.

<sup>9</sup> A meta-value, cf. Doppelt 1988.

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, he may be able to retain a recognizable ideal of autonomy, but arguably it will no longer be a fully liberal one.<sup>10</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.

The endorsement of autonomy as an ideal of the good life is compatible with a form of neutrality. But it is hostile, of course, to conceptions of the good life which do not attach any value at all, or even negative value, to autonomy. Autonomy-based liberalism and (full) anti-perfectionism therefore have different political consequences, especially in the area of education.<sup>11</sup>

Even to forms of liberalism which don't subscribe to autonomy as a 'comprehensive' value, autonomy may be significant as a 'political' value. One way to keep the state out of one's own concerns is to limit its proper aims to the provision of the means for exercising the capacity for autonomous choice, and perhaps that could be an attractive idea even to citizens who don't intend to exercise that capacity themselves, or to develop it in their children.<sup>12</sup> However, the development and exercise of the capacity for autonomous choice requires a certain range of options to choose from.<sup>13</sup> And it turns out that we cannot determine how wide the range should be in purely extensive terms.<sup>14</sup> So if the

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<sup>10</sup> Cf. Raz 1986, 418-9. 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 and for debatable reasons, Den Hartogh 1990, 164-5; Musschenga 1990; Sadurski 1990, 132. {•Geldt dat ook voor: Vinit Haksar, *Equality, Liberty and Perfectionism*, Oxford U.P. 1979, and William Galston, *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State*, Cambridge U.P. 1991.\*?}

<sup>11</sup> "Since they (i.e. illiberal communities) insist on bringing up their children in their own ways they are, in the eyes of liberals like myself, harming them." Raz 1986, 423; similarly Fitzmaurice 1993. The difference is noted by Mendus 1989, 108•; Galston 1991 {•ergens in IV}; Macedo 1993, 624; Halbertal 1996.

<sup>12</sup> But cf. notes \* and \*. {on autonomy as a political value in Rawls, en waarom het uiteindelijk niet coherent is.}

<sup>13</sup> A rich variety of actualized forms of self-realization can be an object of intrinsic valuation as well: a well-known romantic tenet from Humboldt onwards, cf. Rawls 1971, 523-4.

<sup>14</sup> Cf. my argument about freedom-oriented conceptions of health care needs, \*\*.

government is responsible for creating or maintaining a proper range of options, as some adherents of the principle of neutrality suggest,<sup>15</sup> it cannot avoid making some modestly perfectionist judgments. It can still refrain from judging the relative worth of conceptions of the good life, but it cannot refrain from judging their significance.<sup>16</sup> Of course, the government can also decide to leave the maintenance of a proper range of autonomous choice to the cultural market-place. In later sections I will discuss whether this is an acceptable policy.<sup>17</sup>

So even self-professed adherents of the neutrality-principle turn out to be committed to some form of *pale perfectionism*, requiring the state either to help people to become autonomous agents, or at least to protect an adequate range of significant options for them to choose from. There are other forms of pale perfectionism they may be tempted to adopt. According to Rawls, certain 'primary goods' are relevant to the design of the basic institutional structure of society, and among them he counts the 'social bases of self-respect'. For, as he argues, whatever conception of the good life a person adopts, self-respect is a

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<sup>15</sup> Dworkin 1985, 229ff; Kymlicka 1989a, ch. 8. The protection of diversity is itself a community interest...for reasons similar to the reasons why a balanced portfolio is a prudent investment, or why a diverse gene pool protects a species from disease epidemics." Feinberg 1987, 110. The same argument is urged by 'perfectionist' authors: Raz 1986, 205ff; Taylor 1985 {• 190-1 of 207}; Wolgast 1987, ch. 1; Van Asperen 1993, 167-70; Cragg 1986, 47.

<sup>16</sup> Cf. Maris, \*\*, on subsidizing the arts. If the principle of the separation of church and state requires the state to accept religious prescriptions as a relevant defense of conduct that would otherwise be considered harmful or offensive to others, the state has to judge what counts as a *bona fide* religious activity (the 'church of Satan?'), Vermeulen 1997.

<sup>17</sup> Whether it is acceptable may depend on judging whether a proper range is endangered or not. In this way Kymlicka 1989a, ch. 8; 1995•?, argues that the state has a responsibility to protect minority cultures against rapid change which would deprive their members of a significant range of options, cf. Achterberg, \*\*, Musschenga, \*\*. Of course, this judgment is a form of pale perfectionism itself. The perfectionism is even more modest, if the primary state agencies delegate judgments of significance (e.g. in selecting artist and art forms for subsidizing) to special committees, cf. Maris, \*\*. Even so these judgements are the basis of state action, and therefore the neutrality principle is not fully implemented. The procedure should rather be seen as a minor form of the separation of powers.

necessary component of it.<sup>18</sup> But if it is open to the government to be concerned about such necessary components, there may well be others, and, indeed, some of the paradigmatically perfectionist conceptions of proper state concerns simply consist in listing such components.<sup>19</sup> Like acquiring and maintaining a capacity for autonomous choice, acquiring and maintaining self-respect may be compatible with indefinitely many (but not all) possible conceptions of the good life; but this is also true of the participation in social life,<sup>20</sup> having a place of one's own to live in, finding some meaning in one's life,<sup>21</sup> or even living 'the examined life'.<sup>22</sup> So this form of pale perfectionism gradually shades into more full-blooded or robust forms.

Shades of robustness can be distinguished on at least two other dimensions. The first dimension concerns the allowable instruments of perfectionist policies. One may reject all forms of coercion and still allow promotion of the same ideal, e.g. by subsidies or exhortation. And secondly, it is possible to prohibit all perfectionist considerations in the design of society's basic institutions, or in drafting the constitution, but permit them in day-to-day politics, or jurisdiction.

Liberalism, I suggested, is committed to allowing people to make at least some dubious or mistaken choices. But that does not imply that all forms of perfectionism, even of robust perfectionism, are anathema to liberals. A substantial private domain has to be carved out, but it is not necessarily as extensive as the neutrality-principle, on any plausible interpretation, requires.

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<sup>18</sup> Income, wealth and other primary social goods are 'polyvalent instrumental goods', cf. § 8, but self-respect is an intrinsic good.

<sup>19</sup> E.g. Finnis 1980, ch. 4, 6, 8; Nussbaum 1992 ('thick vague theory of the good'), cf. Maris, \*\*?; Den Hartogh \*\*. Rawls may wish to defend self-respect as the least controversial item of such lists, cf. below § 10 on consensual goods. However, like autonomy, the good may be controversial in its specification. The social basis of self-respect for people with deviant sexual inclinations, for example, may not only require general toleration, but also the furthering of real understanding.

<sup>20</sup> Cf. Feinberg's plea for "subcommunity-building policies", Feinberg 1987, 118-20; Reinders \*\*.

<sup>21</sup> And trust in long term social continuity as an essential condition of finding meaning, cf. Visser 't Hooft, \*\*.

<sup>22</sup> Gutmann 1987•. Trudy van Asperen argued in her unfinished contribution to this volume that the humanities should be a state concern for this reason.

Liberalism pretends to be an expression of the 'overlapping consensus'<sup>23</sup> on principles of political morality in liberal-democratic societies. But it is obvious that political debate in those societies concerns conflicting ideals of the good life, not just incidentally but fundamentally and continuously. Should the unemployed be forced to accept labour they do not like? Should the government allow the public media to be taken over by commercial interests? Does the federalization of Europe pose a threat to cultural identities? Does 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? Should consent be accepted as a defence against the accusation of causing bodily harm in the case of sadomasochistic sexual activity, or only in the case of "manly sports"?<sup>24</sup>

To the extent that liberalism claims to account for our consensual political morality, it apparently cannot subscribe to neutrality of aim without reservation. Do we have reasons to insist on a more revisionary account of the limits of the public domain? Or should we be content with excluding some ways of pursuing some ideals of the good life - religious allegiance is the prime example - from the area of proper state concern? If so, is it still possible to define its boundaries in any principled way?

