

**LIBERATING LIBERALISM  
FROM LIBERAL NEUTRALITY**

by

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A thesis submitted to the Department of Philosophy  
in conformity with the requirements for  
the degree of Master of Arts

Queen's University

Kingston, Ontario, Canada

September, 2007

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## ABSTRACT

Liberal neutrality is the idea that laws should not be based on religious or philosophical doctrines that not everyone accepts. The idea is closely related to the “liberal principle of legitimacy”, which holds that laws are legitimate only if they are acceptable to people who are subject to them. In this thesis, I examine if the idea of neutrality meets liberalism’s own requirements of legitimacy. To do so, I ask what arguments can be given to persuade evangelical Christians—a sizable minority of the U.S. population who are opposed to neutral policies on abortion, school prayer, etc.—to accept neutrality. First, I examine Ackerman and Rawls’s *consensus-finding* argument, which claims generally that most comprehensive conceptions of the good are compatible with neutrality. Second, I examine Larmore, Dworkin, and Kymlicka’s *consensus-building* arguments, which try to locate particular principles which non-neutralists (perfectionists) are likely to accept, and the acceptance of which is said to guarantee the acceptance of neutrality as well. I find both arguments unsatisfactory; neither is acceptable to a person who subscribes to the evangelical view of God and human nature. Third, I consider Rawls’s proposal to *exclude* evangelicals and the like, based on the test of reasonableness which he believes is “freestanding”. However, I find his test of reasonableness dependent on particular understandings of the terms “free and equal citizens”, “common human reason”, and “fair terms of cooperation”. The test of reasonableness, I suggest, is not freestanding, and it is thus circular to use it as a criterion of exclusion. I conclude, therefore, that liberal neutrality fails to satisfy the liberal principle of legitimacy.

## ACKNOWLEDGEMENTS

First of all, I would like to express my gratitude to my supervisor, Professor Christine Sypnowich, for her superb guidance over the last 9 months. She always looked a few steps ahead of where I was, but patiently allowed me to realise on my own the merits of her thoughtful remarks. I also thank my second reader, Professor Will Kymlicka, for his incisive comments and questions. My correspondence with him, few as they were, greatly helped me refine and clarify my argument in this thesis.

Now would also be the occasion to thank my parents, Inkyung and Kyungok, for their unfailing love and support that enabled me to embark on this project. You taught me to read and write; you taught me to think and care; and it was you who showed me the wonders of what we now call philosophy. I thank my sister, Haejin, for her encouraging care and concern during the stressful days of writing and revising; she was also the first to read and ask questions about my drafts. The good humour and curiosity of my brother, Euijin, is also appreciated; pranks are often a good antidote to too much philosophy.

Last, but definitely not the least, I thank my Lord, God. You arranged, I believe, my meeting with everyone named above as well as with countless others. Though it is not the purpose of this thesis to defend any particular religious view, I hope the discussion will help us in general to live in ways that are good in Your eyes. Any piece of truth that might be found in the following pages is wholly Yours; any falsity and glaring mistakes, on the other hand, should be traceable to my rashness and ignorance.

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## Chapter 1

### Introduction

#### 1.1 Addressing Frustration

Liberal neutrality is the idea that “political decisions must be, so far as is possible, independent of any particular conception of the good life, or of what gives value to life”.<sup>1</sup> The principle is usually understood as a prohibition against religious opinions being employed as bases for lawmaking. For example, the Establishment Clause of the First Amendment to the United States Constitution (“Congress shall make no law respecting an establishment of religion...”) has been understood, at least since *Lemon v. Kurtzman*,<sup>2</sup> as requiring all laws and policies to have a “secular purpose”—an interpretation that has been upheld by the Supreme Court many times over the last thirty-six years. Section 2 of the Canadian Charter of Rights and Freedoms (which grants “freedom of conscience and religion” to everyone) is often understood in a similar vein, as is the principle of *laïcité* which characterizes the secularism of modern France. Irrespective of the exact form it might take in a nation’s political system, liberal neutrality requires in all cases that laws should be based, not on the authority of a particular religion or moral philosophy, but on “neutral” grounds that all can accept. Neither God’s commands nor Kant’s metaphysics nor Marx’s view of history is an acceptable basis, in other words, for lawmaking in societies where people of many different faiths and creeds live together.

On the one hand, the liberal principle of neutrality seems intuitively correct. The fact that some people, or even many people, demand the making of a particular law does

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<sup>1</sup> Dworkin, *A Matter of Principle*, p. 191.

<sup>2</sup> 403 U.S. 602 (1971).

not show that it would be right to make such a law. For all we know, the majority could be mistaken; even if they are not, dissidents are likely to find the law oppressive. On the other hand, the line of reasoning just sketched only seems to work if you have reasons to doubt the moral worth of the law in question. When you sincerely believe that a law should be made, say, to fight a potentially devastating social ill, and you find that your state refuses to listen to your opinion simply because there are others who disagree, you are deeply frustrated, and depending on the strength of your conviction, you may even come to doubt the very point of having a state like yours. This sense of frustration, for the devout believer, could be no less discouraging than the liberal's outrage who finds himself in a traditional theocracy. The voice of the evangelical Christian, for instance, for whom legal abortion is tantamount to state-supported murder, then, must be taken no less seriously than the frustration of the same-sex couple who do not qualify for marriage- and family-related benefits, or the agony of the 18th-century liberal who is kept away from public office due to his unorthodox religious opinion. At least, that is what the situation looks like to someone who has yet to make up his mind on the principle of neutrality.

When it comes to the chance of being killed or imprisoned for one's beliefs, modern constitutional democracies are without doubt much safer than any other form of political association with which humanity has experimented; nonetheless, being killed or imprisoned is not the only way in which noble causes and sincere efforts can be frustrated with possibly grave consequences. A neutral state refuses to take certain opinions into consideration; a polite apology in lieu of the guillotine does not make a refusal anything other than a refusal. In each and every case sketched above, one finds one's path blocked by an impenetrable wall of political institutions. For the pro-life activist, millions of innocent lives could be at stake—no less urgent a matter than those genocides that make

the better headline.

To be sure, few scholars claim to have found political arrangements that can quench all frustration. As Bruce Ackerman admits, “all outcomes, taken by themselves, are best described as ‘frustrating’ for some citizens—even when they are fulfilling for others”.<sup>3</sup> In a majoritarian, representative, constitutional democracy, for instance, minorities often face frustration; even majorities seldom have the power to make any law they want. However, the frustration that neutrality causes is of a special kind. Whereas most participants of modern democratic processes agree to accept the results of a fair vote, neutrality tells people to refrain from making certain laws even if a fair vote would mandate such laws. For instance, it is said that 74 percent of South Carolinians support the teaching of creationism in public schools.<sup>4</sup> Yet, neutrality requires that this majority’s religious opinion not be made into a law. How is this extra restriction to be explained to the religious citizens of South Carolina? Why should they, who are otherwise good democratic citizens, accept this extra burden?

A feeling of frustration, for political philosophy, means more than just a feeling; it testifies to a discord between a citizen’s sincere beliefs and her country’s concrete laws. Since the widely acknowledged “liberal principle of legitimacy”, as John Rawls explains, says that political power is “fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason”,<sup>5</sup> such discords call into question the legitimacy of the laws involved. As

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<sup>3</sup> Ackerman, “What Is Neutral about Neutrality?”, p. 389.

<sup>4</sup> Woodrum and Hoban, “Support for Prayer in School and Creationism”, p. 313.

<sup>5</sup> Rawls, *Political Liberalism*, p. 136-137.

early liberals risked their lives arguing, why should anyone be subject to laws she cannot accept?

In order to satisfy the principle of legitimacy, then, liberals who argue for neutrality must give an account as to why *their* suppression in the public arena of religious opinions and other comprehensive conceptions of the good life is not as hideous as other, stereotypical forms of suppression often associated with theocracy, communism, and military dictatorship. As liberals have emphasized time and again, every restriction needs a justification. The restriction that accompanies neutrality, therefore, must also be justified in a way that can appeal to every person who chooses to live in a modern constitutional democracy—including and especially citizens who do not already subscribe to the principle of neutrality. For as Nagel points out, “liberalism purports to be a view that justifies religious toleration not only to religious skeptics but to the devout, and sexual toleration not only to libertines but to those who believe extramarital sex is sinful”.<sup>6</sup> When it comes to legitimacy, everyone’s opinion counts.

## **1.2 Outline of the Argument**

In this thesis I will argue that the liberal principle of neutrality cannot be defended in a way that satisfies the liberal principle of legitimacy; the two liberal principles, in other words, are incompatible—at least given the contemporary political climate. A neutral state subjects some of its citizens to laws they cannot accept, and liberal theory has yet to provide those citizens with good reasons to change their minds.

My argument will sometimes draw from, but take a different approach from, some

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<sup>6</sup> Nagel, *Equality and Partiality*, p. 156.

of the related yet more widely discussed topics in modern political philosophy. For instance, the “liberalism versus communitarianism” debate, characterised by the works of Alasdair MacIntyre, Charles Taylor, Michael Sandel, and others, call into question and attempt to qualify some of liberalism’s most important values such as autonomy. Meanwhile, there is the debate within liberalism as to whether or not, and how much, liberals should tolerate nonliberal groups; Susan Mendus’s *Toleration and the Limits of Liberalism* and other writings, among others, have contributed much to that discussion. Recent and ongoing debates surrounding “multiculturalism”, exemplified by Will Kymlicka’s *Multicultural Citizenship* and Brian Barry’s *Culture & Equality*, also deal with liberalism’s treatment of ethnocultural or religious minorities. Roughly speaking, the first debate is led by nonliberals who question the very possibility of finding political principles that all can accept, while the other two debates are largely carried out by liberals who hang on to that possibility and who try to figure out what to do with nonliberal groups. My thesis, however, takes neither direction. Rather than basing my argument on the communitarian belief (or hope) in shared morals, I would like to join the liberals in their search for legitimate government in a world where diversity must be taken for granted. At the same time, however, rather than asking how liberals should deal with nonliberals, I would like to ask how certain, in particular religious, nonliberals perceive their dealings with the liberal, neutral state—a viewpoint that has been conspicuously neglected. The excursion into the other side’s shoes, I believe, will help all of us appreciate the depth of disagreements out there; the case for neutrality, I will argue, is not strong enough to obtain legitimacy in the face of such disagreements.

I will proceed in four parts. In the first part (Chapter 2), I will introduce the idea of liberal neutrality as characterized by its most adamant advocates, such as Bruce

Ackerman and John Rawls. Then I will ask how the two philosophers would defend their respective theories against their opponents, that is, against “perfectionists” who want at least some laws to be based on a particular religion or moral theory. Both Ackerman’s and Rawls’s defense will be found to rely on their understanding of the situation in modern constitutional democracies. More specifically, both believe that many religions and moral theories that enjoy prominence here and now—including the beliefs of many people who might think otherwise—already support liberal neutrality as a matter of fact. Rawls argues that “we may with perfect consistency hold that it would be unreasonable to use political power to enforce our own comprehensive view”,<sup>7</sup> and that most religious and philosophical views out there say the same. I call this the *consensus-finding (CF) defence* of liberal neutrality. Its success, I will suggest, depends on the reality of religious and moral landscape being sufficiently like what Ackerman and Rawls believe it to be.

In the second part (Chapter 3), I will challenge the CF defence by drawing attention to the fact that a particular doctrine that commands much support in contemporary United States turns out to be a counterexample to Ackerman and Rawls’s characterization. The counterexample is *evangelical Christianity*, the foundational tenets of which are so closely related to its believers’ public position on matters such as abortion and the teaching of creationism in schools that a believer would have to be inconsistent in upholding those tenets and supporting neutrality on such issues. Evangelicals, I will argue, neither support neutrality nor can apply their doctrine in a non-perfectionist way; evangelicalism’s core beliefs expressly demand that the doctrine be applied to the state as well as to non-state forums.

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<sup>7</sup> Rawls, *Political Liberalism*, p. 138-139.

In the third part (Chapter 4), I will introduce a different way of defending liberal neutrality, advanced by Charles Larmore, Ronald Dworkin, and Will Kymlicka. Unlike the CF defence, the three philosophers' *consensus-building (CB) defence* admits that there may not be a consensus on neutrality. Instead, Larmore, Dworkin, and Kymlicka try to locate principles that their perfectionist critics are likely to accept, and the acceptance of which will enable even perfectionists to appreciate the merits of liberal neutrality. However, both Larmore and Dworkin's argument based on the principle of equal respect for persons, and Dworkin and Kymlicka's argument based on the principle of free choice, fail to persuade evangelical perfectionists. While liberal neutralists do locate principles that are similar to what evangelicals believe, what little difference remains is sufficient for evangelicals to break out of the neutralists' reasoning and maintain their non-neutral policy recommendations. Kymlicka's argument based on rational revisability—that is, our tendency to make mistakes and our having an interest in being able to correct those mistakes—fares slightly better. However, the “marketplace of ideas” that Kymlicka proposes as an alternative to state perfectionism is not compatible with doctrines such as evangelicalism and, as a result, evangelicals would not see a strong reason to accept Kymlicka's argument for neutrality.

In the fourth part (Chapter 5), I will consider liberal neutralism's most likely response to the failures of their CF and CB defences: to exclude evangelicals from the overlapping consensus such that their dissent does not pose a threat to the legitimacy of neutrality. Rawls, for instance, argues that his “freestanding” test of reasonableness can be used to exclude perfectionist doctrines from the political arena. However, I find that the concepts Rawls relies upon in framing his test of reasonableness, such as “free and equal citizens”, “common human reason”, and “fair terms of cooperation”, are subject to

various interpretations depending on one's view of human nature. The evangelical view of human nature, in particular, would lead evangelicals to understand Rawls's terms in a very different way from what Rawls intends them to mean. Rawls's test of reasonableness, then, is not freestanding; I argue, therefore, that the test cannot be used to exclude evangelicals or any other perfectionist group in modern constitutional democracies.

In my summary and conclusion (Chapter 6), I will suggest that the failure of liberal neutralists in providing successful defences against perfectionist critics is due to their inattention to details about perfectionist doctrines. Liberal neutralists are regularly misinformed about just what it is that their opponents believe, which makes it extremely difficult for neutralists to construct arguments that would be persuade perfectionists such as American evangelicals. Meanwhile, the liberal principle of legitimacy requires neutralists to provide a justification of neutrality that is acceptable to all; failing that, the principle of neutrality becomes illegitimate in liberalism's own light.

## Chapter 2

### Liberal Neutrality as a Common Ground

#### 2.1 What Is Neutrality?

There is much emotional hustle and bustle surrounding the idea of neutrality, among those who are sympathetic to liberalism as well as among conservative, perfectionist and religious critics—not to mention in the debate between the two groups. Evangelical Christians in the United States, for instance, complain that “[w]hen Christians speak out on issues, the hue and cry from the humanist state and media is that Christians, and all religions, are prohibited from speaking since there is a separation of church and state”.<sup>8</sup> “Many Americans”, meanwhile, according to one liberal, “are horrified by the prospect of a new dark age imposed by militant superstition”; when they hear the fundamentalists speak out, “they fear a black, know-nothing night of ignorance in which America becomes an intellectually backward and stagnant theocracy”.<sup>9</sup> The forums are less polarised in Canada and the rest of the liberal democratic world, but the debate is there all the same; abortion, same-sex marriage, human embryonic stem cell research, and numerous other issues bring up everywhere the question of admitting moral opinions into lawmaking.

In this chapter I will attempt to clarify what liberals usually mean by “neutrality”, and I will ask how that idea might be defended against this perfectionist opposition. I will introduce the *modus vivendi* argument, which I will, like many liberals do, dismiss as lacking in stability. Then I will examine how two pioneers in the theory of neutrality,

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<sup>8</sup> Schaeffer, “A Christian Manifesto”, in Schaeffer, *Complete Works*, vol. 5, p. 434.

<sup>9</sup> Dworkin, *Is Democracy Possible Here?*, p. 79.

Bruce Ackerman and John Rawls, propose to defend their views. The success of their defences, I will suggest, is dependent upon most of the comprehensive doctrines found in modern constitutional democracies being compatible with the principle of neutrality. Whether or not such a consensus obtains will be discussed in the next three chapters.

The word “neutrality” can be taken to mean very different things. To begin, must a state be neutral such that *no* contentious religious, moral, or philosophical view is invoked in its decision-making, or should it give due consideration to *every* comprehensive doctrine?<sup>10</sup> Second, should the state remain neutral even towards wicked opinions such as Nazism, and if not, what is the criterion that warrants their exclusion? Third, if a neutral policy gives rise to inequalities in the well-being of people who choose different ways of life, are the inequalities justified, or does neutrality require that the situation be corrected? Different answers to these questions will result in different conceptions of what neutrality amounts to. The typical liberal view is one among many possible ways of defining neutrality: it aims to affirm no particular comprehensive doctrine, it excludes certain doctrines that are deemed unacceptable, and it does not claim neutrality in all outcomes.

Rawls, perhaps the most prominent figure to have written on the topic, says regarding my first question that “the state is not to do anything intended to favour or promote any particular comprehensive doctrine rather than another, or to give greater assistance to those who pursue it.”<sup>11</sup> This remark is open to two interpretations: either the

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<sup>10</sup> Rawls uses the term “comprehensive doctrine” to refer to religious, moral, or philosophical doctrines. Catholicism, Protestantism, Utilitarianism, Marxism, and Islam would all be examples of comprehensive doctrines. However, not everyone holds a comprehensive doctrine; a person may have a number of scattered moral beliefs that do not cohere into a systematic whole, in which case his view would be less than comprehensive. Most writers therefore prefer the term “conception of the good”, which refers to any religious, moral, philosophical, or other set of beliefs that describes a persons’ view on the kind of life that she finds desirable. This difference in meaning should prove important later in my argument.