Many volumes have been published about these questions. At the present state of the discussion, what is at stake is no longer any simple choice between neutrality and perfectionism, but rather the proper mix of perfectionist considerations that can and that cannot be allowed. Taking this line, our approach will be distinctive in two ways. First, by discussing the questions in the context of some important areas, or disputed areas, of concrete government policy. Second, by testing, in each of these domains, the validity of some possible reasons for non-neutrality. In this introduction I will present a short-list of those reasons (§§ 7-10), against the background of some of the main arguments for limiting state perfectionism (§§ 3-6). I will not try to hide my own views, but rather present them in the form of hypotheses which the other chapters may or may not confirm.

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

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<sup>23</sup> Rawls 1993, 15, 39f, and *passim*.

<sup>24</sup>As in recent British jurisprudence.

Why should we try to limit the pursuit of perfectionist aims by the state, and do the reasons for such limitation justify full neutrality? In discussing these questions I will take my cue from the traditional liberal arguments for toleration. Most recent discussions focus on one or at most two of these arguments, but, as some sixteenth and seventeenth century authors realized, the strength of the case for toleration depends on the way different arguments reinforce each other.<sup>25</sup> It will be my primary aim to show this.

Our starting-point must be the fact of pluralism.<sup>26</sup> 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 some communitarians is irretrievably lost - whether one applauds or deplors the fact.

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. Of course conceptions of the good life are acquired initially in a process of socialization. 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

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<sup>25</sup> Some critical discussions suffer from taking the arguments one by one, e.g. Caney 1991, Macedo 1993, Van der Burg forthcoming. {•Check: Waldron, *Liberal Rights*, 151-2.}

<sup>26</sup> I do not refer to the normative fact of the existence of a plurality of really valuable forms of life which may be mutually incompatible as elements of one personal, or even communal life. That fact calls for the virtue of broad-mindedness, not for tolerance. Pluralism of values is relevant to our theme, because it is a source of reasonable disagreement, especially concerning the ranking of the values. And broad-mindedness (the virtue of Romanticism) may reinforce tolerance (the virtue of the Enlightenment). But it can also be argued that increased acceptance of deviating forms of life to some extent undermines the need for toleration, cf. Heyd 1996, or perhaps rather the awareness of the need.

your experience in interacting with people from other traditions. There is no self without aims; but that does not mean that the self has to be resigned to its aims forever.<sup>27</sup> So people will be able - to different degrees - 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: people incorporate the outcomes of experience and reflection, and try to maintain a reflective equilibrium. One does not have to be a foundationalist in order to be a liberal.

I do not claim that this description applies to Western societies as we know them today: it is the picture of a society still 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.

Conflicts of priority between claims on scarce goods cannot be solved by appealing to shared values and traditional roles, at least not if the parties are members of different traditions. A bargaining problem arises, with the risk of a suboptimal outcome (cumulating bargaining costs) for all participants, 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 continuing by other means literally is a matter of life and death.

The conception of a private domain, freed from state interference, can be seen as an outcome of this historical quest for pacification. Because the concerns and the bargaining strength of rival traditions strongly diverged between political communities - and also because there is no such thing as "the" rational solution to bargaining problems<sup>28</sup> - it is only to be expected that the specification of this conception will be highly peculiar to each community. 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

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<sup>27</sup> Feinberg 1987, 83-90; Kymlicka 1990, ch. 6; Macedo 1990, ch. 6; Gutmann 1985, 316-7; Buchanan 1989, 870; Rijkema •.

<sup>28</sup> Sugden 1991, ch. 10.

state school which educates its pupils in "christian and humanist values", a state school with separate religious education for each confessional group, or state and confessional schools financed on an equal footing 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, depended primarily on the bargaining strength of this group or groups.<sup>29</sup> The specification of the compromise cannot be determined by philosophical theory in an apriori fashion; it can only be the result of an actual historical process of negotiation (and learning).<sup>30</sup>

Recent liberal theory does not 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>31</sup> Even as such, it is supposed to have an inherent weakness: the stability of the solution to the bargaining problem depends, to a large extent, on the underlying balance of power.<sup>32</sup> 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.

In my view, this representation of compromise is one-sided. To begin with, peace is a worthy moral aim as well. In bargaining situations there can be

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<sup>29</sup> De Swaan 1988, ch. 3, § 4.

<sup>30</sup> Kymlicka 1996 argues that pacification can even be achieved by giving rights to groups rather than to individuals. His example (the Ottoman Empire's *millet* system) may be debatable (as hardly representing a compromise), but that doesn't affect the point. It could be argued, however, that this form of pacification is only accessible under certain sociological conditions, which in Western societies do no longer obtain. In that case Kymlicka's conclusion that the argument for toleration cannot depend on the need for pacification alone, doesn't follow. Even if it does, the fact that the practice of toleration has a pacification value will still be important, even from the point of view of the other values realized by it, cf. Williams 1996.

<sup>31</sup> Rawls 1993, Lecture 4; Habermas {•Discursethik, s.v. rawls?}; Larmore 1987, ch. 4. Barry 1989 even criticizes Rawls for not totally excluding the concept of mutual advantage from his account of justice, cf. Visser 't Hooft\*\*.

<sup>32</sup> Cf. J. Buchanan 1975, 23-5 {•Limits of Liberty, between Anarchy and leviathan, passage over the natural distribution.} The Dutch XIX-century author Multatuli analysed democracy as an offer of the strong to the weak: if we fight, I win. So let's skip the fighting.

moral as well as prudential reasons to accept a compromise and to adhere to it. Peace is not only a personal good for me, but also a collective good for us.<sup>33</sup> It may be true that I cannot enjoy the personal good without you and the others enjoying the collective good for your part as well, but when we identify the maximum concession we are prepared to make individually, it is still possible for each of us to take into account not only the personal, but also the collective costs of warfare. It could be objected that it is in the end to my own advantage to be prepared to do so, at least if others are so too. But in the first place, the objection, if true, would only show that the personal benefits of peace are to some extent "essential by-products", and, secondly, it is open to doubt whether the objection is true. If you are of a conciliatory disposition, prepared to compromise beyond the call of prudence, you will conclude more treaties than your more martial neighbours (because you do not always press for further advantage), but you will get less favourable terms in the treaties you conclude. We cannot tell beforehand whose advantage will be the greatest in the long run: it will depend on the actual dispositions of the people you meet. Therefore you cannot predict whether a peaceful disposition will be personally 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 wide-spread, it certainly will enhance the stability of the solution.

But there is more to peace than the avoidance of the costs of warfare. As Rawls suggests,<sup>34</sup> what begins as a compromise made out of concern for the personal (and, I would add, the collective) benefits of peace, may later become the focus of a different moral concern. In establishing peace we also establish a certain kind of social relation between each other: a symmetrical one in which each of us recognizes each of the others as a person with "dignity", a responsible agent.<sup>35</sup> We do no longer aim at planting the flag of our own

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<sup>33</sup> Toleration was first propagated as an expression of Christian charity by people horrified by the cruelties of the Inquisition and the civil wars (Castellio, Coornhert). Note that, if peace is made by giving rights of self-government to internally authoritarian groups, part of the costs of oppression are retained.

<sup>34</sup> Rawls 1993, 163.

<sup>35</sup> This conception first emerged in Protestant theology: a person has moral standing because he is directly responsible to God in matters of faith. Merging with the idea of tolerance as a form of pacification, this conception results in freedom of consciousness as the 'first human right' (Jellinek 1895), legally

convictions over as large a territory as possible. Nor do we only grant each of the others sovereignty over her own life, we also permit her a say in shaping our common environment. Recognizing the other as a responsible agent implies allowing her a certain measure of discretion over her own decisions, including the freedom to make the wrong choice; and we accept that each of these decisions has "external" effects as well (even if they do not add up to either "harm" or "offence").<sup>36</sup>

As I said, this concern cannot be identified with the wish to avoid the costs of warfare, though it shades into it. We do not only want to avoid the fear and suffering and harm which is the necessary result of fighting, we also want to avoid the insult of being oppressed, coerced, bullied, or, for that matter, the degradation of being the oppressor or bully.<sup>37</sup>

It has been argued that this whole way of thinking requires a sceptical or at least a fallibilistic attitude concerning our own views of the good life.<sup>38</sup> If I subscribe to my own view without hesitation, I cannot fail to recognize the

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recognized for the first time in the Unie van Utrecht 1579, the constitutional document of the Dutch Republic. Vermeulen 1989, 57-8; Van Genderen 1990, 218.

<sup>36</sup> Scanlon 1996, 230-3.

<sup>37</sup> Shklar 1989, 29-31.

<sup>38</sup> {• alle volgende referenties} G. Dworkin 1974, Gray\*?, Unger 1984, 52, 66-7, Knowledge and Politics 63-103; Taylor art. Atomism, in Taylor 1985, 201; Sullivan 1982, 38-40 • Endorsed by Ackerman 1980, 11, 365-9, 386. Jones 1989 argues that a conflict of beliefs is not identical to a conflict of interest: everyone has an interest in believing what is true or right or judicious, rather than in living up to her own beliefs, true or false. So I do not respect the others by allowing them to form and follow their own false beliefs. "(I)f there were a determinate and discoverable truth, we could hardly think of individuals as being morally at liberty to ignore it." Barry 1990 rightly notes that this is at least the way non-liberals tend to think: they do not want their beliefs to be 'tolerated' because they are held in good faith, but accepted because they are true. Toleration is not enough if you demand recognition.

But scepticism does not support the principle of toleration, cf. Gutmann & Thompson 1990, 126ff. If ideals of the good life are merely preferences, making no truth-claims at all, there can be only pragmatic objections to the policy of changing preferences by coerced habituation or more subtle forms of manipulation. XVIth- and early XVIIth-century religious sceptics could either be in favour of toleration or (like Lipsius or Hobbes) against it: the choice depended on a judgment of expediency, given the primary aim of avoiding conflict.

relevant facts I believe in as the proper reasons for my own actions as well as for yours. For it is not my belief which is my reason; it would indeed be improper for me to consider that an equally good reason for you. My reason is the relevant fact I believe to be true, and this fact is equally relevant to both of us.<sup>39</sup> If I fail to do my utmost to persuade you, I allow you to waste your life, and other people to suffer the negative external effects of your choices. That would not be a sign of respect at all, but only of lack of concern.<sup>40</sup> How could your interest in following your own views override your interest in following the right ones? "Strive for the good and avoid the bad", is a moral axiom so evident as to be almost without content. Yet the principle of toleration prescribes us not to avoid the bad. Can I be sincerely committed to my conception of the good, can you believe me to be sincerely committed, if I act on this prescription?<sup>41</sup>

In the next section, I will consider the extent to which the argument from moral symmetry can be reinforced by fallibilism and by doubts concerning the effectiveness of the enforcement of perfectionist views. For now I only want to note that the argument isn't dependent on these further considerations. Even if I act on the fact I believe in and not on my belief, that is not a reason which I may reasonably expect you to acknowledge if you do not share my belief.<sup>42</sup> It is not a transparent reason.<sup>43</sup> But in recognizing each other's 'dignity' our basic commitment is to act, whenever our actions affect others, only on reasons which the others can reasonably be expected to recognize as well.<sup>44</sup> We are not

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<sup>39</sup> Cf. Raz 1986, 140-3.

<sup>40</sup> Cf. Finnis 1987, 433: respect for persons should trigger our coercive interference with their morally repugnant actions.

<sup>41</sup> Sandel *Intro.* •

<sup>42</sup> This presupposes, indeed, that I accept that you have formed your wrong beliefs earnestly and sincerely, and not e.g. as a cover-up of sinful inclinations. Even so, that doesn't commit me to conceding that I might equally be mistaken myself.

<sup>43</sup> Impressively analysed by Nagel 1987; 1991, ch. 14.

<sup>44</sup> Scanlon 1982; Jacobs 1985, ch. 7; Dworkin 1985, ch. 9; Macedo 1990, ch. 2; Larmore 1990; Rawls 1993, Lecture 6; Postema 1995. We cannot be committed to act only on reasons which the others actually recognize, because they may be (and be known to be) stubborn, biased etc. This raises the issue whether we can unpack the requirement of reasonableness (even disregarding fallibilism) without identifying it with the requirement of bowing to the truth. Cf. Nagel 1991, in particular ch. 14; Ripstein 1992, 10 ff.; Raz 1994, ch. 3. I will argue that

to treat them as a means only, not even for their own good. We have to be able to justify ourselves to the others, while looking them straight in the eye. Toleration focuses on the status of the subject rather than on the content of his beliefs, on the agent rather than on his actions.<sup>45</sup>

That is the most fundamental aspect of the symmetry which we establish in recognizing each other as a responsible agent. In view of the irreversible fact of our disagreement we aim at sharing a common view on how to deal with it.<sup>46</sup> That requires transcending our own point of view, even if we firmly believe the truth to be accessible from it. This is the core of the liberal ideal of the true community.<sup>47</sup>

We have to find the right balance here. There may be some beliefs such that the decision to treat them as nothing but our beliefs, is really incompatible with their content, or perhaps with the strength of our conviction.<sup>48</sup> For

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we cannot identify 'what we may reasonably expect others to agree with', if we have no idea of their conceptions of the good life.

<sup>45</sup>Heyd 1996, 11ff. It is true that this perspective requires a certain conception of subjectivity or agency, but this conception need not include autonomy as the capacity to rationally revise conceptions of the good. If mutual respect required full neutrality, it would be possible to agree to design the basic structure of society by reference to the value of autonomy without necessarily recognizing this as an essential element of the good life oneself. That is the contention of Rawls' 'political liberalism'. I believe that this view is incoherent in the end, for reasons suggested in note\*.

<sup>46</sup> O'Neill 1988, 718-9. But again, that does not exclude the agreement to concern the reasonableness of the request for concessions. That is one reason why people should be allowed to present their view of the good life on the public forum.

<sup>47</sup> On this view, it is precisely the non-liberal ideal which is deficient as an ideal of community, since it lacks symmetry and transparency.

It is true that there would be no room for toleration in a society in which people fully recognized the value of each other's heterogeneous ways of life. Requiring that the state should enforce this recognition, however, leads to 'broad church intolerance', e.g. forbidding orthodox groups to exclude either homosexuals as schoolteachers or women as parliamentary representatives or ministers. See, for example, the plea by Van der Burg forthcoming, for "going beyond tolerance to equal recognition". By failing to include the orthodox this ideal of equal recognition doesn't achieve moral symmetry to the extent the principle of toleration does.

<sup>48</sup> This shows that toleration is a result from weighing the reasons for and against restraint, and finding the first ones generally more weighty. On this

instance, establishing a relation of moral symmetry will not be an option for someone who honestly believes that, by allowing others their own beliefs, he will condemn them to eternal damnation. In this sense, the nature of the truth may limit the toleration of its denial: we must believe that the failures we tolerate do not destroy the whole point of other people's lives, or at least we must have doubts on this score. Otherwise, only an utter lack of power could make us resign ourselves to 'toleration'.<sup>49</sup> But we do not have to believe that the failures we tolerate are no failures. Or we would not properly have to tolerate them at all.

It may seem that in accepting the argument from moral symmetry or mutual recognition, I am committed to concede to Rawls c.s. the moral irrelevance of compromise. For on the one hand, the only way to establish symmetry seems to be to relegate controversial matters to the private domain. On the other hand, in doing so we seem to have left the bargaining arena once and for all. What we need is full neutrality, and we need this as a matter of principle, not as a compromise.