<sup>11</sup> Rawls, *Political Liberalism*, p. 193.

state must uphold no comprehensive doctrine whatsoever, or it may uphold some doctrines as long as it does not uphold any *particular* one—presumably in case more than one doctrine concurs regarding certain laws. As we shall see in the following sections, Ackerman’s theory leans towards the first interpretation while Rawls’s version is closer to the latter. But neither believes that a state can uphold all comprehensive doctrines at all times, and it is obvious why: comprehensive doctrines often conflict with one another. A state cannot simultaneously uphold, for example, a view that condemns physician-assisted suicide and another view that approves of the same thing. Meanwhile, a decision has to be made as to whether physician-assisted suicide is a crime or not. Such a decision, in order to be neutral, must rely on *neither* view. Indeed, there would be no need to make political decisions at all if such decisions could be made while upholding every relevant opinion; in that case there would be unanimity.

Regarding my second question, Rawls argues that certain doctrines must be excluded, since there is no way to keep a society going without excluding some seriously uncooperative ones. Nazism is probably the first to be excluded, but it will not be the only one; other, less offensive doctrines may nevertheless prove incapable of coexisting with others. As Rawls observes:

No society can include within itself all forms of life. We may indeed lament the limited space, as it were, of social worlds, and of ours in particular; and we may regret some of the inevitable effects of our culture and social structure. As Berlin has long maintained (it is one of his fundamental themes), there is no social world without loss: that is, no social world that does not exclude some ways of life that realize in special ways certain fundamental virtues... But these social necessities are not to be taken for arbitrary bias or injustice.<sup>12</sup>

It may be asked, what does it mean to exclude a particular doctrine, since it has already

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<sup>12</sup> Ibid, p. 197.

been said that no particular doctrine may feature in political decision-making anyway? The difference is this: while particular doctrines cannot be invoked to justify laws, any law that does get made must be such that most people, regardless of the particular doctrines they may subscribe to, can consent to it. In other words, there will be what Rawls calls a society-wide “overlapping consensus” on neutral laws. Rawls’s idea will be discussed in more detail later in this chapter; suffice now to note that this point here reflects a powerful idea, the *liberal principle of legitimacy*, which modern liberals have inherited from the social contract tradition: that political power is legitimate insofar as those who are subject to it consent to it. Let’s look at an example. Proponents and opponents of physician-assisted suicide may nevertheless agree on the value of life and the reality of pain, and thus aim to reach a consensus by building upon those shared grounds. A consensus thus reached would be acceptable to both. But if a particular doctrine holds that the value of one’s life depends on one’s race or colour, this opinion shares nothing with others. It is impossible to make law that can both satisfy the demands of this doctrine and command the acceptance of most others. Therefore the racist doctrine must be excluded from further discussion—for otherwise there will be no discussion.<sup>13</sup>

Regarding my third question, Rawls writes that it is simply impractical to ensure neutral consequences, and thus he settles for “neutrality of aim”.<sup>14</sup> Any political decision creates winners and losers; if a conception of the good shares in the overlapping consensus and yet the results so reached are unfavourable to its survival, Rawls argues, it

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<sup>13</sup> Other liberals, such as Kymlicka, do not agree with Rawls that usually a shared ground can be found. According to Kymlicka, there is too much difference between Rawls’s theory of justice and the beliefs and interests of certain communitarian groups for there to be an overlapping consensus among them. (See his *Contemporary Political Philosophy*, Chapter 6.) Nonetheless, Kymlicka argues that a liberal state can be neutral among a wide array of conceptions of the good, including “communitarian” ones.

<sup>14</sup> *Ibid.*, p. 193.

must “cease to exist in the well-ordered society of political liberalism”.<sup>15</sup> While Berlin and Rawls might lament this inevitable nature of the “crooked timber of humanity”, other liberals often attach positive value to the “sorting effect” of neutrality of aim. Ronald Dworkin writes that “liberal neutrality... must have the result that some kinds of lives are more difficult to lead than others”,<sup>16</sup> and Will Kymlicka further explains the importance of neutrality of aim as a way to indirectly measure the worth of contending conceptions of the good:

Freedom of speech and association allows each group to pursue and advertise its way of life, and those ways of life that are unworthy will have difficulty attracting adherents. Since individuals are free to choose between competing visions of the good life, liberal neutrality creates a marketplace of ideas, as it were, and how well a way of life does in this market depends on what it offers to prospective adherents... Liberals endorse civil liberties in part precisely because they make it possible “that the worth of different modes of life should be proved practically”.<sup>17</sup>

It is sometimes argued that it would be unfair to challenging yet valuable ways of life, or to historically disadvantaged ways of life, if the survival of conceptions of the good is left entirely to the “marketplace of ideas”. Liberals often respond by proposing measures that would ensure the survival of generally disadvantaged lifestyles, such as the arts and minority cultures.<sup>18</sup> Still, once those guarantees are in place, neutrality requires that the state take its hands off the rise or decline of any particular religion or moral philosophy.

It is important to notice that, by keeping the state out of the marketplace of ideas as much as possible, liberals do not commit themselves to the sceptical or pluralist view

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<sup>15</sup> Ibid, p. 196-197.

<sup>16</sup> Dworkin, *Sovereign Virtue*, p. 283.

<sup>17</sup> Kymlicka, *Contemporary Political Philosophy*, p. 248.

<sup>18</sup> For instance, Dworkin argues that a neutral state may support the arts for the sake of preserving a “rich cultural structure” (see his *A Matter of Principle*, Chapter 11), and Kymlicka’s arguments for minority rights can be also read in a similar light (see his *Multicultural Citizenship* and related works).

that all religious or moral doctrines are equally wrong or right. Liberals are not opposed to evaluating the worth of various conceptions of the good; they only want the process of such evaluation to have nothing to do with the leviathan of a state. As Dworkin argues, liberals endorse state neutrality “not because there is no right and wrong in political morality, but because that is what is right”.<sup>19</sup> And as Kymlicka notes, this liberal argument betrays “a certain faith in the operation of non-state forums and processes for individual judgment and cultural development, and a distrust of the operation of state forums for evaluating the good”.<sup>20</sup> Liberals believe that a state which tries to uphold, by force, a particular conception of the good is likely become tyrannical; in the past there was the tyranny of religious orthodoxy, and in modern democracies, as John Stuart Mill rightly worried, the tyranny of the majority is a very real danger. No matter how strongly one adheres to one’s moral convictions, liberals therefore argue, it should not be the business of a state to back up such convictions with coercive political power, unless shared grounds are found to which everyone—except a few racists and the like—can freely consent.

Because the idea of neutrality is qualified in these ways, liberals often avoid using the word “neutrality”. Dworkin, for example, insists that his theory is based on “equality” rather than “neutrality”,<sup>21</sup> and Kymlicka proposes the term “state anti-perfectionism” to highlight the idea that it is the liberal *state*—as opposed to the liberal community or the liberal family—that must not uphold any particular perfectionist ideal.<sup>22</sup> In the rest of my

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<sup>19</sup> Dworkin, *A Matter of Principle*, p. 203.

<sup>20</sup> Kymlicka, *Contemporary Political Philosophy*, p. 251.

<sup>21</sup> Dworkin, *A Matter of Principle*, p. 205.

<sup>22</sup> Kymlicka, *Contemporary Political Philosophy*, p. 217. Perfectionism, according to Kymlicka, is the belief “that certain ways of life constitute human ‘perfection’ or ‘excellence’, and that such ways of life should be promoted, while less worthy ways of life should be penalized” (ibid). This definition is true of

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thesis, I will use the terms “neutrality” and “state anti-perfectionism” interchangeably, to refer to the same liberal principle that a state must not base its laws on any particular comprehensive conception of the good.

## 2.2 The Modus Vivendi Argument

So, that is what neutrality means. But why should people be willing to give up, even if only for the purpose of political decision-making, any part of their religious or moral beliefs just because their validity happens to be controversial? To be sure, people’s reluctance to do precisely that, according to liberals, is what causes the problem to which neutrality might be a solution. But as illustrated by the example of the Catholic or evangelical Protestant who sees the legalization of abortion as state-supported murder, neutrality could be quite an appalling idea for some, if not many, people. Suppose, as it is likely, that any neutral policy on abortion will provide for a much less comprehensive prohibition than the Catholic or evangelical would like it to be. For the devout, then, a neutral state allows anywhere between a few thousand and a few million murders to go unpunished. This *is* a strong argument against the neutral policy at hand, at least for the Catholic or evangelical. Consider various other groups (Muslims, etc.) who may have similarly strong social and political agenda on various issues, and one is obliged to ask: *who wants neutrality?*

A traditional response to this problem has been that neutrality is necessary to maintain a peaceful society, for if each person pushed for a political order reflecting his

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most religious, moral, and philosophical doctrines. Since the liberal state does not promote or penalize any particular way of life, it is, according to Kymlicka, “anti-perfectionist”. Note that perfectionism does not necessarily support intolerance: Joseph Raz’s theory, for example, is perfectionist and yet includes toleration as part of its package of perfections (see Raz, *The Morality of Freedom*).

own beliefs, there would never be an end to civil strife. We need only look back at centuries of turmoil that obsessed much of Europe following the Reformation, to see why people might find neutrality attractive. Countless lives were lost while Catholics and various Protestant groups fought for political power. Violence only ended when the churches gave up seeking control of the throne. The Soviet Union and other communist “experiments” also make good examples; we still have only a vague idea of how many political, religious, and other conscientious dissenters were put to death behind the iron curtain. Therefore, the argument goes, religions and other comprehensive conceptions of the good are best kept away from the state; inviting a few angry calls is nothing compared to the horrors of state perfectionism.

Suppose, it is said, that a group with more political power is permitted to use the law to impose *their* conception of the good upon less fortunate groups. If other groups are not powerful enough to resist such an imposition, there will be tyranny; if other groups are equal to resistance, there will be civil war. And whenever the balance of power shifts, there will be another tyranny and another civil war—precisely the situation in England during much of the 17th century. What, it is asked, can be worse than tyranny and civil war? So, the argument goes, everyone should accept a neutral state even if doing so makes it difficult to use the law to serve good, because otherwise the law might end up doing more harm. Hence lawmaking should not be allowed to be justified with reference to any particular religion or moral theory, unless citizens of other persuasions freely consent to the same law. This is the *modus vivendi argument* for neutrality.

The *modus vivendi* argument, however, is only persuasive if the balance of power among the contending groups is such that peace is genuinely at risk. For, as Rawls observes, if people accept neutrality merely as a *modus vivendi*, “social unity is only

apparent, as its stability is contingent on circumstances remaining such as not to upset the fortunate convergence of interests”.<sup>23</sup> If any one group believes itself powerful enough to suppress all other groups without risking civil war, the modus vivendi argument will not keep the group from establishing a monopoly. Also, the suppressed minority might give up resistance after a while, when it finds its efforts to be futile. Where there is a significant imbalance of power among different groups, then, the modus vivendi argument does not support neutrality. Furthermore, people might believe that certain causes are so important as to override any consideration of peace. People in fact go to war for causes that they believe are noble; it will not do to tell them to curb their convictions for the sake of peace which they find disgraceful or even evil. After all, why should we expect anyone to refrain from seeking every support she could get for what she sincerely believes to be good, if she had the opportunity to do so and if she had nothing to fear?

The modus vivendi argument may have been an important motivation for modern liberal philosophy, but it is the wrong way to go when it comes to defending neutrality in the face of its perfectionist opponents. Some may yearn for peace so much as to be moved by the modus vivendi argument, as many in Locke’s time might have been; not everyone, however, is in a position to be persuaded by it. What the advocates of neutrality need, as Jean Hampton points out, is “a public argument for the philosophical project of developing an overlapping consensus that is neutral among the citizenry’s competing metaphysical conceptions”.<sup>24</sup> In other words, neutrality itself must have a justification which most people can accept, no matter what comprehensive doctrine they may

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<sup>23</sup> Rawls, *Political Liberalism*, p. 147.

<sup>24</sup> Hampton, “Should Political Philosophy Be Done without Metaphysics?”, p. 806. Hampton’s remark is a response to Rawls’s theory of “overlapping consensus” which will be discussed later. Hampton concludes in her paper that such a public argument cannot be found.

subscribe to, and no matter how much power they may have at their disposal. Finding such an argument for neutrality is the project pursued by Ackerman and Rawls.

### **2.3 Ackerman and Neutral Dialogue**

One common argument for neutrality is found in the theory commonly known as “political liberalism”, a particular brand of liberal theory that has gained much support since the late 1970s. Basically, political liberalism is liberal theory detached from the deep metaphysical assumptions of Locke, Kant, and Mill, on the basis of which liberalism has traditionally been justified. Although liberal critics of political liberalism such as Kymlicka argue that neutrality should be defended without relying on political liberalism, much recent literature on neutrality revolves around political liberalism in its several formations. Indeed, political liberalism seems to have a *prima facie* advantage over other theories when it comes to justifying neutrality. Its professed lack of metaphysical basis matches well what it purports to justify: namely, the idea that lawmaking should not involve deep metaphysical beliefs about the existence of supernatural beings or the source and nature of good and/or evil.

One of the earliest and most celebrated (and criticized) works on political liberalism is Bruce Ackerman’s *Social Justice in the Liberal State* (1980). There he argues that liberalism must advance beyond “the tradition’s incomplete liberation from the theocratic past”.<sup>25</sup> The liberal theories of Locke, Kant, and Mill, according to Ackerman, are inadequate because they are based on Christian, deontological, or utilitarian assumptions about some supreme good. No human being can quite understand what that

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<sup>25</sup> Ackerman, *Social Justice in the Liberal State*, p. 332.

good amounts to or how best to realize it, a situation which gives rise to endless controversies to no avail. Therefore Ackerman argues that “the just resolution of the flesh-and-blood contest for power”<sup>26</sup> must be determined without making liberalism “a hostage of a *particular* metaphysical system”:<sup>27</sup>

While traditional liberal thought has rejected theology when it comes to a *substantive* answer to the question of legitimacy, it has been strangely uncritical in assuming that the proper *form* of an answer involves an appeal to a hypothetical being who transcends the social situation in fundamental ways... What is required is the construction of a new form of liberal discourse in which you and I can talk to one another without hiding behind some third party who neither of us can claim to understand.<sup>28</sup>

Ackerman begins to construct this “new form of liberal discourse” by asking what the world would look like “if no one ever suppressed another’s question of legitimacy, where every questioner met with a conscientious attempt at an answer”.<sup>29</sup> In other words, he asks us to imagine what the world would look like if all claims to political power or rights were to undergo scrutiny, and if each person were allowed just those rights that such scrutiny showed her to be entitled to. Since “[t]he only context in which a claim of right has a point is one where you anticipate the possibility of conversation with some potential competitor”,<sup>30</sup> Ackerman suggests that the scrutiny should be conducted in the form of a conversation, between whoever claims certain rights and whoever questions such a claim.

The conversation can take any form, according to Ackerman, except that it is subject to three constraints. The first constraint is *rationality*: reasons must be given,

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<sup>26</sup> Ibid, p. 327.

<sup>27</sup> Ibid, p. 356-357. Emphasis is Ackerman’s.

<sup>28</sup> Ibid, p. 332-333.

<sup>29</sup> Ibid, p. 4.

<sup>30</sup> Ibid, p. 5.

rather than brute force, threat, or hypnosis. The second constraint is *consistency*: the interlocutors must not contradict themselves. These two should be quite obvious, if there is to be a conversation rather than a quarrel. But the third constraint may not be so obvious. It is *neutrality*, and it is supposed to dictate what reasons can be given in defense of a claim. Ackerman writes:

No reason is a good reason if it requires the power holder to assert:

- (a) that his conception of the good is better than that asserted by any of his fellow citizens, or
- (b) that, regardless of his conception of the good, he is intrinsically superior to one or more of his fellow citizens.<sup>31</sup>

Neutrality thus keeps people from invoking a particular conception of the good in support of their claims. For whenever a person does so, she says in effect that the doctrine she invokes is better than other doctrines which might be invoked to challenge her claim. Not even the liberal theories of Kant and Mill are an exception: “rather than appealing to contract or utility, liberal citizens try to resolve each of their power problems by talking to one another in a neutral way”.<sup>32</sup> A conversation that meets Ackerman’s three constraints, then, would yield principles that did not appeal to any particular religious or moral doctrine for their justification. Such laws would be acceptable to everyone who participated in the conversation, regardless of their religious or philosophical or cultural affiliation.

So far so good, but this is only an *exposition* of Ackerman’s theory, not a *justification* of why people should engage in a neutral conversation in the first place. How, then, does Ackerman propose to defend his proposal to those who might oppose it? To begin with, here is a passage from Ackerman’s book:

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<sup>31</sup> Ibid, p. 11.

<sup>32</sup> Ackerman, “What Is Neutral about Neutrality?”, p. 380.

There is a perfect parallelism, then, between the role of political conversation *within* a liberal state, and the role of philosophical conversation *in defense of* a liberal state... The task of *political* conversation is to make it possible for each citizen to defend his power without declaring himself intrinsically superior to any other citizen. The task of *philosophical* conversation is to make it possible for a person to reason his way to Neutrality without declaring that the path he has chosen is intrinsically better than any other route to liberalism.<sup>33</sup>

It appears, here, that Ackerman believes there to be a neutral path to neutrality, that is, a defense of neutrality that does not depend on the truth of any particular religious or philosophical doctrine. However, look now at another passage, this time from an article that Ackerman published a few years later:

[W]hile Neutrality excludes a broad range of normative argument from the practice of liberal politics, it does not follow that these arguments should also be excluded when the subject is the justification of the entire practice of liberal argument, considered as a whole. Indeed, it would be a category mistake to imagine that there could be a Neutral justification for the practice of Neutral justification—for Neutrality makes no sense except as a part of the practice it constitutes.<sup>34</sup>

Here, Ackerman denies explicitly that there can be a neutral defense of neutrality. Does this amount to a contradiction of what he asserts in his book, thereby violating his own second constraint? I do not think so. Ackerman's defence of neutrality is meant to be only *parallel* to the substance of neutrality, not *identical* to it. When it comes to defending neutrality, it seems, Ackerman has in mind a looser version of neutrality than what his third constraint allows. The loose version allows people to invoke their comprehensive conceptions of the good "when the subject is the justification of the entire practice of liberal argument, considered as a whole"—as long as people need not be limited to a *particular* doctrine in order to do so.