But as a matter of fact neither of these consequences follow.

(a) Suppose we agree (I will briefly return to the issue in the next section) that the moral ideal of symmetry does exclude any appeal to bargaining power. It would follow that I could not ask you to make a concession on the strength of my bargaining position. I could, however, still ask you to make it on other

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point I disagree with Heyd 1996, who argues that toleration rests on ignoring one type of reasons altogether by focusing on the other.

<sup>49</sup> For such people the formula for compromise offered by liberalism's "foreign office" (Raz {• dit moet staan in het art. Facing Diversity, maar ik kon het daar niet vinden}) may still prudentially represent the best achievable outcome. For that reason fundamentalists in minority-positions often invoke liberal principles. However, fundamentalists may also subscribe to toleration for principled reasons. (Of the three small right-wing fundamentalist parties represented in the Dutch parliament, only one does not accept the separation of church and state.) My position here is in the middle between Rawls and Nagel ("liberalism should provide the devout with a reason for tolerance", Nagel 1987, 229, cf. Waldron 1987, 149; Macedo 1993) on the one hand and Raz 1994, ch. 3; Barry 1990, 14 ("(G)iven the choice between trying to persuade non-liberals to accept the principle of neutrality and trying to discredit their beliefs, I think that the second is clearly the better strategy.") and Kymlicka 1996, 94-6. Cf. Williams 1996. But even Nagel 1991, ch. 4, accepts that 'justification to all' means: to anyone interested in transcending his own position in order to share the common point of view.

grounds, for example as an implementation of the ideal of symmetry itself. That the notion of a "concession" is still in place, is shown by the fact that even Rawls does not insist on neutrality when ideals of the good life are actually, even if contingently, shared.<sup>50</sup> Our actual positions apparently still define the baseline from which agreement is to be reached. What moral symmetry requires is, basically, a fair exchange of concessions.

(b) This exchange may be implemented by a retreat to neutral ground, and sometimes this could be the only implementation possible. But it still has to be shown that for all cases, this is the only or optimal fair exchange of concessions available. I will shortly argue that it is not.<sup>51</sup>

#### § 4. *Two parts of the social contract*

What can we expect a theory of fair compromise to tell us about the desirable constraints on state perfectionism? Generally speaking such a theory should answer the question under which conditions a compromise makes a legitimate moral appeal. 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 negotiators, motivated by a sense of fairness informed by the ideal of moral symmetry, and knowing each other to be so motivated. It is clear, for example, that such agents cannot simply appeal to the truth of their beliefs; nor can they simply appeal to their relative bargaining power. As Rawls says: 'to each according to his threat advantage is not a conception of justice'.<sup>52</sup>

This type of theory, applied to the question at hand, will not determine a unique point within the range of the possible outcomes of negotiation, but it will do two things. In the first place it will determine the range. Part of this 'minimum content of the social contract' can be specified in a quite general way because it is a necessary part of the 'cooperation surplus' of accepting any compromise.<sup>53</sup> What everyone necessarily gains by continuing the civil war by

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<sup>50</sup> Rawls 1993 •.

<sup>51</sup> That neutrality has some principled advantage has been argued by Habermas •, Larmore 1987, ch. 3; O'Neill 1988; and denied by Waldron 1987, 144-6. Macedo 69-73, cf. Achterberg \*\*, makes room for principled moderation where public reason gives out. In my view, 'public reason' is nothing but a form of principled moderation.

<sup>52</sup> Rawls 1971 •. {Plaats opzoeken in mijn artikel}

<sup>53</sup> Cf. Hart 1961, 189-95, drawing on Hume and Hobbes.

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 depend critically on the assumption of the fact of pluralism.<sup>54</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.

For instance, consider again the question of religion. 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. He wants to be free to do these things, because these are (as he firmly believes) the right things to do, not because he believes them to be the right things to do. Many persons also want the community as a whole to conform to the demands of their religion. However, if any appeal to threat advantage is excluded, no one is in a position to request the others to accept the dominance of his particular views. It could be proposed that instead, everybody should accept a procedure for deciding which view shall be dominant. But that would imply to risk your freedom and the freedom of others to follow the truth (as you see it) 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 as it should be (in your view). But then again you cannot reasonably expect the others to accept the proposal. So the only compromise acceptable to everyone who is prepared to accept any compromise at all as morally binding, 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.<sup>55</sup> For the supremacy of the true faith is not an option for collective uncoerced choice.

In the second place, even if no determinate outcome can be identified by the theory within the range of possible outcomes, what may be identified is a generally acceptable procedure for identifying determinate outcomes within the range. Following the procedure would, in bargaining terms, amount to a

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<sup>54</sup> Van Asperen 1993, 91-9 makes a similar distinction between two senses of the concept of a 'morality in the narrow sense'.

<sup>55</sup> The argument implies a form of 'pale perfectionism', because it presupposes that the good protected by the freedom of religion is more important than the prevention of the external effects of its exercise. It can of course be strengthened by an appeal to the costs of religious oppression.

form of arbitration. The conventional form of arbitration arrived at by the learning processes of Western liberal society is democracy, and there may be arguments 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, partly 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 symmetry requirement, needed to secure to the procedure its appeal to everyone's sense of fairness. 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 implementation of personal life plans, secure against state interference; and it will identify an arbitration procedure for the solution of remaining conflicts. The procedure itself should not be a reflection of a particular set of ideals of the good life. Does the argument for accepting the procedure exclude that in certain cases the outcome may still reflect such ideals? 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 by allowing the state to adopt two perfectionist policies at the same time, both parties would 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. A combination of perfectionist policies may be Pareto-superior to a rigidly neutral one.<sup>56</sup>

This shows that it is a mistake to think that, if we want to arrive at a morally acceptable agreement, we should all forget about everything on which we hold diverging views.<sup>57</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 fair concessions.

Suppose all the actual persons who are to be the citizens of the same political community come together in order to agree on a new charter of fundamental rights and decision procedures for their community. Suppose that

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<sup>56</sup> Cf. Raz 1986, 126-30; Kymlicka 1990, 236, note 13.

<sup>57</sup> Den Hartogh 1990 (criticizing Larmore 1987), and Den Hartogh 1989 (criticizing Rawls). The criticism also applies to Gutmann & Thompson •, 125, cf. Achterberg \* \*.

each of them is prepared to abandon all considerations, the recognition of which would necessarily lessen the appeal of the agreed arrangements to everybody's (or even somebody's) sense of fairness. What I object to is the attempt to enforce this abandonment by the introduction of a veil of ignorance.<sup>58</sup> For it will not be possible to withdraw all irrelevant information, and at the same time to allow everything that is relevant. 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 knowledge of the latter is necessary, for their problem is: how to live together in peace with the minimum sacrifices this requires everyone to make in 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 an 'overlapping 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. (Should it be allowed to help another to commit suicide on his earnest request? Should the selling of pornography be permitted? Should individuals be taxed, rather than 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 tends to have 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. 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. But even so,

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<sup>58</sup> And an overlapping consensus on the outcome of deliberation behind the veil is not to be expected if Pareto-improvements on it can be made.

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 extension 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. For they do not treat autonomy as a meta-value only, but rather identify the good life with the self-chosen life, whatever the content of the choice.

In passing, I note another corollary of the fact that there is no unique rationally evident solution to every conflict of values. To some extent democratic politics, even if severely constrained by substantial and procedural constraints, is still a matter of power, and not only, or even primarily, of argument. It is ruled out that one of the parties threatens to reopen civil war, i.e. to use violent means in order to achieve its aims, but it is not ruled out that it uses its voting power, its ability to form coalitions etc. However, these forms of power are defined by a fair procedure of arbitration which is not simply - or not at all? I will not try to answer that difficult question - a reflection of the underlying natural distribution of power. The outcome of such political manoeuvring may still be compatible with moral symmetry. For one thing, it does not seem unfair that the number of people sharing a view of the good life, or a priority ranking between views, should count in identifying the most reasonable compromise.<sup>59</sup> We already saw that numbers were crucial in determining the form of religious education not controlled by the state which was actually established in the European countries.