What this means is that there are multiple justifications of neutrality, each of

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<sup>33</sup> Ackerman, *Social Justice in the Liberal State*, p. 359.

<sup>34</sup> Ackerman, "What Is Neutral about Neutrality?", p. 387.

which may depend on the truth of one or more religious or moral doctrines, but which, taken as a whole, leads people with different conceptions of the good all to neutrality. In other words, many comprehensive doctrines support neutrality. “Liberalism does not depend on the truth of any single metaphysical or epistemological system”, writes Ackerman. “Instead, liberalism’s ultimate justification is to be found in its strategic location in a web of talk that converges upon it from every direction. Each strand is itself sufficient to support a reasoned belief in Neutrality; yet to cut oneself off from a single strand hardly liberates from the web of belief”.<sup>35</sup> What is more, according to Ackerman, it is “downright easy to think of several weighty arguments in support of Neutrality”.<sup>36</sup>

Here are a few examples of what Ackerman believes are “the *different* paths that can lead a thoughtful person to Neutrality”.<sup>37</sup> To begin with, suppose you believe that there is a certain supreme social good that must be promoted. Still, it might be bad idea to bring the modern state into that business. “Love, friendship, and the like are not readily susceptible of mass production. A vital communal life will not flourish under the watchful gaze of bureaucrats dispatched from the imperial center.”<sup>38</sup> Furthermore, “a bureaucratic government’s hypocritical declarations of virtue can give the good a bad name”.<sup>39</sup> Therefore, you had better not allow the state to make laws in the name of what you believe to be the good, lest you do more bad than good. To take another example, if you have any doubts about the good, you have all the more reason to keep the state from telling you which way to go. “[S]urely the only way you can ever come to *know* the good

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<sup>35</sup> Ackerman, *Social Justice in the Liberal State*, p. 361.

<sup>36</sup> *Ibid.*, p. 11.

<sup>37</sup> *Ibid.*, p. 360.

<sup>38</sup> *Ibid.*, p. 362.

<sup>39</sup> *Ibid.*, p. 364.

is by transcending, rather than suppressing, your doubts.”<sup>40</sup> Anyone currently in search of truth would be attracted to this argument for neutrality, since a law that is based on a particular answer could make it difficult to try another potential answer. Third, there is the possibility that the nature of the supreme good is such that it simply cannot be forced upon people, either by the state or by other people. “You may have scaled Mount Olympus only to discover the blazing truth that the good is of a kind that cannot—conceptually cannot—be imposed on another.”<sup>41</sup> This would be true of traditional liberals such as Locke, Kant and Mill, who argue that it is good for people to be free.

Ackerman thus suggests that “[p]eople may be persuaded by any number of very different reasons to embrace the ideal of Neutral discourse”.<sup>42</sup> As the argument sketched above seem to work in favour of neutrality for many different people, Ackerman writes: “In proposing Neutrality... I do not imagine I am defending an embattled citadel on the fringe of modern civilization. Instead, I am pointing to a place well within the cultural interior that can be reached by countless pathways of argument coming from very different directions.”<sup>43</sup>

## 2.4 Strict versus Loose Neutrality

Confident that the reasons he gives must be sufficient to lead people to neutrality, Ackerman challenges the potential critic: “Would you mind telling me why you find this conversational constraint [i.e. neutrality] unduly confining?”<sup>44</sup> And voila! Soon after his

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<sup>40</sup> Ibid, p. 365.

<sup>41</sup> Ibid, p. 367.

<sup>42</sup> Ibid, p. 14.

<sup>43</sup> Ibid, p. 12.

<sup>44</sup> Ibid, p. 357.

book was published, critics began to tell Ackerman their reasons for discontent.

According to them, there are good reasons for a state to bring in, at least sometimes, one or another comprehensive doctrine in shaping its policies. Ackerman's neutrality, in other words, is so strict that it cripples the state's ability to do some of the things that it must do.

Don Habibi argues that neutrality is no good when it comes to education. Given that most schools in North America are operated and/or funded by the state, if the state must not uphold any particular conception of the good, neither should schools. But education, argues Habibi, must uphold some or other conception of the good:

The requirement that public schools neither favor nor interfere with the free exercise of religion has led to a strained form of secularism which is ambivalent and muddled on questions of ethics... Unfortunately, the proponents of neutrality have not replaced traditional ethics with something better. They have created a vacuum which is highly problematic. Just as nature abhors a vacuum, moral development does not suffer neutrality.<sup>45</sup>

Ackerman's view on education is that, "as a citizen of a liberal state", a child "is entitled to the least restrictive environment consistent with her dialogic and behavioural development".<sup>46</sup> A child should be free to question anything that is asserted by her parents and teachers: "[t]he liberality of an education is to be measured... by the extent that the growing child's question of legitimacy is taken seriously".<sup>47</sup> Habibi does not disagree with any of this: "it is crucial that educators not indoctrinate their students and use their authority to impose values on them".<sup>48</sup> That requirement, however, according to Habibi, is not the same as neutrality on moral issues:

[It] is vital that educators recognize issues of values and not shy away from them. Addressing such issues is preferable to avoiding them, and is in keeping with the

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<sup>45</sup> Habibi, "Discrimination and Liberal Neutrality", p. 321.

<sup>46</sup> Ackerman, *Social Justice in the Liberal State*, p. 152.

<sup>47</sup> Ibid, p. 159-160.

<sup>48</sup> Habibi, "Discrimination and Liberal Neutrality", p. 321.

best traditions of liberalism. Teachers should not respond to children in a neutral or indifferent manner. Obviously, certain attitudes and behaviors should be encouraged and others should not be tolerated. Teachers should not be expected to resolve tough questions of ethics whenever they arise, but they should be prepared to demonstrate to their students ways of weighing and judging competitive moral claims.<sup>49</sup>

Therefore, argues Habibi, a neutral policy on education will not work. And the problem is not only about the attitude of parents and teachers but also about a state's educational policy in general: “[p]ublic school curriculum policies and textbook selection necessarily involve value judgments”.<sup>50</sup>

Meanwhile, James Fishkin argues that Ackerman's neutrality must assume a particular conception of the good in order to be a viable option at all. Ackerman claims that the first move that a person should make while engaging in neutral dialogue is to say, “I'm at least as good as you are, so I should have power over an X that is at least as good as yours is”.<sup>51</sup> This move, Ackerman believes, ensures that no one possesses more wealth, political power, or other goods than anyone else without providing a neutral justification. But unless a metric of comparison is given, there is no way to tell if anyone has any more of X than any other. This metric, Fishkin argues, can only be given if at some point neutrality is violated:

[Ackerman's] book has a “mantra” which goes: “I'm at least as good as you are, therefore, I should get at least as much.” But this formula cannot be filled out with an answer to the next question, “At least as much *what?*” without an argument for one particular distributional yardstick compared to the competing alternatives. Since, As Ackerman's Commander notes, “We search in vain for a neutral yardstick” (p. 48), neutrality interpreted this strictly leads to an empty formalism.<sup>52</sup>

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<sup>49</sup> Ibid, p. 321.

<sup>50</sup> Ibid, p. 322.

<sup>51</sup> Ackerman, *Social Justice in the Liberal State*, p. 15, 19.

<sup>52</sup> Fishkin, “Can There Be a Neutral Theory of Justice?”, p. 355. Italics mine. Note that, in Ackerman's book, the commander's words are meant to count against utilitarianism by illustrating the impossibility of measuring utility. Fishkin's argument is that the same problem also haunts Ackerman's Neutrality.

Ackerman conveniently avoids the question of metric in two ways: first, he uses an imaginary all-purpose currency, “manna”, in many of his examples; and second, he posits the existence of a “commander” who can discern inequalities and can offer perfect remedies. However, manna can only serve illustrative purposes; in the real world, a real currency must be specified. Not everything can serve as a metric, so long as Ackerman does not aim for a radically homogeneous society where every person is very much like everyone else. But, as Fishkin notices, a neutral state cannot endorse the use of one metric without also acknowledging other, conflicting metrics, in order for it to remain neutral:

Once the empty formalism of strict neutrality is relaxed so that one “yardstick” or another can be inserted into a structural theory as the appropriate account of payoffs, the uniqueness claim of that theory is undermined... Why equal manna rather than equal utilities or equal time shares or equal life-support payments or equal opportunities? <sup>53</sup>

Therefore, Fishkin argues, the idea of neutrality is inconsistent to begin with. In order to discover a neutral solution to any problem, a non-neutral assumption must be made. A state, according to Fishkin, can do nothing if it were to avoid invoking certain comprehensive doctrines in its policy decisions.

How, then, can neutrality be rescued? Susan Mendus provides a cue:

Under any plausible interpretation, the requirement that the state shall be neutral is not a requirement that it shall be neutral between absolutely everything which people might want, or between everything which they might perceive as contributing to their conception of the good. It is only a requirement that *within limits* it shall be neutral.<sup>54</sup>

But what are the “limits” of neutrality? Is there a non-arbitrary way to limit neutrality such that a state is neutral enough not to discriminate among reasonable comprehensive doctrines and at the same time non-neutral enough to make the necessary

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<sup>53</sup> Ibid, p. 355.

<sup>54</sup> Mendus, *Toleration and the Limits of Liberalism*, p. 118.

decisions? As Peter Jones asks, can a state “set the terms, either wholly or in part, *within* which individuals are to pursue conceptions of the good and yet remain neutral, in some credible sense, with respect to all particular conceptions of the good?”<sup>55</sup> Rawls believes that such a solution is possible; he gives an account and a defence of liberal neutrality which he believes work better than Ackerman’s.

### 2.5 Rawls and the Overlapping Consensus

John Rawls’s *Political Liberalism* (1993) provides one of the most thorough treatments of the theory which goes by the same title. For Rawls as well as for Ackerman, political liberalism is a “freestanding view” which “offers no specific metaphysical or epistemological doctrine beyond what is implied by the political conception itself”;<sup>56</sup> yet, the formulation which he calls “the political conception of justice” or “justice as fairness” is designed to overcome the difficulties of Ackerman’s strict neutrality. In short, Rawls takes “loose neutrality” (which Ackerman accepts only as a *defence* of neutrality) and makes it the *substance* of his theory, such that elements of religious and philosophical doctrines are admissible as bases of lawmaking as long as other comprehensive doctrines can also support the same laws.

Rawls’s move to political liberalism is motivated, not so much by a determination to wipe all conceptions of the good out of political discourse (and so rescue liberalism from its “theocratic past”, as Ackerman says), as by the diversity of religious, moral, and philosophical doctrines that have begun to emerge as a serious problem for political

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<sup>55</sup> Jones, “The Ideal of the Neutral State”, in Douglas, Mara, and Richardson, *Liberalism and the Good*, p. 25. Emphasis added.

<sup>56</sup> Rawls, *Political Liberalism*, p. 10.

theories since the middle of the last century. Since the liberal principle of legitimacy requires that the laws of a state be an expression of the will of its citizens, disagreement is a problem that must be handled in one way or another, in order for any law to have legitimacy in a diverse society. Rawls writes:

[O]ur exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason. This is the liberal principle of legitimacy. To this it adds that all questions arising in the legislature that concern or border on constitutional essentials, or basic questions of justice, should also be settled, so far as possible, by principles and ideals that can be similarly endorsed. Only a political conception of justice that all citizens might be reasonably expected to endorse can serve as a basis of public reason and justification.<sup>57</sup>

How can any law based on principles that all can consent to, when there seems to be no such consensus? Rawls thus embarks on a search for principles which all citizens, perhaps with the exception of a few, of a society as diverse as the United States and Canada can nevertheless approve of. Like Ackerman, Rawls is wary of traditional liberalism:

As comprehensive moral ideals, autonomy and individuality are unsuited for a political conception of justice. As found in Kant and J. S. Mill, these comprehensive ideals, despite their very great importance in liberal thought, are extended too far when presented as the only appropriate foundation for a constitutional regime. So understood, liberalism becomes but another sectarian doctrine... [T]hey are only two such conceptions among others, and so but two of the philosophical doctrines likely to persist and gain adherents in a reasonably just democratic regime.<sup>58</sup>

Rawls finds individual autonomy a “sectarian doctrine” because of communitarian challenges that affirm neither individuality nor autonomy. Michael Sandel, for example, criticizes liberalism for its emphasis on individual autonomy, stressing instead that persons do not autonomously choose conceptions of the good but are bound up in

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<sup>57</sup> Ibid, p. 136-137.

<sup>58</sup> Rawls, “Justice as Fairness: Political Not Metaphysical”, p. 246.

(“encumbered by”) the traditions of the community in which they find themselves. Rawls yields to communitarian challenges and seeks a theory that is not based on any contentious view of the person.<sup>59</sup>

In Rawls’s words, his theory “applies the principle of toleration to philosophy itself”.<sup>60</sup> This sounds similar to Ackerman’s statement that there is a parallel between the content of neutrality and the defense of neutrality. It is true: as noted above, for Rawls, not only is neutrality all about finding common grounds, its justification also consists in finding common grounds among various comprehensive doctrines. Political liberalism, according to Rawls, is “a conception of justice that may be shared by citizens as a basis of a reasoned, informed, and willing political agreement”, which “expresses their shared and public political reason”. (Notice the repeated use of the word “shared”.) At the same time, Rawls’s theory is, “as far as possible, independent of the opposing and conflicting philosophical and religious doctrines that citizens affirm”.<sup>61</sup> Therefore, as Rawls proudly pronounces, his theory is “expressly designed to gain the reasoned support of citizens who affirm reasonable although conflicting comprehensive doctrines”.<sup>62</sup>

Rawls, unlike Ackerman, does not demand that people pack up their comprehensive doctrines and make sure to leave them behind when entering the political arena. Rawls’s goal is to find a common ground; therefore, he needs to advocate only as much neutrality as is necessary to resolve the most divisive controversies. The idea, as Peter Jones puts it, is that “[t]he neutral state need be neutral not between all possible

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<sup>59</sup> For Sandel’s criticism, see his *Liberalism and the Limits of Justice*. Also see Kymlicka, *Contemporary Political Philosophy*, Chapter 6. Kymlicka believes that a liberal should reject some communitarian arguments and incorporate other elements of communitarian into the liberal fabric, so he argues that Rawls’s move to political liberalism is unmotivated.

<sup>60</sup> Rawls, *Political Liberalism*, p. 10.

<sup>61</sup> *Ibid.*, p. 9.

<sup>62</sup> *Ibid.*, p. 143.

conceptions of the good but only between conceptions of the good that are held, or are likely to be held, by its citizens”.<sup>63</sup> If so, those parts of comprehensive doctrines that are not actually controversial in a society may be invoked, with perfect legitimacy, as bases of lawmaking.<sup>64</sup> (The range of beliefs that is allowed in the political arena would still be quite narrow. Any opinion pertaining to what a particular religious text requires of people, for example, would be certainly left out.)

Thus Rawls amplifies his thought experiment, “the original position”, which he first introduced in *A Theory of Justice* (1971), in light of political liberalism. The purpose of this thought experiment is to keep biases out while affirming whatever common ground might be found among people from different backgrounds:

[T]he fact that we occupy a particular social position is not a good reason for us to propose, or to expect others to accept, a conception of justice that favors those in this position. Similarly, the fact that we affirm a particular religious, philosophical, or moral comprehensive doctrine with its associated conception of the good is not a reason for us to propose, or to expect others to accept, a conception of justice that favors those of that persuasion.<sup>65</sup>

In order to satisfy this one requirement, Rawls’s original position is designed such that “the parties are not allowed to know the social position of those they represent, or the particular comprehensive doctrine of the person each represents”.<sup>66</sup> More intuitively, the

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<sup>63</sup> Jones, “The Ideal of the Neutral State”, p. 14.

<sup>64</sup> It might be argued that Ackerman’s position in fact supports this point, such that there is no disagreement between Ackerman and Rawls regarding the admissibility of uncontroversial values as bases of lawmaking. This interpretation of Ackerman says that, if certain values are affirmed by all comprehensive doctrines in a society, one does not have to assert the superiority of any particular doctrine to another in invoking those values. Therefore, invoking such values as bases of lawmaking does not violate the constraint of neutrality. This is a reasonable interpretation; however, it obscures the distinction between strict and loose neutralities, and thus stands uneasily with Ackerman’s remark, quoted earlier, that there can be no neutral defense of neutrality. If Ackerman’s defence of neutrality is to be read in a consistent manner, I believe, the distinction between strict neutrality (which is the content of Ackerman’s theory) and loose neutrality (which is employed only as a defense of neutrality) must be maintained.

<sup>65</sup> Rawls, *Political Liberalism*, p. 24.

<sup>66</sup> *Ibid.* Rawls also stipulates that people in the original position are not allowed to know their “race and ethnic group, sex and gender, and their various native endowments such as strength and intelligence, all

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idea behind the original position is that you are invited to choose the principle of justice which would govern the society that you are going to be born into, but no information is given as to what kind of person you will be in that society. For all you know, you might find yourself occupying one of the most prestigious positions, or you might be the wife of a perpetually drunk fellow who beats you up every night. You might be as smart as Albert Einstein, or you might be like Forrest Gump. Most importantly, you might belong to a majority religion, or you could even be what everyone else calls a heretic. So you must make sure, when you choose the principles of justice for your society, that your life would be bearable even if you found yourself in the worst imaginable situation—physically, economically, and religiously. The “veil of ignorance”, as Rawls calls it, therefore ensures that no one is biased when she stands in the original position by her actual beliefs and circumstances.

Given the setup outlined above, Rawls argues that whatever principles agreed upon in the original position will be neutral among many different comprehensive conceptions of the good. This has to be the case, for people in the original position would not want to make life too difficult for members of a certain religion, for example, lest they themselves turn out to be a member once the veil of ignorance is lifted. Meanwhile, since people in the original position are likely to be provided with abundant information as to what each comprehensive doctrine really amounts to (the only thing they are not allowed to know is if *they* will subscribe to any particular doctrine), it is possible for decisions to be made with the details of particular doctrines in mind—unlike in Ackerman’s case

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within the normal range” (p. 25).

where no such detail is allowed to enter the conversation.<sup>67</sup>

The result, according to Rawls, is an “overlapping consensus” on the principle of neutrality. It is a consensus because people do agree upon something, but it is an overlapping, not a full, consensus because people do not necessarily consent to anything but Rawls’s political conception of justice. People in the original position will find that a certain political arrangement is a common denominator of their diverse views, but they are not expected to reach a consensus on every theological conundrum. Rawls also does not prescribe *why* or *how* people should come to reach a consensus on his political conception of justice; as long as they do consent, no other question is asked. “All those who affirm the political conception”, Rawls writes, “start from within their own comprehensive view and draw on the religious, philosophical, and moral grounds it provides”.<sup>68</sup> The original position device encourages people to take everyone’s circumstances into consideration, but otherwise it is business as usual: once the veil is lifted, a Christian remains nothing but a Christian—a Christian who finds that neutrality is a common denominator between her faith and those of others, to be precise.

Therefore, insists Rawls, “accepting the political conception does not presuppose accepting any particular comprehensive religious, philosophical, or moral doctrine”.<sup>69</sup> This is because Rawls’s political liberalism is meant to be “a module, an essential constituent part”, rather than itself a comprehensive doctrine, “that fits into and can be supported by various reasonable comprehensive doctrines that endure in the society

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<sup>67</sup> This leads Ackerman to criticize Rawls for not being neutral enough. “It is just too easy”, writes Ackerman, regarding theories of social contract of which Rawls’s theory is one, “to manipulate the definitions of chooser and choice set to generate any conclusion that suits one’s fancy” (*Social Justice in the Liberal State*, p. 337). “What should *we*, the manipulators of the veil, permit the contractors to see? For, of course, their “choices” will be but artifacts of our shadow play” (p. 339).

<sup>68</sup> Rawls, *Political Liberalism*, p. 147.

<sup>69</sup> *Ibid.*, p. 175.

regulated by it”.<sup>70</sup> By presenting political liberalism as a “political” conception rather than a “comprehensive” conception of the good, Rawls tries to “bypass religion and philosophy’s profoundest controversies so as to have some hope of uncovering a basis of a stable overlapping consensus”.<sup>71</sup>

Again, it is time to ask: why should anyone accept Rawls’s invitation to the original position? If a Christian knows, for example, that he will be required to become party to an overlapping consensus that limits his political agenda to only those beliefs he shares with atheists, what reasons does he have to acknowledge Rawls’s proposal as just? Would he not rather toss the invitation card into the trash?

Rawls gives two reasons why it is “reasonable” for people to participate in the decision-making process he suggests. Reasonableness, according to Rawls, is associated “first, with the willingness to propose and honor fair terms of cooperation, and second, with the willingness to recognize the burdens of judgment and to accept their consequences”.<sup>72</sup> Anyone who is willing to do the two things listed above is reasonable; anyone who is reasonable must be willing to do them.

Reasonable people are willing to propose and honour fair terms of cooperation, Rawls argues, because any human society is “a fair system of cooperation over time, from one generation to the next”.<sup>73</sup> People must be willing to cooperate (or, at the very least, coexist) with others; otherwise there is no point living in a society. People must be also willing to keep their society habitable for the next generation; otherwise the society will soon come to an end. Given these obvious facts, reasonable people must “desire for its

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<sup>70</sup> Ibid, p. 12.

<sup>71</sup> Ibid, p. 152.

<sup>72</sup> Ibid, p. 48 note 1.

<sup>73</sup> Ibid, p. 15.

own sake a social world in which they, as free and equal, can cooperate with others on terms all can accept”.<sup>74</sup> By contrast, those who have no interest in cooperating (or coexisting) with others will not be interested in Rawls’s project of finding legitimate laws for a diverse society in the first place. Such people are unreasonable.

Reasonable people are interested in Rawls’s project, also because they recognize the “burdens of judgment”. The burdens of judgment, according to Rawls, are “the many hazards involved in the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life”,<sup>75</sup> and are thus responsible for the fact of diversity which political liberalism seeks to address. For any given case of disagreement, these include:

- (a) The evidence—empirical and scientific—bearing on the case is conflicting and complex, and thus hard to assess and evaluate.
- (b) Even where we agree fully about the kinds of considerations that are relevant, we may disagree about their weight, and so arrive at different judgments.
- (c) To some extent all our concepts, and not only moral and political concepts, are vague and subject to hard cases; and this indeterminacy means that we must rely on judgment and interpretation (and on judgments about interpretations) within some range (not sharply specifiable) where reasonable persons may differ.
- (d) To some extent (how great we cannot tell) the way we assess evidence and weigh moral and political values is shaped by our total experience, our whole course of life up to now; and our total experiences must always differ...
- (e) Often there are different kinds of normative considerations of different force on both sides of an issue and it is difficult to make an overall assessment.
- (f) Finally... any system of social institutions is limited in the values it can admit so that some selection must be made from the full range of moral and political values that might be realized... Many hard decisions may seem to have no clear answer.<sup>76</sup>

According to Rawls, reasonable people must acknowledge that disagreement is inevitable

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<sup>74</sup> Ibid, p. 50.

<sup>75</sup> Ibid, p. 56.

<sup>76</sup> Ibid, p. 56-57. As with the principles of justice, Rawls makes minor adjustments to the list of burdens of judgment. A similar list appears in *Justice as Fairness: A Restatement*, p. 36-37, where (f) is replaced with a somewhat different statement. The differences should not matter here.

given the conditions under which they exercise reason. Reasonable people should not treat anyone with contempt just because the other person disagrees with them; chances are that the other person thinks she has good reasons to believe what she believes. “It is unrealistic—or worse, it arouses mutual suspicion and hostility”, Rawls argues, “to suppose that all our differences are rooted solely in ignorance and perversity, or else in the rivalries for power, status, or economic gain”.<sup>77</sup>

As noted in the first section of this chapter, Rawls does find it necessary to exclude certain views (such as racism) from the overlapping consensus. However, Rawls believes that most religious and philosophical doctrines found in modern societies are reasonable: as Rawls writes, “[we] avoid excluding doctrines as unreasonable without strong grounds based on clear aspects of the reasonable itself. Otherwise our account runs the danger of being arbitrary and exclusive.”<sup>78</sup> It is a fact of our society, argues Rawls, that an overlapping consensus on neutrality is possible:

[T]he history of religion and philosophy shows that there are many reasonable ways in which the wider realm of values can be understood so as to be either congruent with, or supportive of, or else not in conflict with, the values appropriate to the special domain of the political as specified by a political conception of justice. History tells of a plurality of not unreasonable comprehensive doctrines. This makes an overlapping consensus possible, thus reducing the conflict between political and other values.<sup>79</sup>

In support of his claim, Rawls invites his reader to consider a model society containing three conceptions of the good, which Rawls presumably takes to be a simplified account of twentieth-century North America where monotheistic religions, secular liberalism, and a jumble of other commonsensical opinions exist together:

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<sup>77</sup> Ibid, p. 58.

<sup>78</sup> Ibid, p. 59.

<sup>79</sup> Ibid, p. 140.

It contains three views: one affirms the political conception because its religious doctrine and account of free faith lead to a principle of toleration and underwrite the fundamental liberties of a constitutional regime; while the second view affirms the political conception on the basis of a comprehensive liberal moral doctrine such as those of Kant or Mill. The third, however, is not systematically unified: besides the political values formulated by a freestanding political conception of justice, it includes a large family of non-political values. It is a pluralist view, let us say, since each subpart of this family has its own account based on ideas drawn from within it, leaving all values to be balanced against one another, either in groups or singly, in particular kinds of cases.<sup>80</sup>

All three views, Rawls believes, affirms freedom of opinion, which should lead their adherents to uphold neutrality. To be sure, Rawls notices that not all comprehensive doctrines value freedom of opinion as much as he would like them to. But as long as such doctrines are compatible with neutrality, Rawls has no complaints.

Rawls's belief that an overlapping consensus on neutrality is possible is also supported by his general remarks about what comprehensive doctrines are like—which, if true, would greatly reduce the chances of there being a counterexample. He writes:

It is left to citizens individually—as part of liberty of conscience—to settle how they think the values of the political domain are related to other values in their comprehensive doctrine. For we always assume that citizens have two views, a comprehensive and a political view; and that their overall view can be divided into two parts, suitably related.<sup>81</sup>

In other words, your comprehensive views on how to reach salvation, or how best to treat your neighbours, need not have too much of a bearing upon your political view on neutrality. And even if one's comprehensive doctrine, at the end of the day, is found to be incompatible with neutrality, Rawls urges his readers not to despair:

Should an incompatibility later be recognized between the principles of justice and their wider doctrines, then [people] might very well adjust or revise these doctrines rather than reject [the] principles [of justice].<sup>82</sup>

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<sup>80</sup> Ibid, p. 145.

<sup>81</sup> Ibid, p. 140.

<sup>82</sup> Ibid, p. 160.

[Neutrality's] political values normally outweigh whatever other values oppose them, at least under the reasonably favorable conditions that make a constitutional democracy possible.<sup>83</sup>

Why is this so? Most people, according to Rawls, are interested in his project of establishing neutral laws based on common grounds. As Rawls emphasises, “reasonable persons see that the burdens of judgment set limits on what can be reasonably justified to others... It is unreasonable for us to use political power, should we possess it, or share it with others, to repress comprehensive views that are not unreasonable”.<sup>84</sup> Only a few who hold unreasonable conceptions of the good can be suppressed in Rawls’s liberal society. For all others who are reasonable, their commitment to finding fair principles to govern a society with inevitable diversity should lead them to consent to the liberal principle of neutrality.

## 2.6 The Importance of Finding a Consensus

For Rawls, then, as well as for Ackerman, an important justification of neutrality is that *most people in our society are likely to consent to it*. Ackerman believes that there are many paths to Neutrality; and if we concede that Ackerman’s theory is “too neutral” to be workable, we still have Rawls’s assurance that there are at least as many paths to his looser version. This should not be a surprising finding, especially with respect to Rawls whose theory, as noted above, is motivated by the need to satisfy the liberal principle of legitimacy in a diverse society. A political arrangement is legitimate, according to that principle, only if it is endorsed by most if not all of those who are subject to it; for

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<sup>83</sup> Ibid, p. 152.

<sup>84</sup> Ibid, p. 61.

neutrality to meet the demands of legitimacy, it is obvious that most of not all citizens must consent to it. Ackerman's and Rawls's proposals for justifying neutrality, then, amount to what I would call the *consensus-finding (CF) defence*. It claims to have found an existing consensus on neutrality (though some people might not recognise it as a consensus), such that the liberal principle of legitimacy is satisfied. Nagel's term "convergence theory"<sup>85</sup> also captures well the "overlap" aspect of the neutral defence (though I would not use Nagel's term here as I will be introducing a different defence of neutrality in Chapter 4 that also has elements of convergence). In any case, the central idea of the CF defence is that many different conceptions of the good converge upon the liberal principle of neutrality.

There is a weakness in this way of defending neutrality. As Rawls admits, the feasibility of the CF defence "importantly depends on the content of the religious, philosophical, and moral doctrines available to constitute an overlapping consensus".<sup>86</sup> Since the success of the CF defence is dependent on features of existing comprehensive doctrines, it will not be able to persuade people who insist that their religious, philosophical, or other views do not contain features that support neutrality (however rare such people might be), especially if such people are also exceptions to Rawls's hope that dissenters will learn to embrace neutrality at the cost of their own doctrines. Strict neutrality, such as Ackerman's theory, would be immune to this weakness because it would not be dependent on empirically discoverable facts; if the strict version could be used as a defence of neutrality, political liberals would be home and dry. However, neither Ackerman nor Rawls provides a strictly neutral defense of liberal neutrality. Their

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<sup>85</sup> Nagel, "Moral Conflict and Political Legitimacy", p. 218-219.

<sup>86</sup> Rawls, "Justice as Fairness: Political Not Metaphysical", p. 250.

CF defences, if neutral, are neutral in the loose sense of being uncontroversial.

As Rawls acknowledges, “it is vital to the idea of political liberalism that we may with perfect consistency hold that it would be unreasonable to use political power to enforce our own comprehensive view, which we must, of course, affirm as either reasonable or true”.<sup>87</sup> So if, for instance, there are more than a handful of people whose comprehensive doctrines—despite Rawls’s optimism—turn out to be incompatible with neutrality, and if those same people see no good reason to abandon their doctrine, then Rawls’s CF defence would collapse. Furthermore, even if there are few such people now, “[s]ettled conceptions of the good may become contested in the future”,<sup>88</sup> as Richard Sinopoli points out. There is no guarantee that an overlapping consensus on neutrality will remain stable indefinitely.

The problem is similar to the one that plagues the *modus vivendi* argument, discussed earlier. It may be argued that an overlapping consensus on neutrality, being based on reasoned arguments rather than the contingencies of political fortune, is more stable than the balance of power that might or might not give rise to neutrality. But this in no way guarantees that an overlapping consensus on neutrality will be a permanent feature of any particular society; nor does it make it any more likely either that those who disagree now will change their minds, or that those who agree now will not change their minds. It is no more a defence of neutrality to say that many people happen to endorse neutrality, than it is a defence of monotheism to say that many people believe in God—*unless*, as we will see in Chapters 4 and 5, liberal neutralists have reasons to believe that neutrality, unlike monotheism, is required by some more basic principles which everyone

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<sup>87</sup> Rawls, *Political Liberalism*, p. 138-139.

<sup>88</sup> Sinopoli, “Liberalism and Contested Conceptions of the Good: The Limits of Neutrality”, p. 652.

in fact has to endorse.

In response, it may be argued that political liberalism is only meant as a practical solution to the particular phenomenon of unprecedented diversity that we now find in Western democracies such as the United States, Canada, France, and Britain (and perhaps also in non-Western democracies such as India, Japan, and South Korea—though we must be careful in extending the subject matter too far). Rawls, for example, insists that his project only seeks to establish neutrality “under the reasonably favorable conditions that make democracy possible”,<sup>89</sup> and that his theory should be relevant only to “a modern constitutional democracy”.<sup>90</sup> In that case, the CF defence should be taken not as a justification of political liberalism for all times and places, but as an argument tailored particularly for the contemporary democratic audience. In the next chapter, however, I proceed to question the validity of even this limited-purpose defence, by pointing out a counterexample in the heartland of modern constitutional democracy—the United States.

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<sup>89</sup> Rawls, *Political Liberalism*, p. 156.

<sup>90</sup> *Ibid*, p. 11.

## Chapter 3

### Is There a Consensus on Liberal Neutrality?

#### 3.1 A Counterexample

Never before has there been such a wide consensus on a form of government as there is today regarding democracy. Constitutional democracy and the rule of law are international standards that more and more countries are being compelled to acknowledge. Human rights are upheld not only in the West but also increasingly in other parts of the world. Any state or public institution that tries to diverge from the ideals of democracy and human rights must have a hard time explaining itself before the national and international societies. Ten years ago, some would still object to democracy and human rights on the basis of their religious (e.g. Islamic) or philosophical (e.g. Confucian) beliefs; now, in contrast, many who work within traditional doctrines strive to develop interpretations of their own tradition that are more or less consistent with the international norms of freedom and equality.<sup>91</sup> Perhaps, then, it is not surprising that defenders of political liberalism describe neutrality as an object of widespread consensus—an “overlapping consensus” that transcends all other disagreements.

My objective in this chapter is to challenge Ackerman and Rawls’s consensus-finding (CF) defence of neutrality, by showing that it fails to give due consideration to the *mechanisms* by which a person’s most deeply held beliefs might lead her to oppose liberal neutrality, at least concerning certain issues. This lack of in-depth study, I will argue,

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<sup>91</sup> Examples of such efforts can be seen, among others, in An-Na’im, *Human Rights in Cross-Cultural Perspectives*; Bauer and Bell, *The East Asian Challenge for Human Rights*; and Bontekoe and Stepaniants, *Justice and Democracy: Cross-Cultural Perspectives*.

gives Ackerman and Rawls false hopes of finding a consensus, whereas in reality many people are not so supportive of neutrality. There are comprehensive doctrines, in other words, that escape the CF defence.