Trying to pre-empt the politicians' job by taking all controversial issues off the political agenda would be futile. For even adopting the fullest principle of neutrality would not be enough to end all basic controversy: matters of basic justice still have to be decided in the public domain, and these can be as controversial as questions of the good life. Yet we are not prepared to 'privatize' matters of basic justice, rather we insist on treating them as one of

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<sup>59</sup> Holding a religious procession outside the church used to be forbidden in the Netherlands in areas with a Protestant majority, and to be allowed in areas with a Catholic one.

the basic concerns of democratic politics.

In sum, the liberal social contract, aimed at keeping the peace and preserving moral symmetry, will consist of two parts: a list of fundamental rights protecting a private domain from perfectionist policies and other intrusions; and a democratic decision procedure which in particular cases, within the limits drawn by the basic rights, may, as far as the pacification and symmetry arguments go, still identify a particular perfectionist policy as binding on every citizen.

Are there any further arguments for neutrality beyond the minimum defined by the basic rights? And on the other hand, are there any reasons to treat particular perfectionist concerns in the way we want to treat issues of basic justice?

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

The pacification argument for religious freedom goes back to the sixteenth century<sup>60</sup>; we find it still very clearly expressed in Locke's *Epistola de Tolerantia* (1689). But Locke relies mainly on other arguments which have not lost their 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,

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<sup>60</sup> In all its forms, cf. for the prudential form an anonymous French pamphlet from 1561: "Les choses sont arrivés à tel point que vous ne saurions ruiner les Protestants, sans notre générale ruine, vu leur grand nombre et quantité...", quoted from Vermeulen 1989, 47, with similar quotations from Michel de l'Hospital and Bodin.

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 forced to be saved. In the end he must be left to himself and his own conscience.'<sup>61</sup>

*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 lead to heaven would inevitably be open to very few, and those 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?'<sup>62</sup>

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<sup>61</sup> This is the principal argument of both Castellio and Coornhert, cf. Vermeulen 1989, 49. It can be traced back to Tertullian.

<sup>62</sup> The argument can be found in Castellio and Coornhert, and is common in seventeenth and eighteenth century discussions of toleration (e.g. Bayle's *Commentaire Philosophique sur les paroles de Jésus*), cf. King 1976, 101 • .

Both arguments, taken on their own, are not really very impressive.<sup>63</sup> 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 any 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 anyone else?

The same point applies to views concerning the value of particular forms of life. Human beings, restricted as they are 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>64</sup> Should we hesitate to press our fallible views on others?<sup>65</sup> Only if these others were in a better position to make these judgments with respect to their own life. Indeed, it is often claimed - it even seems to be a truism of bioethics - that no one can ever be a better judge of the quality of a person's life than the person himself. But I suggest that such statements are best interpreted as expressions of strong commitment to a principle of respecting autonomous choice. As statements of fact they are not very plausible.<sup>66</sup> It is true that by coming to share a person's experience we may discover aspects of value which cannot 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

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<sup>63</sup> Herzog 1989, 162ff; Barry 1990, 5; Waldron 1991 {•Mendus ed.}; Macedo 1993.

<sup>64</sup> Cf. Rawls 1993, 54-8 (on 'the burdens of judgment').

<sup>65</sup> Feinberg 1988, xx, 286, 310-1; Ackerman 1980, 12, 362-9, Jones 1989.

Arguments of the same type: (a) governments cannot be trusted not to abuse their power; (b) even faultless perfectionist intentions cannot be trusted to be rightly executed, on account of the usual failures of bureaucratic efficiency.

<sup>66</sup> "What is needed is a comparative judgment on the abilities of individuals and state officials...", Caney 1991, 463-5. Caney's own 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 underrated by majorities and/or established elites.

expect the pig to concur.

The first argument does not seem particularly strong either. It makes one point which I shall by and large accept, and which can be generalized from religious belief to beliefs concerning the good life: no person can be said 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 suspect you to be the victim of a fundamentalist education which has burdened you with an omnipotent superego. But it will be of no help to you if I make you lose 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 (to you!) at all as long as you do not *endorse* it as such.<sup>67</sup>

But it does not follow that only a policy of toleration - let alone of neutrality - is acceptable. If life has no value unless it is valued from the inside, we cannot conclude 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.<sup>68</sup>) The argument gives us no reason to prefer the second alternative.<sup>69</sup> And therefore this balance can be tipped by

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<sup>67</sup> Dworkin 1989, 486; 1990, 50; 1993, 206, cf. Achterberg, \*\*; Kymlicka 1989, 12-3; 1990, 203-4. The argument does not amount to accepting the value of autonomy as an ideal of the good life, for it does not disvalue non-autonomous people unreflectingly embracing traditional forms of life. Nozick 1981, 410-1, 436-40, 498-504 (tracking bestness)•; Dworkin 1983a, 24-30•; Rosenblum 134-5•; Lomasky 1987, 231, 253-4•; Raz 1986, 291-4, 305-7, Waldron 1989b, 1145-6. In a valuable discussion Hurka 1995 disputes the point, but in his example of a writer who does not believe in his own talent, he does not sufficiently distinguish between the personal value of his life to the writer, and the value his life may have to others. Whatever plausibility the example has as regards personal value derives from the fact that such beliefs tend to be highly ambiguous. If the author is unreservedly convinced that his toils have no intrinsic personal value whatsoever, it is hard to see how it can have such value nevertheless.

<sup>68</sup> Along such lines Aquinas justified persecuting heretics.

<sup>69</sup> This refutation of the endorsement argument is reinforced by a commitment to value 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?

other considerations.

The endorsement argument succeeds in showing that by compelling people to live a life deemed valuable by others we do not 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 do not themselves want to live in a public environment which confronts them with error and heresy, or because they expect the next generation to become really sincere believers in the Truth.<sup>70</sup>

This brings me to another weakness of the endorsement argument. Occasionally coercion may be the beginning of a habituation process ending in full endorsement. Many great performing artists have started their career with at least some parental enforcement of their practice requirements.<sup>71</sup> Even if I cannot 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 the right environment, by eliminating bad influences, or even by forced re-education, I can bring it about that you really start endorsing the proper way of life. It simply is not true that 'light is needed to change men's opinions' (Locke) or that 'souls cannot be killed by the sword' (Coornhert). The exercise of power can result in belief, and in true belief as well.<sup>72</sup>

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 is not even improved if you endorse that kind of life!) We may concede that a restricted moral imagination counts to the debit of life's account, but is it true that this is a cost which can never be compensated by any benefit whatever? Suppose one person happens to lead a fulfilling life, realizing his human and personal potential to the maximum, but so to speak

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<sup>70</sup> The historical record shows that this policy can be very effective. To that extent the 'learning experience' of the European civil wars could seem to be rather exceptional. However, Williams 1996 plausibly argues that the sociological conditions for this learning experience have become general ones, see note \*.

<sup>71</sup> Hurka 1995, 45 notes that one may welcome such coercion as a countermeasure against one's own weakness of will. Limitations of freedom may bring some bargaining advantages with them as well.

<sup>72</sup> In a similar way critics of Locke, in particular Jonas Proast, argued that, even if sincerity is a necessary condition for believing, force, used "indirectly and at a distance", could be useful to create the right circumstances for people to reconsider their false beliefs.

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 leads to disaster, as he knew it might. Do we really want to say that the latter had the better life after all?<sup>73</sup>

### *6. 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>74</sup> - as Locke suggests, we have no reason to believe that they are substantially less fallible than we are ourselves - 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 fool-proof method of manipulating people into the inner acceptance of their planned lives, but clearly such a method does not exist.