In some sense, this negligence is understandable; a political theorist cannot be expected to be knowledgeable in every comprehensive doctrine that exists in such a diverse place as modern North America. Hence Ackerman sorts comprehensive doctrines into a few categories and discusses why doctrines in each category might support neutrality;<sup>92</sup> likewise Rawls, as we examined towards the end of section 2.5, makes use of generalized and abstract examples such as “a religion that affirms the principle of neutrality on the basis of a doctrine of free faith”. What is evident about these general remarks is that they do not rule out the possibility of counterexamples. But in order for the CF defence to succeed, *each* doctrine that a significant number of citizens reasonably hold must be such that, *either* its tenets support neutrality, *or* it is possible to detach its tenets that do not support neutrality from the political implications of the doctrine as a whole. The first possibility is what Rawls believes is the case with most comprehensive doctrines that value freedom; the second is what he hopes to be the case when he writes about other doctrines that “political values normally outweigh whatever other values oppose them”.<sup>93</sup> If either condition is met with respect to a comprehensive doctrine, anyone who subscribes to it but objects to neutrality must be inconsistent. But if neither condition is met with regard to some prominent comprehensive doctrines, the CF defence is in trouble.

My counterexample is *evangelicalism*, a religious doctrine that is supported by a significant portion of the American citizenry and also by many people elsewhere, and a

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<sup>92</sup> Ackerman, *Social Justice in the Liberal State*, p. 11-12; 359-369.

<sup>93</sup> Rawls, *Political Liberalism*, p. 152.

doctrine that underlies much of the debate in the U.S. regarding neutral policies ranging from abortion laws to public school curricula. As I will explain shortly, evangelicalism is based on tenets that are logically incompatible with the kind of neutrality that Ackerman and Rawls advocate. In addition, there is nothing in it to keep believers from bringing forth their non-neutral concerns to the political arena; rather, its central tenets explicitly demand that believers push for laws reflecting biblical morals. Hence, when American evangelicals demand, for example, that abortion and euthanasia must be banned or that creationism must be taught in public schools or that teachers and students must be free to organise prayer meetings at school, they are simply being true to their most deeply held beliefs. Indeed, as I will argue, they would have to contradict themselves if they were to support the liberal principle of neutrality.

Let me make clear which doctrine I am talking about, for the sheer diversity of opinion within Christendom often causes labels to be mixed up. Evangelicalism, first, is not the name of a particular Protestant denomination; as Nancy Pearcey describes it, evangelicalism began as “a renewal movement within the churches, not as a separate denomination”,<sup>94</sup> and remains such to this day (though some denominations have a higher concentration of evangelicals than others). Rather, evangelicalism corresponds to a way of believing and living that cuts across many other theological disagreements. Francis Schaeffer, one of the best-known evangelicals of the last century, writes that the label may be used with “the connotation of being Bible-believing without shutting one’s self off from the full spectrum of life, and in trying to bring Christianity into effective contact

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<sup>94</sup> Pearcey, *Total Truth*, p. 253.

with the current needs of society, government, and culture”.<sup>95</sup> In other words, evangelicalism has two prongs: first, it requires *literal* belief in the biblical accounts of creation, fall, and miracles, including the death and resurrection of Jesus Christ whom they believe to be their *saviour*; second, it places heavy emphasis on social and political responsibility as dictated by its believers’ interpretations of the Bible.

Not everyone who calls herself a Protestant today is an evangelical (though evangelicals often stress that one must be an evangelical to be a real Christian). For this reason, my argument in this chapter should not be taken to imply that every Protestant in the United States, as a matter of fact, is opposed to liberal neutrality. There are many “liberal Christians”, for instance, who “regard the Bible as *metaphorically* true and Jesus Christ as an *ethical prophet*”,<sup>96</sup> and who usually have little problem admitting that humans are a product of evolution or that biblical morals must be updates to the times. There are also “separatists”, who share the evangelicals’ belief in supernatural realities but who have a “fortress mentality”,<sup>97</sup> to borrow Pearcey’s words, that makes them treat the worldly business of government and critical thinking as irrelevant to their heavenly ideals. In some sense, both liberalism and separatism are Christian concessions to the dominant, secular world-view; whereas liberals do away with supernatural realities in exchange for a sticker that says “Guaranteed: 100% compatible with modern science”, separatists trade the option of engaging with the world for the safekeeping of their pristine faith.

Evangelicals, meanwhile, remain stalwart. They want to keep *both* their belief in

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<sup>95</sup> Schaeffer, “The Great Evangelical Disaster”, in Schaeffer, *Complete Works*, vol. 4, p. 368. Here he gives only an example of common usage, rather than a definition of his choice. This is probably because he is unwilling to characterize Christianity as an “ism” in the first place.

<sup>96</sup> Warner, “Theoretical Barriers to the Understanding of Evangelical Christianity”, p. 2.

<sup>97</sup> Pearcey, *Total Truth*, p. 291.

the literal truth of the Bible *and* the option to apply those beliefs to their country’s public affairs. That, however, is a difficult position to maintain in the contemporary political climate, where scientific findings are increasingly seen as being at odds with religious beliefs and public policy draws heavily upon those findings—not to mention the existence and political influence of countless religious and philosophical views that contradict Christian teachings. Perhaps in response to the unfriendly environment in which they find themselves, evangelicals over the last few decades have put considerable effort into constructing defences of their faith.

Delicate theological points aside, a fact that is relevant to my argument is that many modern evangelicals, including Francis Schaeffer (1912-1984) whose views on abortion I will introduce shortly, draw upon “the Dutch Reformed tradition” of “presuppositional apologetics”. That tradition emphasises “the formative impact of worldviews themselves and the need to evaluate them as unified wholes—starting with first principles and trading out their logical conclusions”.<sup>98</sup> Modern evangelicals, in other words, present Christianity as a systematic and structured world-view with its own foundational beliefs and its own way of evaluating evidence (experience), which, they say, competes with other systematic world-views such as secular materialism and other religions. Schaeffer, for instance, insists that “in reality no one can live logically according to his own non-Christian presuppositions”,<sup>99</sup> confident that Christianity is the only world-view that can explain everything without contradicting itself.<sup>100</sup> Schaeffer’s “presuppositional” approach invites his readers to consider what would follow *if*

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<sup>98</sup> Ibid, p. 313.

<sup>99</sup> Schaeffer, “The God Who Is There”, in Schaeffer, *Complete Works*, vol. 1, p. 137.

<sup>100</sup> Ibid, p. 122.

evangelicalism's beliefs about supernatural realities were true, and to ask if there is a contradiction down the road that might amount to a *reductio ad absurdum* of those foundational beliefs. Let us accept his invitation and see what follows regarding the controversial issue of abortion.

### **3.2 A World-View Unveiled: Schaeffer on Abortion**

In *Roe v. Wade*,<sup>101</sup> the Supreme Court of the United States granted every American woman a constitutional right to have an abortion, except during the last two or three months of pregnancy. In overturning a Texas statute that prohibited all abortion other than those necessary for saving the woman's life, the Court's decision made it unconstitutional for any state to legislate against abortion during the first 24-28 weeks of pregnancy. The decision was *not* based on any particular belief as to when human life begins; the Court upheld neither the conservative view that a person begins at conception, nor the contrary opinion that a foetus's lack of rationality makes it a nonperson. Justice Harry Blackmun wrote: "We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer." Instead, the Court asked at what stage, for the limited purpose of the Fourteenth Amendment, a foetus obtained *legal rights* to have her (or its) life protected. The Court found that a foetus was able to live outside of a woman's womb (albeit with artificial aid) when it became 24-28 weeks old; the Court decided on the basis of this scientific information that only foetuses above that

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<sup>101</sup> 410 U.S. 113 (1973).

age had any rights *as American citizens* to be protected against killing. Before that stage, the Court said, a foetus had no claim *against the state*; so the abortion of foetuses less than 24-28 weeks old was not wrong—at least legally, if not morally.

*Roe v. Wade* remains in effect to this day. It is interesting to note that Norma McCorvey (“Jane Roe”), on whose behalf *Roe v. Wade* was filed, converted later to Catholicism and requested that the decision be revoked; in *McCorvey v. Hill*,<sup>102</sup> however, her request was turned down and the Supreme Court refused to reconsider its earlier judgment. Many states maintain tighter restrictions on abortion than what the Supreme Court might have had in mind, but such restrictions are always based on independent health or safety concerns that are consistent with *Roe v. Wade*, such as a woman’s right to be fully informed about the possible consequences of abortion. As recently as in 2006, South Dakota and Mississippi attempted to introduce blanket bans on abortion, but neither attempts resulted in enforceable law. The *Partial-Birth Abortion Ban Act* and the *Unborn Victims of Violence Act* have been recently introduced at the federal level, the first of which prohibits a particular method of abortion (where the foetus is partially delivered alive then killed), and the second of which allows two charges to be filed against anyone who murders a pregnant woman. Notwithstanding the dismay of pro-choice activists who were alarmed especially with the latter (as it seemed to give a mother and her foetus equal rights), both statutes remain in effect; the Supreme Court, in *Gonzales v. Carhart*,<sup>103</sup> refused by a narrow margin to overturn the former. Meanwhile, according to a report by the Center for Disease Control, 848,163 foetuses were legally aborted in the United States

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<sup>102</sup> 385 F.3d 846 (2004).

<sup>103</sup> 550 U.S. \_\_\_\_ (2007).

in 2003—which translates to 241 abortions per 1,000 live births.<sup>104</sup>

While not every liberal is satisfied with the outcome of *Roe v. Wade*, the landmark decision might be safely called an exemplar of neutral lawmaking, at least in one respect: the Court’s reasoning circumvented the most tenacious disagreements as to when a human life begins, relying instead on concrete scientific evidence and less controversial precedents pertaining to who (or what) is entitled to *legal* protection. The Court may not have been completely neutral in deciding the case, but its decision and reasoning shows a clear aspiration for neutrality. The neutralist Ronald Dworkin defends *Roe v. Wade* in noting that the legality of abortion should depend on “whether [a foetus] has interests and so rights to protect those interests at that early stage”, and that “[n]o creature has interests who has not had a mental life that has generated those interests”.<sup>105</sup>

However, it is none other than this neutral decision, *and particularly the neutral aspect of it*, that was met with more severe censure from evangelicals and Catholics alike than was any other Court decision in the history of the United States. Not only do Christians organize peaceful rallies on each anniversary of *Roe v. Wade*, but they also sometimes engage in illegal activities, or civil disobedience, to stop abortion. Operation Rescue, for instance, has blockaded major abortion clinics several times since the 1980s, sometimes leading to hundreds of arrests. Why are evangelicals so upset about *Roe v. Wade*? The influence of televangelists such as Jerry Falwell and fundamentalist groups such as the Moral Majority (which not all evangelicals approve of) might provide part of the answer. But a deeper basis for the Christian pro-life movement is to be found in two of Francis Schaeffer’s books: *Whatever Happened to the Human Race?* (1979) and *A*

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<sup>104</sup> CDC, <<http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5511a1.htm>>, accessed 20 June 2007.

<sup>105</sup> Dworkin, *Is Democracy Possible Here?*, p. 79.

*Christian Manifesto* (1981). Both books deal with abortion and similar bioethical questions (physician-assisted suicide, human embryo research, etc.) from the evangelical point of view, and they are widely acknowledged by evangelicals and Christian Right leaders as having been a crucial motivation for a renewed interest in political activism among Christians in the United States and abroad. As Frederick Clarkson writes:

Francis Schaeffer is widely credited with providing the impetus for Protestant evangelical political action against abortion. For example, Randall Terry, the founder of Operation Rescue, says: “You have to read Schaeffer’s *Christian Manifesto* if you want to understand Operation Rescue.”<sup>106</sup>

What, then, is Schaeffer’s argument against abortion? How did he manage to bring so many evangelicals to come together in tens of thousands and demand a change everywhere from Wichita, Kansas to Washington, D.C.? The argument, as I will introduce shortly, involves no surprises; but it is extremely appealing to anyone who takes seriously the Reformation motto, *sola Scriptura* (only Scripture). In the rest of this section I will outline how Schaeffer constructs his argument condemning abortion on the basis of his religious beliefs, and in the next section I will also introduce he builds his argument for political action against abortion in a similar manner.

“All people are unique because they are made in the image of God”.<sup>107</sup> This is a characteristically Christian claim. “The Bible tells us also, however, that man is flawed”,<sup>108</sup> that is, as a result of the original sin. These two propositions are all that Schaeffer needs in order to pull out his argument against abortion. Obvious as they might seem, however, few people outside of evangelicalism realize the significance these

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<sup>106</sup> Clarkson, *Eternal Hostility*.

<sup>107</sup> Schaeffer and Koop, “Whatever Happened to the Human Race?” in Schaeffer, *Complete Works*, vol. 5, p. 384.

<sup>108</sup> *Ibid.*

propositions carry for those who believe them. Schaeffer writes:

[T]he idea is strange to a society by which the Bible has been neglected or distorted, that Christianity does not begin with a statement of Christ as Savior. That comes later in its proper setting... Christianity begins with the personal and infinite God who is the Creator. It goes on to show that man is made in God's image but then tells us that man is now fallen. It is the rebellion of man that has made the world *abnormal*.<sup>109</sup>

In other words, "Believe in Jesus and you will go to Heaven" is not the alpha and omega of evangelicalism, as most outsiders (and many insiders) often believe it to be. The path to salvation is certainly a foundational tenet of evangelicalism; but, for Schaeffer, that does not make the Old Testament accounts of creation and fall any less foundational.

Evangelicals believe that the first chapters of Genesis are *literally* true, and it is in those very chapters that their opposition to abortion is based. Schaeffer writes:

Some people mistakenly believe that one can "spiritualize" away the history of the first chapters of Genesis and that this will make no difference. They argue that these chapters are not history but something like parables. This type of thinking depreciates the factual content, which gives information about history and the cosmos. Those who do this sometimes imagine that doing this makes little or no difference. But it changes everything.<sup>110</sup>

[T]he Bible tells us who we are and who other people are. It tells us how people are differentiated from all other things.<sup>111</sup>

It is important to notice, then, that for Schaeffer and other evangelicals, the Bible not only preaches salvation but also consists of metaphysical statements about human nature and our place in the universe. *If*, as evangelicals believe, it is an objective truth about the world (as opposed to a mere metaphor) that humans are created in the likeness of a personal, loving, intelligent, Supreme Being, *then* there is a strong reason to regard human life in a very special way. No "leap of faith" is involved here; it is a simple

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<sup>109</sup> Ibid, p. 384-385.

<sup>110</sup> Ibid, p. 387.

<sup>111</sup> Ibid, p. 388.

argument with some premises and a conclusion. There is a tinge of divinity in human life so conceived; and sacred things are not to be messed with. Schaeffer continues:

Anyone who kills a person is not killing just another member of the same biological species, but one of overwhelming value, one made in the image, the likeness, of God.

Any person, no matter who he or she is—a stranger or a friend, a fellow-believer or someone who is still in rebellion against God, anyone of any age, before or after birth—*any and every person is made after the likeness of God.*

Each man, woman, and child is of great value, not for some ulterior motive such as self-gratification or wealth or power or a sex object or “the good of society” or the maintenance of the gene pool—but simply because of his or her origin.<sup>112</sup>

We can see where this is leading to. Schaeffer’s argument is that the life of a human embryo a few minutes after conception is just as sacred as the life of any adult, *in virtue of her origin*, rather than due to any of her other characteristics such as rationality, self-sufficiency, or being emotionally attached to someone else.

Liberals would stop Schaeffer here: if human life is so dignified and closely related to the all-powerful, all-knowing God, why do people so often feel that this way of treating human life goes against our most “natural” aspirations? Why must women, for example, give up so much of their hopes and desires just because she must respect the life of a foetus, even when she had done everything she could to avoid having a baby—for example, when a normally reliable method of contraception fails unexpectedly, or when she gets pregnant as a result of sexual assault? Doesn’t the insistence on the sanctity of foetal life, then, go hand in hand with a worsening of women’s lives? In short, haven’t we already found an inconsistency in evangelicalism?

Evangelicals’ belief in the fall, or the original sin, is what neutralises this apparent

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<sup>112</sup> Ibid.

inconsistency. Humans are special because of their God-given status, evangelicals believe; but they are flawed, or “abnormal” to quote Schaeffer, because of what they do.<sup>113</sup> People’s tendency to abuse their freedom (which they enjoy as a result of being made in the image of the personal, rational, creative God), evangelicals also insist, is why there need to be rules to restrict their behaviour. Such rules, Schaeffer proceeds, are given by God who, of course, being omniscient, knows which rules work best.

This understanding of the chasm between what mankind and history are now and what they could have been—and should have been, from the way they were made—gives us a real moral framework for life, one which is compatible with our nature and aspirations. So there are “rules for life”, like the signs on cliff tops which read: DANGER – KEEP OUT. The signs are there to help, not hinder us. God has put them there because to live in this way, according to His rules, is the way for both safety and fulfillment. The God who made us and knows what is for our best good is the same God who gives us His commands. When we break these, it is not only wrong, it is also not for our best good; it is not for our fulfillment as unique persons made in the image of God.<sup>114</sup>

God’s rules are like a perimeter fence. We must stay within that fence if we are to avoid getting messed up. But inside the fence we have an almost endless *variety of possibilities for freedom*. These touch every area of human life.<sup>115</sup>

Critics, still, would not be satisfied. They do not feel that the scope of freedom allowed by God’s “fence” is broad enough. Sure, one could be a preacher or an architect or a composer or a physician within the “fence”; but one could not pursue the life of a pornographer or dedicate oneself to refining the art of abortion. This is exactly why critics suspect that the evangelicals’ “freedom” is an oxymoron. Respectable as that suspicion is, however, the objection does not work *from the inside*. For the evangelical could always

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<sup>113</sup> The problem of evil and the question of free will are important topics for Christianity as well as for the philosophy of religion. I would not pursue those topics here, however, because to do so would be a massive diversion from the present argument. Suffice to say now that many evangelicals believe there to be a solution to those problems. Schaeffer’s account is that “God had not made [humans] robots, and so they had real choice. It is man, therefore, and not God, who is responsible for evil” (Ibid, p. 384). For a fuller account that would be more or less representative of evangelicalism, see C. S. Lewis, *The Problem of Pain*.