The pacification and recognition arguments I discussed before are reinforced as well by this combination of the fallibilism and the endorsement argument. For if these are true, it is highly unlikely that the profits of fighting will outweigh the moral costs.

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? Anyone who holds a belief must also believe that he holds it on adequate, and therefore also on relevant grounds.<sup>75</sup> Therefore he must be prepared to revise his belief as soon as he is persuaded that it is not correct. But the fact that the adherents of a certain religious belief happen to

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<sup>73</sup> On the importance of authenticity, see den Hartogh \* \*.

<sup>74</sup> One of the "regrettable sources of political freedom", discussed by Raz 1986, 429-30 (i.e. only on the very last pages of that monumental work!). Hurka 1995, 53 even denies that fallibility should lead to caution, pointing out that the same conclusion is not drawn in the case of distributive justice. However, in that case there is no natural position caution should lead one to take.

<sup>75</sup> 'Nun kann man sich unmöglich eine Vernunft denken, die mit ihrem eigenen Bewusstsein in Ansehung ihrer Urteile anderwärts her eine Lenkung empfinde, denn alsdenn würde das Subjekt nicht seiner Vernunft, sondern einem Antriebe, die Bestimmung der Urteilskraft zuschreiben.' Kant 1785, III, section 4, BA 101.

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.) If you follow your own reason and conscience, your chances of finding the right faith may not be better than if you follow '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.<sup>76</sup> (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 arguments 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.<sup>77</sup> And in that case your belief will have no value whatsoever: it cannot be the faith that saves your soul.<sup>78</sup>

This type of argument, again extended 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 to guarantee the possibility of an intelligent examination of ideals: a right to education for instance.) The reasoning is fundamental to Mill's *On*

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<sup>76</sup> Can't you rationally accept your belief on authority? You can, but then you have to decide on the evidence etc. who can be trusted to have epistemic authority.

<sup>77</sup> The argument can be found in a somewhat more explicit form in Bayle's *Commentaire Philosophique*.

<sup>78</sup> The argument that belief cannot be produced by force (Locke, Coornhert) should primarily be taken to refer to the belief-that-brings-salvation. It presupposes a conception of the meaning of grace, cf. Walzer 1986, 248. Hence it has recently been evaluated as an exercise in Protestant theology only, cf. Herzog 1989; Waldron 1993, 109-11 •; Macedo 1993; Jenkinson 1996. That seems to me a misrepresentation, both of Locke's intention and of his achievement.

*Liberty*, and to Rawls' arguments for the priority of liberty.<sup>79</sup> Even Mill suggests, most of the time, that the free competition of life-styles will guarantee, or at least promote, their correct evaluation.<sup>80</sup> This survival-of-the-fittest doctrine seems to me hardly warranted by experience.<sup>81</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...Truth, thus held, is but one superstition the more, accidentally clinging to the words which enunciate a truth.'<sup>82</sup>

The argument gives us a second reply to the objection we met in §4 that, if there is a determinate and discoverable good, it cannot be in a person's fundamental interest to be free to disregard it. The reply is that the good is only discoverable in the right way if people are generally free to disregard it.<sup>83</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.<sup>84</sup>

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<sup>79</sup> Rawls, 1993, 311-5; Ackerman 1980, 365-7; 1983, 387; Lloyd Thomas 1988, 36-41.

<sup>80</sup> Cf. also Hayek 1960, 36; Kymlicka 1989, 1990, 219; and the 'resources'-argument for epistemological anarchism in Feyerabend 1979.

<sup>81</sup> Caney 1991, 460; Williams 1979, 55 (maybe the public's taste is subject to a kind of Gresham's law).

<sup>82</sup> Mill {•On Liberty II, ed. Warnock 161-2}, rightly identified as Mill's most fundamental argument by Ten 1980, 125-30, and endorsed by Williams 1979, 55; cf. Dworkin 1985, 337.

<sup>83</sup> As Jones 1990, 56-7 concedes (but only for the case of "reasonable doubt"). Caney 1991, 468, makes an interesting comparison with a classical theodicy argument: if people were not free to choose evil, they could not really be good. Caney goes on to argue (following 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.

<sup>84</sup> The argument is not always clearly distinguished from the endorsement argument, cf. Kymlicka 1989, 163-4. But the endorsement argument focuses on the interest of the person whose freedom is to be protected, the conditions-for-

We have found some additional arguments for toleration, alongside the pacification argument and the appeal to the ideal of moral symmetry. They support the conclusion that the state should permit people to choose their own way of life, not restricting this permission to the options 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 does not improve the chances of arriving at it, while at the same time it risks forcing people to lead lives with which they cannot identify. Even more basically, it tends to destroy the conditions for recognizing the truth when you meet it.

Obviously these arguments do not require that people's choice among ways of life must be without any restriction. To begin with, they permit neutral principles of restriction, if any can be formulated - the harm principle being the prominent candidate.<sup>85</sup> 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. If a particular way of life is thought to have no net value, its prohibition might be in the interest of the people who would otherwise be tempted to choose it, but this is not a sufficient reason to forbid it. For the sum of such prohibitions has negative effects of its own, both for the agent who may not find the prescribed way to his liking (and who has some chance of being right in this), and more generally for the search for truth.

So we have to ask whether other appeals to perfectionist considerations are possible beside the paternalistic one. This inquiry may start from a general presumption of neutrality, but we should not exclude the possibility that the presumption may sometimes be overridden. Certainly we cannot allow all appeals to ideals of the good life indiscriminately, even within the domain delineated by the basic rights, but perhaps we can allow particular types of such appeals, if the relevant ideals have special credentials.

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

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critical-scrutiny argument on the beneficial effects of this protection for others. Free discussion is a public good, cf. § 8.

<sup>85</sup> Feinberg 1984. It is debatable whether he succeeds in specifying the harm principle in a fully neutral way.

Let me return to an observation made earlier: day-to-day politics is always perfectionist politics, in liberal societies no less than elsewhere. One reason is that neutrality is not 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>86</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 cannot be better exercised with dry feet. Among the class of things you have reason to want whatever else you want, we may count 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 defence 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 to be so on a very superficial view, if we specify these goods in the vaguest and most general terms. An environmental policy which merely 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. But even the idea of 'sustainable development' cannot be specified without relying on some conception of the good society to be developed.<sup>87</sup> Again, is punishment meant to have a retributive quality or a deterrent function only?<sup>88</sup> Which aesthetic principles should be used in shaping and designing 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

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<sup>86</sup> 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 (cf. Dworkin 1993) therefore fails.

<sup>87</sup> Visser 't Hooft \*\*

<sup>88</sup> Hampton •

health insurance scheme: In Vitro Fertilisation, circumcision, artificial hearts?<sup>89</sup>

And even if it were 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 is impossible to find a neutral (e.g. monetary) index of their value.<sup>90</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 combination of investment levels, every participant in the decision procedure has to consult his own conception of the good life. If we accept public production at all, we have to accept perfectionist grounds for production decisions - 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 his side.

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.

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

It is generally agreed that providing for goods with a public dimension is a proper task of government.<sup>91</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

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<sup>89</sup> Cf. Den Hartogh \*\*.

<sup>90</sup> This is a well-known problem with the list of primary goods as provided by Rawls, first pointed out by Arrow 1973.

<sup>91</sup> Recent studies of the public goods argument include De Jasay 1989; Schmidtz 1991. The concept of a public good has been classically introduced by Samuelson; the same idea has later been recognized in other discussions of a more limited scope, such as Baumol, Olsen, G. Hardin, see Barry & Hardin 1982; R. Hardin 1982. Rawls 1971, 331 accepts the argument, but only on a unanimity condition which would render it practically impotent.

groups characterized by an exit-option for all participants. (This way of putting it does not imply that all entry into these 'voluntary' associations usually is a matter of free and informed choice.) The defining characteristic of a public good which is relevant here is that it is not feasible to exclude people prepared to exercise their exit-option from its 'consumption'. 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. There is an additional problem, however: even if all those who appreciate the value of the good take their fair share, or even more than that, the actions and omissions of the others may frustrate their endeavours.

In this sense, the religious and perfectionist beliefs entertained within a community necessarily have a public dimension, as we saw: 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 the voluntary-social) dimension of a religious or perfectionist belief higher than its public one. Therefore the liberal compromise acquiesces in the 'external effects' of the exercise of liberty-rights.<sup>92</sup>

But the argument cannot be generalized to cover every good with a public dimension.<sup>93</sup> 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 in the case of the decisions to use violence and fraud in the pursuit of one's aims. It is therefore legitimate if the political process is used 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 overridden by others, as in

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<sup>92</sup>According to Mill the private domain should include "all that part which concerns only the life, whether inward or outward, of the individual, and does not affect the interest of others, or affects them only through the moral influence of example", Mill •, 938, quoted Skipper 1993, 729.

<sup>93</sup> Raz 1986, 198-203; 1994, 37-40; Postema 1987; 1992, 165-6, cf. Musschenga \*\*; Taylor 1992, 58-9; Jordan 1992.

the case of the public good of the religious character and 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 do not share their values, or do not participate in the effort necessary to realize them. (One problem of public goods is that it is very difficult to distinguish between those groups: would-be free-riders 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 without reservation. 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 pumping station, etc. The public goods 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 is not necessarily true that any time we value some state of affairs, we also sufficiently value the effort needed to bring it about.<sup>94</sup> Hence it may well be a proper task of the state to support private and cooperative activities in this area. Secondly, and principally, the products of

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<sup>94</sup> When Postema 1987, 425 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' (non-instrumental public goods) are a proper area of political concern.

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 nineteenth-century ancestors for destroying many of our historic monuments, even if not to the extent that we blame the people responsible for the wanton destruction of the cathedral of Sibenik and the mosques of Mostar.

Once it has been accepted that, by participating in the political process, people may strive to realize ideals of the good life with a public dimension, and not just the fair distribution of polyvalent instrumental goods, we might wonder whether there is any reason to exclude the ideal of participation in the political process itself. Is there any general liberal objection to be made against a state trying to educate the inhabitants of its territory into active and responsible citizens?<sup>95</sup> In any case, it 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 their sake. 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, why should it be incompatible with a modicum of republicanism?

I conclude that the state may sometimes concern itself with the production and maintenance of intrinsic goods, if these goods have important public aspects.<sup>96</sup> Examples discussed in this book include the following. A national identity is a public good, and possibly a non-instrumental one; the question therefore arises whether the state is properly concerned with its maintenance, especially against external threats.<sup>97</sup> Avant-garde art has, even though the artists tend to deny this themselves, an intrinsically enriching, in particular an innovative meaning for people's lives; as a public good it is

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<sup>95</sup> But cf. § 11, objecting to direct state influence on the formation of value beliefs.

<sup>96</sup> The same goods may have internalizable aspects as well. Social security is primarily an individual interest, but keeping the society free from people prone to desperate action, from focuses of disease, and from the shameful sight of destitute people in public spaces is a public good. It may be that people are at least as willing to contribute to the public good as to person-to-person transfers.

<sup>97</sup> Jacobs \*\*, gives a negative answer to this question.

therefore a proper state concern.<sup>98</sup> The ideal of sustainable development can be specified and implemented as a requirement of having a temporal horizon extending beyond our death, which in its turn should be considered a precondition of pursuing many of the important ends of life.<sup>99</sup> A minority culture may embody a form of life that is available nowhere else, and worth preserving, not (only) for its members, but for mankind.<sup>100</sup> Similarly, living together with mentally handicapped people may be considered an enrichment, not only of their social environment, but also of the social environment of the 'others'.<sup>101</sup>

We already came across other important examples of 'intrinsic' public goods in our discussion of the grounds for toleration: a moral and intellectual climate of mutual respect (of course one can start respecting others without waiting for others to do so, but people actually need each other's continuous reinforcement to maintain this attitude) and liberal culture as a forum for free discussion, needed for the self-conscious search for justified belief.<sup>102</sup> The latter example is particularly interesting, for it suggests that even in the case of some exercisable basic rights, their value resides not only, or even primarily, in the interest of the right-holder to exercise the right, but in the external effects of her exercising it for others.<sup>103</sup>

The other side of this coin is the question of state moralism. Let us define this as the question whether the state should be interested in preventing immoral activities which are not immoral because they are harmful, but for some other reason. This definition leaves it open whether such activities are harmful because they are immoral. We see now that this may indeed be so, because such actions cumulatively have an effect on the 'moral climate' within which people's preferences and ideals are formed. The end result may be harmful because it adversely affects people's legitimate interest in the

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<sup>98</sup> Maris \*\*, claiming this to be compatible with neutrality.

<sup>99</sup> Visser 't Hooft \*\*.

<sup>100</sup> Musschenga \*\*.

<sup>101</sup> Reinders \*\*.

<sup>102</sup> Peace may be a polyvalent instrumental good, though it can also be valued for its own sake.

<sup>103</sup> Raz 1986, ch. 10. Rights contribute to the public good of the liberal culture, i.e. an environment with an adequate menu of valuable options for autonomous choice. Raz 1994, ch. 2, even seems to claim that this is the fundamental rationale for having rights at all, which is surely putting it too strongly, cf. Chan 1995.

formation of interests. Whether the harm is ever sufficient to warrant criminalization, however, is quite another matter. We saw that the same negative external effects of people's religious adherence cannot tip the balance against their interest in being free to form their own beliefs and act on them. And this for two reasons: because of the exceptional importance of this freedom to the agent, and because of the positive external effects of its exercise in creating a context for critical scrutiny.<sup>104</sup>

Above we met the question why the state should be neutral concerning ideals of the good life and the good society, when it is permitted to take a partisan stance on the no less controversial issues of distributive justice. The answer is that patterns of distribution of distributable resources are public goods, or evils. There is no neutral position, because state abstinence simply realizes one such pattern, and it is, to say the least, debatable whether this particular pattern is a public good or evil. We see now that exactly the same point can be made about some realizations of perfectionist conceptions as well.

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

The humdrum perfectionism of day-to-day politics I described in section 7 does not only apply to non-excludable goods. I will set aside the question whether it is possible to specify, in a neutral way, 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. (This specification will be particularly difficult at points where these rights and non-injuries come into conflict.<sup>105</sup>) 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>106</sup> However, as soon as we decide to use collective funds to provide some additional goods in kind, e.g. education, health care insurance, housing, or methadon, our problems of specification and weighing return.

Of course they do. For why should we take these goods from the

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<sup>104</sup> See the discussion between Dyzenhaus 1992 and Skipper 1993, cf. note\*.

<sup>105</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>106</sup> If monetary redistribution is used to compensate for special handicaps, perfectionist reasoning may be needed to determine the rates.

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 do have this capacity. For these people could take care of 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, self-respecting etc., because these things themselves belong to the good life, on an equal footing with autonomy.<sup>107</sup>

It would be a mistake to consider this a form of paternalism. It is true that we feel obliged to guarantee one another some basic goods, not as conditions of the exercise of free choice, but as essential components of the good life. But we do not thrust these goods upon others against their will, they can always refuse our offer. On the other hand, we refuse to give them the monetary equivalent of our offer, even if they ask for it, because we do not want our money to be wasted.<sup>108</sup> 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; on the contrary, we have an enforceable positive duty to contribute to the fulfilment of other people's pressing needs. But then we cannot sincerely consider ourselves to perform that duty, unless we believe we are actually fulfilling pressing needs.