<sup>114</sup> Ibid, p. 385.

<sup>115</sup> Ibid, p. 386.

reply that the desire to get rid of a foetus, for example, for the sake of other projects, is just another symptom of abnormality that plagues the universe. Not only the desire but also the perceived *need* for abortion, for the evangelical, is no more than a cover-up of more important problems. Evangelicals and Catholics together, a contemporary group of Christian ministers and theologians, nicely sums up once such example:

Men beyond numbering are complicit in the culture of death. The legal abortion license has made it easier to exploit women sexually; to abandon them or refuse to support them in the bearing of the new life for which men are equally responsible; and even to coerce them into having the child killed. This is a wickedness of unspeakable proportions and is only compounded by men who self-servingly construe the abortion license as a form of liberation for the women they exploit.<sup>116</sup>

The account of the original sin in Chapter 3 of Genesis, then, for evangelicals, provides a reason to doubt the authenticity of many of our desires, aspirations, and even perceived needs. *If* that account is true, *then* the objection that Christianity allows too narrow a scope for freedom will not make Schaeffer's argument any less persuasive for his fellow Christians; indeed, the objection only strengthens his convictions by providing a good illustration.

I have stressed *if* and *then* several times in the preceding discussion, because that is how Schaeffer presents evangelicalism, and also because that is how we can view the abortion debate from an evangelical's point of view. It is not the purpose of my discussion to decide whether or not evangelicalism is sound. My goal in this section, as I wrote earlier, is to lay bare the mechanisms by which a person who subscribes to something like Schaeffer's theology might oppose neutral policies regarding, say, abortion. So let us continue: what would a thoroughgoing evangelical, who believes the creation and fall as historical events (putting aside the question as to whether those things happened six

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<sup>116</sup> Evangelicals and Catholics Together, "That They May Have Life", p. 23.

thousand years ago or sometime earlier), conclude from his deepest beliefs?

We have already seen the most important reason why Schaeffer condemns abortion: his literal reading of the Bible tells him that every human being, in virtue of her *origin* rather than any of her biological or psychological features, is created in the image of God. The fact that foetuses are not rational, or that they cannot survive on their own even with artificial aid, or that some of them are the product of rape, are simply irrelevant when it comes to evaluating the worth of their lives; *if* Schaeffer's two propositions pertaining to creation and fall are true, *then* each human foetus is God's image-bearer in virtue of her origin, and that is all that matters. Nor is the fact that carrying a baby to term might infringe upon a woman's freedom or well-being a relevant factor in evaluating the permissibility of abortion. For evangelicals, it is the other way around: *if* sin is real, *then* freedom and well-being are to be evaluated with respect to the unconditional sanctity of human life and the possibility of sinful, distorted desires.

Abortion, then, for evangelicals, is a crime no less grave than any other deliberate act of homicide. As Evangelicals and Catholics Together stresses, this conclusion applies not only to abortion but also to any measure that takes away a human life after the moment of conception: "abortion, euthanasia, assisted suicide, and embryonic research is rightly understood as murder".<sup>117</sup> Add to this the belief that only God's commands define the proper scope of freedom, and we can see how evangelicals reach the conclusion that nothing short of saving the mother's own life can outweigh a foetus's God-given right to life—precisely what Texas's abortion law said before it was overturned in *Roe v. Wade*. For *if* the Bible's story is true, *then* chances are that any peace and comfort a person might

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<sup>117</sup> Evangelicals and Catholics Together, "That They May Have Life", p. 21-22.

enjoy at the cost of the foetus's life is only a continuation of sin; and the only thing that is comparable to a human life is another human life. All of this follows from the two propositions, laid out earlier, pertaining to creation and fall. As Schaeffer emphasises:

We must understand that the question of the dignity of human life is not something on the periphery of Judeo-Christian thinking, but almost in the center of it... the dignity of human life is unbreakably linked to the existence of the personal-infinite God. It is because there is a personal-infinite God who has made men and women in His own image that they have a unique dignity of life as human beings.<sup>118</sup>

No one, therefore, can believe the Bible literally and at the same time approve of abortion. In other words, *if* one subscribes to evangelicalism, *then* one must condemn abortion. Any deviation from this formula is not only unorthodox but inconsistent, for the one entails the other—at least according to Schaeffer.

### **3.3 A World-View in Action: Schaeffer on Neutrality**

All that has been shown in the last section, however, does not establish that evangelicalism is opposed to a state that remains neutral regarding abortion. More needs to be said as to how evangelicals such as Schaeffer justify *bringing their view on abortion into the political arena*. Otherwise it would be quite possible for an evangelical to believe that abortion is atrocious and keep that conviction to oneself. Such a person may lament the Court's decision in *Roe v. Wade*, but he would not try to overturn it.

This is where, for Schaeffer, the third and best-known tenet of Christianity kicks in: the faith in Jesus, Son of God and God himself at the same time, as the saviour who would wash away each believer's sin and restore her to her original dignity. Drawing

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<sup>118</sup> Schaeffer, "A Christian Manifesto", in Schaeffer, *Complete Works*, vol. 5, p. 455.

upon sources from the New Testament,<sup>119</sup> Schaeffer tells his fellow Christians that biblical morals should be practiced not only in private but also in every other branch of human endeavour, including politics. He writes:

But when we accept Christ as Savior, we must also acknowledge and then act upon the fact that if He is our Savior, He is also our Lord in *all* of life. He is Lord not just in religious things and not just in cultural things such as art and music, but in our intellectual lives and in business and our attitude toward the devaluation of people's humanness in our culture. Acknowledging Christ's Lordship and placing ourselves under what is taught in the whole Bible includes thinking and acting as citizens in relation to our government and its laws. We must know what those laws are and act responsibly to help to change them if they do not square with the Bible's concepts of justice and humanness. The biblical answers have to be lived and not just thought.<sup>120</sup>

This is Schaeffer's emphasis on the "Lordship of Christ in the totality of life",<sup>121</sup> for which is he well known among American Protestant theologians. Put simply, the idea is that one who only thinks about morals and never lives them out is a hypocrite, that one who lives them out in only one area of life and not in others is no less a hypocrite, and that born-again Christians should not be hypocrites.

Still, why involve the state rather than, say, Christian groups operating within the civil society to discourage people from having abortions? Schaeffer, indeed, proposes a number of alternatives to abortion which he believes can and should be implemented by private evangelicals, often at a great cost.

Churches and other groups opposed to abortion must be prepared to extend practical help to both the unmarried woman who is pregnant and the married woman who may be faced with the question of abortion... Pleasant institutions should be available... but each person who does not believe that abortion is right should personally be prepared to offer hospitality, financial aid, or other

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<sup>119</sup> For example, "Love the Lord your God with all your heart and with all your soul and with all your mind and withal your strength" (Mark 12:30).

<sup>120</sup> Schaeffer and Koop, "Whatever Happened to the Human Race?" in Schaeffer, *Complete Works*, vol. 5, p. 407.

<sup>121</sup> Schaeffer, "A Christian Manifesto", in Schaeffer, *Complete Works*, vol. 5, p. 450.

assistance.<sup>122</sup>

[S]aying that abortion is wrong immediately confronts us with a challenge to be willing to share in the consequences which our advice brings. For Christians who adhere to the truth of the Bible, the importance of doing what it teaches is imperative.<sup>123</sup>

We must be realistic. The alternatives we have discussed will demand a high price. They will cost each of us some of our personal peace and affluence. But we must do them—first of all, because they are right. This is taught in the whole of the Bible and especially in the teachings of Christ.<sup>124</sup>

The question is not the worth of the imperfect infant, the retarded child, the defective adult, and the aging individual with physical and mental signs of the aging process. The question is this: Are we worthy enough to extend ourselves to meet their needs?<sup>125</sup>

These private and community-based alternatives are a must for Schaeffer; laws against abortion, even if enacted, would not eliminate the need for them as long as people keep sinning and unwanted foetuses keep being made. Nevertheless, as the numbers suggest, nearly one million foetuses are being destroyed in the United States every year—*one million unpunished murders*, from the evangelical’s perspective. Schaeffer argues that the involvement of the state in the abortion problem is inevitable, because humans are fallen and sin is so prevalent that no amount of voluntary effort will come close to correcting the situation. Such is the other side of his remark that “we must be realistic”. Schaeffer writes: “there are going to be people who say, ‘don’t use the legal and political means, just show the Christian alternatives’. That is absolutely utopian in a fallen world, and specifically in a world such as ours at the present moment”.<sup>126</sup> Just imagine: *if* one million “regular” murders went unpunished every year, even a liberal would demand that

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<sup>122</sup> Schaeffer and Koop, “Whatever Happened to the Human Race?” in Schaeffer, *Complete Works*, vol. 5, p. 348.

<sup>123</sup> *Ibid*, p. 349.

<sup>124</sup> *Ibid*, p. 351.

<sup>125</sup> *Ibid*, p. 352.

<sup>126</sup> Schaeffer, “A Christian Manifesto”, in Schaeffer, *Complete Works*, vol. 5, p. 494.

the state act immediately!

In addition, Schaeffer's view of the state, which he also ties to the Bible, makes the state's involvement in the abortion problem not just an option but a duty. The primary role of a state, for Schaeffer, is not only to protect a narrow range of legal rights but generally to discourage sin and to facilitate the realization of biblical morals by establishing justice in the world—where justice, of course, is understood as divine justice. So if anyone is a perfectionist, Schaeffer is; but his perfectionism, like his condemnation of abortion, follows from his belief in the truth of propositions contained in the Bible. The apostle Paul wrote over 1,900 years ago:

Rulers hold no terror for those who do right, but for those who do wrong. Do you want to be free from fear of the one in authority? Then do what is right and he will commend you. For he is God's servant to do you good. But if you do wrong, be afraid, for he does not bear the sword for nothing. He is God's servant, an agent of wrath to bring punishment on the wrongdoer (Romans 13:3-4).

Schaeffer, along with most other evangelicals, interprets this passage not only as a *descriptive* account of the state but also as a *prescriptive* account of it. In other words, it is a fact for evangelicals that God uses political authority to bring order to a fallen world (imagine what a "state of nature" it would have been if humans were indeed fallen as Schaeffer says!); but it is also imperative that a state perform its role in a satisfactory manner. For, *if* Christ (God) is Lord over everything, *then* the state is but a tool, a servant, a steward of God's. "God gives the standards of value", writes Schaeffer, "and His absolutes are binding on both the ordinary person and those in all places of authority".<sup>127</sup>

The state, then, is not some extra-religious entity whose relationship with evangelical doctrine is only contingent; rather, for Schaeffer, it is an indispensable part of

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<sup>127</sup> Schaeffer and Koop, "Whatever Happened to the Human Race?" in Schaeffer, *Complete Works*, vol. 5, p. 287.

the fallen world which, despite its fallenness, remains under God's dominion. Jesus' famous remark on taxation illustrates Schaeffer's point, which he explains as follows:

When Jesus says in Matthew 22:21: "Give to Caesar what is Caesar's, and to God what is God's", it is not:

GOD and CAESAR

It was, is, and it always will be:

GOD  
and  
CAESAR

The civil government, as all of life, stands under the Law of God. In this fallen world God has given us certain offices to protect us from the chaos which is the natural result of that fallenness. But when *any office* commands that which is contrary to the Word of God, whose who hold that office abrogate their authority and they are not to be obeyed. And that includes the state.<sup>128</sup>

Christians, then, have a duty to obey a state if and only if its laws conform to the higher Law of God. Old-fashioned as this might sound, what other conclusion can evangelicals draw from their belief that everything that exists is created by a personal and infinite God, who declares that He is willing to exert dominion over all creation and who urges believers to take part in effectuating that dominion? *If* there is such a God, *then* who are we to object? Schaeffer emphasizes this point again in his *Christian Manifesto*:

God has ordained the state as a *delegated* authority; it is not autonomous. The state is to be an agent of justice, to restrain evil by punishing the wrongdoer, and to protect the good in society. When it does the reverse, *it has no proper authority*. It is then a usurped authority and as such it becomes lawless and is tyranny.<sup>129</sup>

It is noteworthy that the clearest account that can be found in the Bible regarding the citizen's duty to obey the state—"Everyone must submit himself to the governing authorities"—is immediately followed by a condition: "there is no authority except that which God has established" (Romans 13:1). What follows from this view of political

<sup>128</sup> Schaeffer, "A Christian Manifesto", in Schaeffer, *Complete Works*, vol. 5, p. 468.

<sup>129</sup> *Ibid*, p. 468.

power is that Schaeffer's definition of tyranny is diametrically opposed to the definition that liberals are used to. Most liberals would attach the label of tyranny not to a state that permits abortion and gay marriage but to one that is ruled by evangelical morals—while Schaeffer, in effect, argues that the decision in *Roe v. Wade* makes America a tyranny.

Some further remarks are in order, so that there is no misunderstanding. Despite all that has been said, the kind of government that Schaeffer endorses is *not* a theocracy like what was found in medieval Europe and which some “fundamentalists” even now look back upon in nostalgia. Schaeffer clearly sets himself apart from radicals who wish for a return to theocracy:

[W]e are in no way talking about any kind of theocracy. Let me say that with great emphasis. Witherspoon, Jefferson, the American Founders had no idea of a theocracy. This is made plain by the First Amendment, and we must continually emphasize the fact that we are not talking about some kind, or any kind, of theocracy... The whole “Constantine mentality” from the fourth century up to our day was a mistake.<sup>130</sup>

Instead of theocracy, what Schaeffer proposes is a more democratic approach. He quotes extensively from Samuel Rutherford's *Lex Rex* (1644), which he believes clearly outlines biblical requirements for the state that are compatible with democracy. “In *Lex Rex* [Rutherford] does not propose armed revolution as an automatic solution”; according to Rutherford and Schaeffer, if a state disobeys God, one must first protest; if protest does not work, one must seek to leave, flee, or abandon the country; and if it proves impossible to leave, only then is force acceptable.<sup>131</sup> But, in a democracy, “protest is a form of force”.<sup>132</sup> So Schaeffer calls, first of all, for massive protests against the legalisation of abortion and similar sins: “those who call themselves Christians, having a moral base,

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<sup>130</sup> Ibid, p. 485.

<sup>131</sup> Ibid, p. 475.

<sup>132</sup> Ibid, p. 478.

should make these things a principal issue and be willing, even at the risk of personal sacrifice, to strive privately and publicly for the dignity and sanctity of the individual.”<sup>133</sup>

Schaeffer’s model state (for this fallen world, at any rate), then, turns out to be a constitutional democracy. Whatever he might have to say about abortion, in other words, he would not try to force everyone to be a Christian—though he certainly wishes that other people were Christians like him. What does all this mean for liberal neutrality? Since Schaeffer approves of constitutional democracy, does it not follow that whatever he may have to say about abortion is ultimately overshadowed by the neutral, constitutional process? Rawls, for instance, argues that “a certain looseness in our comprehensive views” can make such views accommodate political liberalism.<sup>134</sup> Shouldn’t we then conclude that Schaeffer’s evangelicalism, which eschews theocracy and upholds democratic procedures, is just another example of what Rawls has in mind?

Not so quickly. Rawls’s mistake, again, is that he jumps to his conclusion without looking at details. He assumes, in the passages quoted above, that if the tenets of a religion uphold a democratic constitution, then the religion should be compatible with liberal neutrality. That might be true of liberal Christianity, which expunges from the Bible all references to the supernatural; or of separatism, which maintains a sharp distinction between heavenly affairs and worldly affairs. But Rawls’s assumption is unwarranted when it comes to contemporary evangelicalism with its Schaeffer-esque theology. Notice what Schaeffer writes regarding political authority: “since the ruler is granted power *conditionally*, it follows that the people have the power to withdraw their

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<sup>133</sup> Schaeffer and Koop, “Whatever Happened to the Human Race?” in Schaeffer, *Complete Works*, vol. 5, p. 345.

<sup>134</sup> Rawls, *Political Liberalism*, p. 159.

sanction if the proper conditions are not fulfilled”.<sup>135</sup> Not everyone who upholds a democratic constitution, then, upholds it unconditionally. *If* evangelicals consent to liberal democratic institutions, for instance, because such institutions would usually help more people live in ways that are good in the eyes of God, *then* the same evangelicals *reserve the right to withdraw their consent* if liberal democratic institutions, in certain areas, fail to procure the right consequences.

This is a subtle but important point, which is a key to the failure of Ackerman and Rawls’s CF defence of liberal neutrality when it comes to doctrines like evangelicalism. When Schaeffer leaves theocracy behind and signs onto the democratic plan, he makes sure that evangelicals have the option to obtain refunds or exchanges if they are not satisfied. Even as Schaeffer, like many other evangelicals, uphold the American Constitution as one of the best constitutions around, he insists that “no one has the right to place anything, including king, state or church, above the content of God’s law”.<sup>136</sup> A state, democratic or not, could lose its God-given authority *at any time* if it fails to perform its God-given duties to a satisfactory degree; presumably, a state that allows almost one million foetuses to be aborted every year falls far short of God’s expectations in that regard. Given the view of the state that follows from evangelical beliefs about God, democracy as a whole might retain legitimacy if only because there is no better alternative; meanwhile, problematic laws would lose God’s sanction and no evangelical would believe herself obliged to obey such laws. This conclusion could even sanction the kind of civil disobedience that Operation Rescue engages in, though evangelicals usually settle with less aggressive tactics. *If* physicians do not have the license to perform

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<sup>135</sup> Schaeffer, “A Christian Manifesto”, in Schaeffer, *Complete Works*, vol. 5, p. 474. Emphasis added.

<sup>136</sup> *Ibid*, p. 430.

abortion no matter what the Supreme Court says, *then* it is then a duty of every good citizen to keep abortion clinics from operating—just as everyone should stop murder if possible.