Positive duties may have another aspect which does not fit in well with at least the spirit of the neutrality principle. For it may be the case that not just action is required, but also virtue, and not just the "cool" liberal virtues of tolerance and respect for rights and for persons, but also solidarity with people in need, good neighbourliness, hospitality <sup>109</sup>, non-competitiveness, self-restraint, perhaps even austerity.<sup>110</sup> It is true that to the extent that these attitudes are matters of duty, the duties involved are not enforceable ones. If

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<sup>107</sup> Cf. Den Hartogh \*\*, Musschenga \*\*, arguing that in the fields of health care and the treatment of minority cultures respectively, autonomy should not be the only consideration; and in particular Reinders \*\*, on the positive duty to create an enriched social environment for mentally disabled people

<sup>108</sup> Den Hartogh \*\*.

<sup>109</sup> Cf. Reinders \*\*, on policies of integration of mentally disabled people in 'normal' neighbourhoods.

<sup>110</sup> Cf. Visser 't Hooft \*\*, on the virtues required to overcome the ecological crisis.

one does not feel neighbourly to begin with, no law can bring it about that one does. But the government may have a task of promoting these virtues in indirect ways, e.g. by education.<sup>111</sup>

### 10. *Consensual goods*

As we saw, some adherents of the neutrality principle, including Rawls, have no objection to the common pursuit of consensual values; they merely object to requiring people to contribute to the production or maintenance of goods they do not consider to be goods at all.<sup>112</sup> In this vein Wouter Achterberg 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 Creation; Humanism) represented in liberal-democratic society.<sup>113</sup>

A value can be a matter of consensus in different ways.<sup>114</sup> The weakest form is convergence in valuing: each person valuing the same thing, but possibly for different reasons. The second form is transparency: each valuing the same thing for the same reasons and accepting these reasons for the same more basic ones, all the way down. The strongest form is interdependency: each valuing the thing to the extent that it is valued, or enjoyed, by all.<sup>115</sup> A

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<sup>111</sup> Recently some liberal theorists have insisted on the necessity of civic virtue, e.g. Galston 1991 (with a list of the virtues of citizenship on p. 221-4); Macedo 1990 (stressing the virtue of public reasonableness); Gutmann 1987 • {ca. 51-3} cf. the review in Kymlicka & Norman 1994, 365-8. O'Neill 1989 argues that liberalism can give an account of the virtues without compromising its anti-perfectionism, by interpreting them as required by imperfect obligations to fulfill special needs. I agree with her that classical liberalism (Locke, Kant) contained such an account; it is a well-known lacuna in Rawls' work. However, one cannot identify 'needs' without a commitment to at least pale perfectionism.

<sup>112</sup> Cf. Ackerman 1989; Larmore 1990, 358 •.

<sup>113</sup> Achterberg 1993.

<sup>114</sup> Cf. Finnis 1980, ch. vi; Feinberg 1984, 72 •; Nagel 1987, 218 ('convergence' and 'common standpoint' theories); Postema 1987, 420-9, cf. Musschenga \*\*. The interest in social continuity, cf. Visser 't Hooft \*\*, may be of either of the three kinds I discuss. It should be noted that shared, even interdependent aims are not automatically praiseworthy, even if human life without any such aim should be considered impoverished.

<sup>115</sup> Cf. Miller 1989, ch. 3.

community is a group of people involved in transparent or interdependent consensual valuation, and the community may itself be an object of such valuation. An object of interdependent valuation is *ipso facto* a public good.

The notion of a consensual value is rather tricky, because it refers to an unspecifiable number of non-identifiable individuals. For example, if I claim (today somewhat less implausibly than a few years ago) that belonging to the Dutch nation is a consensual (interdependent) 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 would seem that we can speak of consensual valuation even if there is a quite substantial number 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?

But suppose Achterberg is right: all Dutch citizens would, on reflection, 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 be found that this value is interpreted in different ways, and that diverging relative priorities are assigned to it (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 the development of policies cannot be postponed until it does. So political decision-making, even if it tries to implement the '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 to which we are consensually committed, this does not 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 may equally 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 do not by any means intend to belittle the importance of the appeal to shared understandings.<sup>116</sup> If we are prepared to accept perfectionist policies when they can be justified by an appeal, even a controversial appeal, to shared views, our anti-perfectionism appears to be inspired, primarily, by a motive of pacification or recognition. And indeed, if we are aiming at peace or at mutual recognition, it is the obvious move first to consider to what extent our moral views can be made to converge. My point is merely, once again, that we should move on to consider Pareto-superior bargaining results as well.

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>117</sup>; and besides we have a neutral procedure for 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 difference 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.

Day-to-day politics is perfectionist politics. If actual political debate had to proceed in neutral terms, it would be impoverished beyond recognition; the rational formation of public conceptions of the good life, and possibly 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.

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<sup>116</sup> Cf. Den Hartogh \*\*.

<sup>117</sup> De Marneffe 1989, cf. Achterberg, \*\*.

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>118</sup> there is not always a world of meanings that we share which can be used to found a common understanding.<sup>119</sup> But this 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. Day-to-day 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.

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

If the provision of intrinsic public goods is a proper political concern (§ 8), and if our mutual positive obligations concern basic intrinsic goods besides freedom and autonomy (§ 9), our simultaneous acceptance of the complex argument for toleration (§ 3-6) confronts us with the prospect of recurring conflicts of values. Are there any guidelines for resolving these, besides the relegation to proper democratic procedure? On the whole this can only be a domain-specific matter of specifying and weighing the conflicting values and principles, as the other chapters of this book will show. But perhaps a case can be made for one special form of restraint.

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

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<sup>118</sup> Walzer 1983.

<sup>119</sup> This is a common criticism of Walzer, cf. Dworkin 1985, ch. 10, Cohen 1986, Warnke 1992, ch. 2.

treatment of symbols? Some authors<sup>120</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 offence, precisely because the value of symbols is, after all, only symbolic. I do not deny that the treatment of symbols can have a real causal effect on the actual good they symbolize. But if that is sufficient to speak of 'harm', the whole distinction between harm and offence collapses.

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 involve 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.

The state should not make the 'moral climate' of a society its concern, even though it clearly is an essential public good.<sup>121</sup> For every measure it could take - with the exception of the promotion of the cultural diversity of the media, the flourishing of the arts and the humanities (which are just forms of pale perfectionism) - would change the context in which beliefs are formed, and change it intentionally, not only as an inevitable side-effect. And the protection of a free environment for the development of beliefs is another essential public good, usually of overriding importance.

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

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<sup>120</sup> Postema 1987, 430-3; Taylor 1989.

<sup>121</sup> Or the confirmation and expression of national identity, cf. Jacobs, \*. However, some aspects of nationality require a public expression or facilitation, e.g. the public use of one's language, cf. Lagerspetz, forthcoming. And when one's national identity is endangered by oppression at the hands of others, in particular state oppression, the nation may need a state of its own to protect and express its existence.

productive activity, i.e. as 'environment'; it should be prepared to consider intrinsic dimensions of the value of nature as well.<sup>122</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 do not 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>123</sup>

It does not 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.<sup>124</sup> It is sometimes argued that the environmental issues are too important to allow much room for scruples about state moralism. But that argument is completely wrong-headed, as we saw in our discussion of the classical arguments for toleration. The reason why religion paradigmatically belongs to the private domain, is not that the care of our soul is unimportant. It is precisely because it is of overriding importance that we are not be prepared to leave it to any decision procedure, majoritarian or otherwise.

The formation of beliefs and of belief-dependent values can only be trusted in a context of maximum freedom. Perfectionist policies should therefore preferably be directed at changing ways of acting, rather than 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 the state should

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<sup>122</sup> As an essential component of the good life of sentient beings, cf. Den Hartogh 1997.

<sup>123</sup> But 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'.

<sup>124</sup> After the débâcle of Srebrenica the present Dutch Minister of Defence subsidized a private entertainment firm for making a soap series presenting a positive image of the military.

hesitate to confer assay-marks upon life-styles.