Schaeffer is specifically opposed to the neutralist project of making laws on the basis of independent grounds. He believes that the decision in *Roe v. Wade* was led astray none other than because of its neutralist aspiration: “The humanist philosophers tried to make ethics independent of biblical teaching; the present tragic result is the loss of humanness on every level”.<sup>137</sup> For Schaeffer, this is just another consequence of the fall; being defective, or “abnormal”, fallen humans cannot discern moral truths except with the assistance of God’s revelations. Speaking to would-be activists, therefore, Schaeffer cries out against “the removal of religion as an influence in civil government”.<sup>138</sup>

We implore those of you who are Christians to exert all your influence to fight against the increasing loss of humanness—through legislation, social action, and other means at your disposal, both privately and publicly, individually and collectively, in all areas of your lives.<sup>139</sup>

Many Christians listened and followed Schaeffer’s advice. That is the current situation of the abortion debate in the United States. From the evangelicals’ point of view, the debate is neither between enlightened reasoning and traditional morals nor between liberty and patriarchy. Rather, the debate is between two or more competing belief systems, one of which happens (fortunately, they might think) to be embodied in traditional morals.

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<sup>137</sup> Schaeffer and Koop, “Whatever Happened to the Human Race?” in Schaeffer, *Complete Works*, vol. 5, p. 290. Notice that, for Schaeffer, “ethics” includes politics, as the purpose of politics for him is none other than to realize ethics in a fallen world. Also, Schaeffer means by “humanness” not something secular but God-given human nature with its tinge of divinity.

<sup>138</sup> Schaeffer, “A Christian Manifesto”, in Schaeffer, *Complete Works*, vol. 5, p. 434.

<sup>139</sup> Schaeffer and Koop, “Whatever Happened to the Human Race?” in Schaeffer, *Complete Works*, vol. 5, p. 408.

### 3.4 Similar Problems

Abortion is not the only matter regarding which evangelicals push for non-neutral laws. Evangelicals are also opposed to a number of other neutral measures that have been introduced in the United States and elsewhere. One such measure is the prohibition of school prayer. In *Engel v. Vitale*,<sup>140</sup> the Supreme Court found mandatory school prayer unconstitutional, and in *Abington Township School District v. Schempp*,<sup>141</sup> mandatory Bible readings were also outlawed. Note that few evangelicals today would object to these earlier decisions; the statutes in question were compelling non-Christians to participate in Christian activities. However, everything changed since the landmark case *Lemon v. Kurtzman*.<sup>142</sup> Making it unconstitutional for the state to subsidize the salaries of teachers who taught anything other than secular material (even in Catholic schools), the Supreme Court began to tell even private, religious schools what to teach and what not to teach. While *Lemon* itself was a case more about creationism than about school prayer, the Supreme Court's guideline, which required every activity of the government to have a "secular purpose", provided a strong neutralist precedent to all later cases. In *Santa Fe Independent School District v. Doe*,<sup>143</sup> the Supreme Court interpreted the First Amendment along the guidelines set in *Lemon* when it struck down an educational policy that *permitted*, rather than required, students to organize a prayer at a football game. Meanwhile, the American Civil Liberties Union (ACLU) convinced a number of educational authorities that it would be also unconstitutional to allow students to pray during graduation ceremonies; tension arose in May 2006 when students of Munford High

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<sup>140</sup> 370 U.S. 421 (1962).

<sup>141</sup> 374 U.S. 203 (1963).

<sup>142</sup> 403 U.S. 602 (1973).

<sup>143</sup> 530 U.S. 290 (2000).

School in Tennessee disobeyed and read out loud the Lord's Prayer during their ceremony.

While liberal neutralists such as Dworkin argue that it is “wrong in principle to make any state institution as a public school the venue of any exercise of any religion” and that public schools must not be used for “practicing, as distinct from studying, religion”,<sup>144</sup> it is not difficult to see why evangelicals are deeply troubled by recent developments regarding school prayer. Prayer, for them, is the primary means by which a person communicates with her loving Creator. The Bible tells Christians to “pray continually” (1 Thessalonians 5:17) and to “acknowledge” God in everything they do (Proverbs 3:6); for anyone who believes those verses to be the word of God, praying is both a right and a duty. Furthermore, football games for evangelicals are just as much under God's dominion as Sunday schools are—for what isn't under God's dominion? While nonbelievers should not be forced to pray, it would be a clear abuse of political authority, understood along Schaeffer's lines, to force people *not* to pray—collectively, if they wish so—at such important occasions. When the state's “secular purpose” in organizing football games and graduation ceremonies conflicts with the God-given privilege and duty to pray, it goes without saying which side should prevail, from the evangelical's point of view.

The teaching of creationism, in both public and private schools, is also a point of tension between liberal neutralists and evangelical perfectionists. Recall that *Lemon*, by cutting state subsidy of private school teachers who do not follow the same curriculum as public schools do, discourages even Catholic school teachers from teaching creationism.

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<sup>144</sup> Dworkin, *Is Democracy Possible Here?*, p. 59-60.

The debate began when, in *Epperson v. Arkansas*,<sup>145</sup> the Supreme Court overturned laws that prohibited the teaching of evolutionism. Again, evangelicals such as Schaeffer can probably live with this decision, for the old law was meant to silence all critics of creationism. But then, Arkansas introduced a different law, requiring a balanced treatment of creationism and evolutionism. The new law was promptly struck down in *McLean v. Arkansas Board of Education*,<sup>146</sup> and in *Edwards v. Aguillard*<sup>147</sup> a similar Louisiana statute was overturned. Nearly twenty years later in *Kitzmiller v. Dover Area School District*,<sup>148</sup> the Supreme Court reaffirmed the unconstitutionality of requiring a “balanced treatment”. Creationism, as we saw above, is one of the foundational tenets of evangelicalism upon which the rest depends; none of their other beliefs stand if they give up the proposition that “[in] the beginning God created the heavens and the earth” (Genesis 1:1). Evangelicals are therefore adamant that creation be taught to children—if not exclusively, then at least as an alternative to evolutionism. Schaeffer accuses the decision in *McLean*, which was pending at the time he wrote *A Christian Manifesto*, as a paradigm case of tyranny that justifies disobedience:

If there was ever a clearer example of the lower ‘magistrates’ being treated with tyranny, it would be hard to find. And this would be a time, if the appeal courts finally rule tyrannically, for the state government to protest and refuse to submit... It is a time for Christians and others who do not accept the narrow and bigoted humanist views rightfully to use the appropriate forms of protest.”<sup>149</sup>

As usual, the evangelicals’ opposition to secular, neutral decisions of the U.S. Supreme Court is reasoned and principled rather than superstitious and arbitrary—unless we mean

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<sup>145</sup> 393 U.S. 97, 107 (1968).

<sup>146</sup> 529 F.Supp. 1255, 1274 (1982).

<sup>147</sup> 482 U.S. 578 (1987).

<sup>148</sup> 400 F.Supp. 2d 707 (2005).

<sup>149</sup> Schaeffer, “A Christian Manifesto”, in Schaeffer, *Complete Works*, vol. 5, p. 479.

by “superstitious” their most foundational belief that there is a personal, omnipotent, immaterial Creator. *Suppose* that such a God exists, and everything else follows; *suppose* that there is no such God, and none of their arguments stands.

More recent examples include the debate surrounding same-sex marriage and the controversial “faith-based initiative” that the Bush administration has been putting forward. There is very little room for evangelicals to avoid condemning homosexuality; from Genesis 2:24 (“a man will leave his father and mother and be united to his wife, and they will become one flesh”) to Romans 1:26-27 (where homosexuals are accused of “exchang[ing] natural relations for unnatural ones”), there are more than a handful of verses in the Bible that commend heterosexuality as the God-given, natural relation. Though evangelicals do not necessarily push for laws that ban homosexuality per se, they have good reasons to infer, from these verses (which they believe to be true) and their aforementioned belief in the role of the state, that a state should at least not give support to sinful relations.

The faith-based initiative involves allowing educational vouchers to be used at religious schools and supporting the operation of religious groups engaged in public services (such as the Templeton-Prize-winning Charles Colson’s Prison Fellowship). It would be seen by many evangelicals as a good policy; by allowing more people to come into contact with the gospel, a state that supported the faith-based initiative would be fulfilling its proper role of effectuating God’s dominion on earth—provided that corruption did not become an issue in the process. Of course, the faith-based initiative fails to pass the *Lemon* test; its very purpose is to facilitate, by state support, the operation of religious and particularly Christian organisations.

An evangelical who meets Rawls’s expectations and approves of neutral policies

regarding abortion, school prayer, and the like, then, is not only “unorthodox” by evangelicalism’s own standards but is positively *inconsistent*. Someone who literally believes the Bible’s account of creation, fall, and salvation seems to have no choice but to arrive at conclusions that go against liberal neutrality regarding the said matters. As Evangelicals and Catholics Together insists, its policy recommendations are “an integral part of Christian faith and therefore a morally unavoidable imperative of Christian discipleship”.<sup>150</sup> Evangelicalism is opposed to liberal neutrality *in principle*; that is, its opposition to liberal neutrality is not a mere product of tradition that somehow got pasted on top of its core beliefs over time, but rather a direct consequence of core beliefs which have seen little change over the centuries. Evangelicals can neither endorse the liberal principle of neutrality nor adjust their beliefs to accommodate neutrality, short of abandoning the central tenets of their world-view. Therefore, evangelicalism is a counterexample to Ackerman’s and Rawls’s view that most comprehensive doctrines are compatible with liberal neutrality. The CF defence of neutrality fails.

This leaves liberal neutralists with two options. The first option is to *deny* that evangelicalism is incompatible with neutrality. Schaeffer and other evangelicals are mistaken, this reply says, in believing that their religious principles recommend perfectionist laws. The second option is to accept that there may be counterexamples to Rawls’s generalisation, but to *exclude* evangelicals as unreasonable, so that their dissent does not become a problem for the legitimacy of liberal neutrality. I will consider the first option in Chapter 4, and the second option in Chapter 5; my conclusion will be that neither is a viable option.

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<sup>150</sup> Evangelicals and Catholics Together, “That They May Have Life”, p. 18.

## Chapter 4

### Should There Be a Consensus on Liberal Neutrality?

#### 4.1 Another Try

Not all liberals stop at the consensus-finding (CF) defence of neutrality; the *consensus-building (CB) defence* is available as a response to comprehensive doctrines that seem to escape the CF defence. The CB defence admits that there is currently not a consensus on neutrality. But it adds that it is possible to persuade those who disagree, such as evangelicals, by providing them with reasons that can shift the balance in favour of neutrality—reasons which may not have been a significant part of their traditional repertoire, but which, the CB defence maintains, can easily fit into apparently perfectionist doctrines. In other words, while the CF defence tries to locate existing elements of existing doctrines that support neutrality, the CB defence brings forth fresh principles in support of neutrality which even perfectionists, it is said, will accept either as part of or as an extension of their other beliefs. If this strategy works, then evangelicals and other critics of neutrality can be brought into the consensus on neutrality, and the validity of the CF defence will be restored.

Charles Larmore, Ronald Dworkin, and Will Kymlicka are all liberals who try their hands at the CB defence of neutrality. In this chapter I will briefly go over each scholar's proposal. After introducing each proposal, I will refer back to the case of evangelicals discussed in Chapter 3, in order to decide if the new arguments are compatible with existing non-neutral beliefs held by evangelical perfectionists and if they are strong enough to shift the balance towards neutrality. While the CB defence makes the justification of liberal neutrality much less dependent on contingent facts than the CF

defence is, I will suggest, it falls prey to the same fallacy of hasty generalisation, coupled with inattention to detail, that the earlier CF defence suffers.

#### 4.2 Equal Respect for Persons

Larmore's theory, in his *Patterns of Moral Complexity* (1987), *The Morals of Modernity* (2002), and other works, is similar to Rawls's. He believes that laws should be made without appealing to a particular comprehensive doctrine (or, in other words, without making decisions as to the superiority of any particular doctrine to another). Larmore writes: "so long as some view about the good life remains disputed, no decision of the state can be justified on the basis of its supposed intrinsic superiority or inferiority".<sup>151</sup> Also, for Larmore, as for Rawls, neutrality "does not require that the state be neutral with respect to all conceptions of the good life, but only with respect to those actually disputed in the society".<sup>152</sup> Any political principle that is not disputed in a society can legitimately be made into a law, even if there is no way to justify it without invoking some conception of the good. Since such a principle is endorsed by everyone, it would not be unfair to anyone for a state to invoke it. Such a principle, in other words, would be an object of an overlapping consensus.

Larmore's theory, meanwhile, does not make any use of imaginary devices such as Ackerman's neutral dialogue or Rawls's original position. Larmore, in other words, does not believe that people in decision-making positions should be prevented (either in reality or in imagination) from knowing about comprehensive doctrines or from appealing to such doctrines. Instead, he believes that "[p]eople must... be free to explain to one

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<sup>151</sup> Larmore, *Patterns of Moral Complexity*, p. 47.

<sup>152</sup> *Ibid.*, p. 67.

another in full their comprehensive visions of the good life, and not just those parts that can be laid out on the basis of common ground... A liberal polity benefits greatly from people coming to know the full extent of their reasonable disagreements”.<sup>153</sup> Of course, this free exchange of opinion should not lead to the imposition of some people’s views on others. After comparing their conceptions of the good with those of others, people should sit down and look for common grounds. “When two parties disagree, they can adopt a neutral stance by setting aside, for the time being, the opinions in a dispute and continuing to converse on the basis of the rest of their beliefs”.<sup>154</sup> Liberalism, according to Larmore, thereby “seeks to found the principles of political association upon a core morality that reasonable people can accept despite their natural tendency to disagree about comprehensive visions of the nature of value”.<sup>155</sup> Larmore’s citizens, then, arrive at their laws, not by reasoning from a certain point of view that is designed to be neutral, but in a two-step process. In the first step, they lay out as fully as possible each comprehensive doctrine they subscribe to. In the second step, they selectively eliminate those parts of their doctrines which are found incompatible with parts of other doctrines.

The result of Larmore’s process is similar to that of Rawls’s theory. Only those principles that are widely shared among citizens will be made into laws, and the rest will be filtered out. In both Rawls’s and Larmore’s views, a liberal political arrangement is a “module”,<sup>156</sup> to use Rawls’s terms, which fits into the comprehensive doctrines of each and every person—provided, of course, that they are reasonable. Whatever principles are agreed upon at the end of the day will not be foreign to anyone who took part in either

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<sup>153</sup> Larmore, *The Morals of Modernity*, p. 135-136.

<sup>154</sup> Larmore, *Patterns of Moral Complexity*, p. 50.

<sup>155</sup> Larmore, *The Morals of Modernity*, p. 167.

<sup>156</sup> Rawls, *Political Liberalism*, p. 12.

Rawls's or Larmore's lawmaking process; the principles will be consistent with, and therefore be a part of, each and every reasonable conception of the good. Laws based on such principles will be legitimate and binding upon all.

Where Larmore departs from Rawls is in his defence of liberal neutrality. His justification, like Rawls's, makes references to there being a consensus on the principle of liberal neutrality. He does not, however, intend his defence to be heavily dependent on the existence of such a consensus. Larmore writes:

These norms [i.e. the principle of liberal neutrality] may themselves fail to belong to the common denominator of existing opinion. It would therefore be wrong to object to political liberalism that there are many in our society who show no commitment to these norms. That would be unfortunate if true. But it is not a reason to reject political liberalism.<sup>157</sup>

I wish to insist on the fact that political liberalism is to be understood as a *correct* moral conception and not just as an object of consensus.<sup>158</sup>

[W]e would badly misunderstand [liberalism], if we supposed its guiding principles to consist simply in whatever might turn out to be the common ground among reasonable people otherwise divided by their convictions.<sup>159</sup>

*Correct* is what liberal neutrality is, according to Larmore. Liberal neutrality is not a mere “common denominator of existing opinion”; nor is it a regrettable compromise that people might be forced to make in the face of disagreement. It is a correct principle, no matter what else people may believe. For Larmore, therefore, either there is a consensus on the principle of liberal neutrality, or if there isn't, people are mistaken in not recognising good reasons to consent. In short, there *should be* a consensus, in the moral sense of the word “should”, on the principle of liberal neutrality.

This way of defending neutrality is sure to make opponents laugh. Hasn't Larmore,

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<sup>157</sup> Larmore, *The Morals of Modernity*, p. 145.

<sup>158</sup> *Ibid.* Emphasis added.

<sup>159</sup> Larmore, “The Moral Basis of Political Liberalism”, p. 602.

by calling neutrality correct and its opponents wrong, just made liberalism “just one more partisan ideal”<sup>160</sup> among many? Liberalism, after all, “has been the hope that, despite [people’s] tendency toward disagreement about matters of ultimate significance, we can find some way of living together that avoids the rule of force”.<sup>161</sup> But if Larmore insists that the liberal position is simply *correct*, he runs the risk of making himself (and his theory) just another contestant in the battle he wishes to end, by seeking to force neutrality down his opponents’ throat. Certainly a neutralist cannot do that!

Larmore, however, is well aware of the danger he runs by advancing neutrality as an objectively correct principle. So he explains, in terms he expects even his opponents to be able to accept, why he insists on the correctness of liberal neutrality. In other words, Larmore attempts to build a consensus where there had been none, by presenting reasons he believes even perfectionists would have no choice but to accept.

Larmore’s starting point for liberal neutrality is the idea of *equal respect for persons* (ERP hereafter). “To show another equal respect”, Larmore argues, is “to treat his demand for justification as part of a rational discussion one must have with him”,<sup>162</sup> and “to require that coercive or political principles be as justifiable to that person as they presumably are to us”.<sup>163</sup> I do not respect you if I do something to you without explaining to you why I am doing it, in a manner that you can understand; I respect you only if I am ready to give a satisfactory answer when you ask why you should comply with my demands. ERP is a strong consideration in favour of neutrality, as it requires people to provide reasons that everyone else can accept.

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<sup>160</sup> Larmore, *The Morals of Modernity*, p. 151.

<sup>161</sup> *Ibid.*, p. 151.

<sup>162</sup> Larmore, *Patterns of Moral Complexity*, p. 65.

<sup>163</sup> Larmore, “The Moral Basis of Political Liberalism”, p. 608.

Larmore believes that ERP is compatible with most comprehensive doctrines, including those that might be opposed to neutrality:

Respect for persons is an attitude that we can adopt, just about however much we may disagree with them about the nature of the good life... Others are due equal respect by virtue of their capacity for working out a coherent view of the world and indeed of the good life, whether or not they exercise this capacity autonomously and experimentally, or through the uncritical acceptance of traditions and forms of life... I wish to insist only that it is *compatible* with a very great variety of ideals of the good life, including those that were dominant at times when, as a matter of fact, the norm of equal respect was not so widely shared.<sup>164</sup>

Not only that, but whoever seeks to live with others must accept ERP and its implications.

ERP, according to Larmore, is “what impels us to look for common ground at all”.<sup>165</sup>

Larmore’s argument that ERP is compatible even with those doctrines “that were dominant at times when... the norm of equal respect was not so widely shared”, specifically targets traditional doctrines, such as Christianity, that used to engage in severe conflicts. If ERP is a part of the Christian doctrine (as it seems to be, for we often hear Christians arguing that every human being is created equal and loved equally by God), then 18th-century Christians who oppressed dissidents were mistaken about the implication of their own beliefs. Evangelicals such as Schaeffer who oppose neutrality today are also probably wrong about their beliefs, if they accept ERP. A few people, such as sexists and racists, might reject ERP; however, as with Rawls and other liberals, Larmore argues that such unreasonable people are best excluded from the debate. “Liberals need not have an argument to convince people of this sort, only safeguards for preventing them from acquiring political power”.<sup>166</sup> For all others, according to Larmore, acceptance of ERP means acceptance of neutrality.

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<sup>164</sup> Larmore, *Patterns of Moral Complexity*, p. 65-66.

<sup>165</sup> Larmore, “The Moral Basis of Political Liberalism”, p. 608.

<sup>166</sup> Larmore, *Patterns of Moral Complexity*, p. 66.

Dworkin, in *A Matter of Principle* (1985) and other writings, takes a similar approach. As with Larmore, Dworkin is sceptical about the effectiveness of the consensus-finding (CF) defence. “Our political arguments”, writes Dworkin, “almost never begin in some shared understanding of the pertinent principles of distribution. Every important issue is a contest between competing models”.<sup>167</sup> He is not, in other words, looking for an existing consensus as a defence of neutrality. “If justice is only a matter of following shared understandings, then how can the parties be debating about justice when there is no shared understanding?”<sup>168</sup> For Dworkin, “justice is our critic, not our mirror”.<sup>169</sup> Principles of justice, including the liberal principle of neutrality, must be *prescriptive*; such principles must stand even if no one acknowledged them.

Naturally, Dworkin tries to convince his opponents that everyone, regardless of their religious and moral convictions, is obliged to support what he believes to be a requirement of justice—liberal neutrality. Like Larmore, Dworkin argues along the lines of ERP that a government must “treat all those in its charge *as equals*, that is, as entitled to its equal concern and respect”.<sup>170</sup> What this means for Dworkin is that a state, or anybody for that matter, “must impose no sacrifice or constraint on any citizen in virtue of an argument that the citizen could not accept without abandoning his sense of his equal worth”.<sup>171</sup> Therefore, Dworkin argues, a state must be neutral regarding comprehensive conceptions of the good life. He writes:

Since the citizens of a society differ in their conceptions [of the good life], the government does not treat them as equals if it prefers one conception to another,

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<sup>167</sup> Dworkin, *A Matter of Principle*, p. 216.

<sup>168</sup> *Ibid*, p. 217.

<sup>169</sup> *Ibid*, p. 219.

<sup>170</sup> *Ibid*, p. 190.

<sup>171</sup> *Ibid*, p. 205.

either because the officials believe that one is intrinsically superior, or because one is held by the more numerous or more powerful group.<sup>172</sup>

Are Larmore's and Dworkin's defence based on ERP good enough to make opponents of liberal neutrality acknowledge that they had been mistaken in their opposition? At first glance, the argument for ERP being an object of society-wide consensus (excluding some radicals) seems very strong. After all, it is a hallmark of modern liberal democracies that every citizen, regardless of differences in race, class, birth, or gender, enjoys the same rights and bears the same duties. If evangelicals, for example, support ERP, are they not inconsistent in opposing liberal neutrality, as noted above? If we are to refrain from challenging the evangelicals' most important beliefs about God, creation, and human nature, at least it must be the case that theologians like Schaeffer do not pay enough attention to other beliefs he must have—for otherwise it would be hard to explain their inconsistency in accepting ERP and rejecting neutrality.

That line of argument, however, works only if (a) Schaeffer and his fellow evangelicals do accept ERP and (b) they, like Larmore and Dworkin, can derive neutrality from ERP. Unfortunately for the two liberal philosophers, neither condition obtains in the case of evangelicals—despite our first impression to the contrary. Recall Schaeffer's belief in the original sin, which he also invokes in his argument against abortion:

Christians do *not* see things as if they always have been this way. This is of immense importance in understanding evil in the world. It is possible for Christians to speak of things as absolutely wrong, for they are not original in human society. They are derived from the Fall; they are in that sense “abnormal”.<sup>173</sup>

While in the discussion over abortion the belief in the fall leads evangelicals to view with

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<sup>172</sup> Ibid, p. 191.

<sup>173</sup> Schaeffer and Koop, “Whatever Happened to the Human Race?” in Schaeffer, *Complete Works*, vol. 5, p. 385.

suspicion desires and needs that conflict with a foetus's life, in the present context it leads them to subject people's sense of self-worth to the scrutiny of the Bible's standards. "The Bible", writes Schaeffer, "says that you are wonderful because you are made in the image of God, but that you are flawed because at a space-time point of history man fell".<sup>174</sup> For anyone who believes this statement to be an accurate description of human nature, no political principle she accepts or rejects is sufficient to make her gain or lose her sense of self-worth; for she believes herself to be made in the image of God no matter what else may be true about her. Any temptation to the contrary would be attributed to the unfortunate flaw that blinds people to their true nature. Meanwhile, the same belief that every human being—including non-Christians—are made in the image of God will lead evangelicals to conclude that everyone should be treated in a way that is respectful of his or her true nature, that is, in a way that is worthy of God's image-bearers. To respect a person, then, is to give her reasons that are appropriate for God's image-bearers to accept, rather than reasons that her flawed desires make her prefer, or reasons that sit comfortably with her flawed sense of self-worth.

ERP, then, in the hands of evangelicals, turns into something quite different from the liberal formulation. Dworkin's insistence that no law is legitimate if a person "could not accept [it] without abandoning his sense of his equal worth",<sup>175</sup> for evangelicals, does not entail neutrality. Respect for flawed persons requires attending to those flaws by means of perfectionist policy. What evangelicals believe is something that looks similar to ERP, but not quite the same as Larmore and Dworkin's ERP. The difference is large enough to stall the inference from ERP (the evangelical formulation) to neutrality. The

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<sup>174</sup> Schaeffer, "Escape from Reason", in Schaeffer, *Complete Works*, vol. 1, p. 219.

<sup>175</sup> Dworkin, *A Matter of Principle*, p. 205.

CB defence based on ERP, therefore, fails to locate elements in evangelicalism that support neutrality.

### 4.3 Free Choice

Dworkin has another CB defence up his sleeve; this one is specifically targeted at “conservatives” who, in the American context, are more likely to be evangelicals. A conservative, according to Dworkin, “supposes that the good man would wish to be treated in accordance with the principles of... the virtuous society”.<sup>176</sup> This, in effect, is an acknowledgment of the evangelical understanding of ERP; Dworkin surely knows who he is dealing with. Dworkin, however, tells his opponent that the aforementioned belief must be overridden by other considerations. No one has the right to make society “virtuous” according to only one or another of many contending comprehensive doctrines, because trying to do so would be *detrimental* to, rather than disrespectful of, others. “Ethical liberals”, he writes, “know that they cannot make other people’s lives better by the coercive means that liberal tolerance forbids, because they know that someone’s life cannot be improved against his steady conviction that it has not been”.<sup>177</sup> The good life, according to Dworkin, is not something that can be forced upon a grudging dissident. People should freely pursue the good life as they see fit; it is better for them to learn by trial and error than to live a life of disgruntled obedience.

A slightly different formulation of the same argument appears in *Is Democracy Possible Here?* (2006). Dworkin, in his new book, tries to base his argument for neutrality on principles he believes liberals and conservatives share. The first such principle is the

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<sup>176</sup> Ibid, p. 198-200.

<sup>177</sup> Dworkin, *Sovereign Virtue*, p. 282-283.

“principle of intrinsic value”, which says that “each human life has a special kind of objective value”. “[Human life] has value as potentiality”, writes Dworkin; “once a human life has begun, it matters how it goes. It is good when that life succeeds and its potential is realized and bad when it fails and its potential is wasted”.<sup>178</sup> The second principle is the “principle of personal responsibility” which, according to Dworkin, “holds that each person has a special responsibility for realizing the success of his own life, a responsibility that includes exercising his judgment about what kind of life would be successful for him”.<sup>179</sup> From these two principles it follows that it is best for people to be left to decide for themselves what the good life is for them.

Notice how Dworkin’s two principles echo the voice of American conservatives and especially evangelicals. The first sounds like a concession to pro-life activists, who argue that human life has a special value. The second would appeal to anyone who believes that people are responsible for their own success; if “success” here is interpreted as financial success, economical conservatism is just around the corner. Dworkin’s seems to be an excellent CB defence of neutrality; it appeals to what is commonly assumed to be typically conservative, and presumably evangelical, principles. Dworkin’s strategy, of course, is to show that these familiar conservative views actually support the liberal principle of neutrality.

This defence, however, would not keep evangelicals away from perfectionism. Dworkin’s principle of intrinsic value, while quite close to the pro-life activists’ agenda, places the source of the value of human life in the wrong place. Evangelicals, as we saw in Chapter 3, do not believe that the value of human life derives from a person’s potential

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<sup>178</sup> Dworkin, *Is Democracy Possible Here?*, p. 9.

<sup>179</sup> *Ibid*, p. 10.

for living a successful life—though they are certainly interested in “success” in the sense of being a good Christian. The evangelical view is that human life is valuable in virtue of its *origin*; all other features are irrelevant. Dworkin’s principle of intrinsic value, meanwhile, could be employed to justify abortion and physician-assisted suicide in some if not many cases. What if a foetus is found to have brain defects that will keep it from realising any “potentiality” in the ordinary usage of that word? What about old and ill people who think they have had a fulfilling life and that they have no further “potentialities” to realise? Defining the value of human life in terms of “potentiality” is unacceptable to evangelicals; they would not buy the argument.

Dworkin’s principle of personal responsibility, likewise, is not exactly what evangelicals would call their own. Sure, it is a keystone of Protestant faith that salvation is strictly a matter between a human being and her God; no one can be forced to be saved. But salvation is not the only agenda for evangelicals; evangelicals, unlike separatists, believe that God’s dominion is not only over spiritual matters but over the entire universe. And while it is presumably impossible to force someone to earn salvation, it is quite possible to force her not to have an abortion. The use of force, of course, might have some undesirable effects, such as the loss of a woman’s certain freedoms. But those losses can be minimised if the proper institutions and community support are in place; furthermore, what is some loss of freedom when a human life is at stake? As the focus moves from personal salvation to societal virtue, the use of force does begin to seem a promising possibility. In other cases such as same-sex marriage, the loss of freedom can be even seen as a benefit; as Thomas Hurka observes, evangelicals and others who disapprove of homosexuality “do not believe that homosexuality is less good than other forms of sexuality. They believe that it is positively evil: to engage in it is worse than to engage in

no sexual activity at all... surely some perfectionist theories of the good are theories of good *and evil*".<sup>180</sup>

Will Kymlicka's version of the same argument fares no better. According to Kymlicka, "no life goes better by being led from the outside according to values the person does not endorse. My life only goes better if I am leading it from the inside, according to my beliefs about value... If I do not see the point of an activity, I will gain nothing from it".<sup>181</sup> Here, Kymlicka's example is specifically religious, and one that is not directly related to salvation: praying. "Praying to God may be a valuable activity", he writes, "but you have to believe that it's a worthwhile thing to do—that it has some worthwhile point and purpose. You can coerce someone into going to church and making the right physical movements, but you won't make someone's life better that way".<sup>182</sup> But Kymlicka chose the wrong example. Evangelicals at the beginning of the 21st century, unlike those in the 1960s, are not necessarily pushing for mandatory school prayer. As the legal cases listed in Section 3.4 suggest, they are now struggling for the right of Christian students to voluntarily organise prayers at state-supported events such as football matches and graduation ceremonies—a more modest demand that nonetheless fails to pass the *Lemon* test. Many evangelicals recognise that people cannot be forced to communicate with God. When they want the coercive power of the state behind their backs, it is usually for causes such as prohibiting abortion that can be successfully carried out by force. With regard to those things, the argument from free choice does not have much strength.

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<sup>180</sup> Hurka, "Indirect Perfectionism", p. 47.

<sup>181</sup> Kymlicka, *Contemporary Political Philosophy*, p. 216.

<sup>182</sup> Kymlicka, *Liberalism, Community, and Culture*, p. 12.

#### 4.4 Rational Revisability

In *Liberalism, Community, and Culture* (1989) and *Contemporary Political Philosophy* (2002), Kymlicka proposes yet another CB defence of neutrality that draws upon elements of Larmore's and Dworkin's arguments but updates them to a form which Kymlicka believes will be met with more success. Like the other two, Kymlicka defends neutrality by referring the opponent to a principle which he believes is more likely to gain acceptance, and he argues from there to convince the opponent. For Kymlicka, that principle is that people make mistakes. Let me quote Kymlicka's argument in full:

At the most general level, our aim is to lead a good life, to have those things that a good life contains. Put at such a general level, that claim may seem quite uninformative. But it has important consequences. For... leading a good life is different from leading the life we currently believe to be good. We recognize that we may be mistaken about the value of our current activities. We may come to see that we have been wasting our lives, pursuing trivial goals that we had mistakenly considered of great importance. This is the stuff of great novels—the crisis in faith. But the assumption that this could happen to all of us, and not just to the tragic heroine, is needed to make sense of the way we deliberate about important decisions in our life. We deliberate carefully because we know we could make wrong decisions. And not just in the sense of predicting wrongly, or of calculating uncertainties. For we deliberate even when we know what will happen, and we may regret our decisions even when things went as planned. I may succeed in becoming the best pushpin player in the world, but then come to realize that pushpin is not as valuable as poetry, and regret that I had ever embarked on that project.

The idea that some things really are worth going, and others are not, goes very deep in our self-understanding. We take seriously the distinction between worthwhile and trivial activities, even if we are not always sure which things are which. Self-determination is, to a large extent, the task of making these difficult, and potentially fallible, judgements, and our political theory should take this difficulty and fallibility into account.<sup>183</sup>

Put simply, the crux of the argument is that anyone can make mistakes—including the confident evangelical theologian. And this is true not only in the case of mundane

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<sup>183</sup> Kymlicka, *Contemporary Political Philosophy*, p. 215.

hobbies such as pushpin, but also in the case of much more important religious and political questions. Let me pick an example that isn't Kymlicka's. A couple of centuries ago, most people believed that women should stay home. Competent theologians were no exceptions; they would cite Bible verses in support of sex discrimination. Today, in contrast, few people in the West believe that there are intrinsically male or female occupations. Many theologians also have come to support sex equality; in support of their changed position, they either cite different verses or give new interpretations of the same old verses. The old theologians' insistence on sex discrimination would be seen by contemporary theologians as a mistake. Most evangelicals today, likewise, would be happy that the mistake had been corrected.

Generalise this, and we get the intuitive fact that people have an interest in correcting mistakes. And if some rigid law were perpetuating the state of mistake, those who know that there was a mistake would not appreciate that law. Again, we see neutrality at the end of the road; for a state that upheld a particular comprehensive doctrine by law would prevent, or at least discourage, people from discovering and overcoming potential flaws in that doctrine—not to mention experimenting with other, potentially better doctrines. But it must be noted that Kymlicka's insistence on self-determination is not the same as classical liberalism's emphasis on individual autonomy. It is not as if he sees metaphysical reasons to value freedom for freedom's sake—a position that would raise an alarm for many critics of liberal neutrality, including evangelicals who insist that autonomy can go against God.<sup>184</sup> For Kymlicka, the value of freedoms associated with self-determination is merely instrumental:

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<sup>184</sup> Schaeffer, "Escape from Reason", in Schaeffer, *Complete Works*, vol. 1, p. 219. "There is nothing autonomous—nothing independent from the Lordship of Jesus Christ and the authority of the Scriptures."

Liberals do not say that we should have the freedom to select our projects for its own sake, because freedom is the most valuable thing in the world. Rather, our projects and tasks are the most important things in our lives, and it is because they are so important that we should be free to revise them, should we come to believe that they are not worthwhile. Our projects are the most important things in our lives, but since our lives have to be led from the inside, in accordance with our beliefs about value, we should be free to form, revise, and act on our plans of life. Freedom of choice is not pursued for its own sake, but as a precondition for pursuing those projects that are valued for their own sake.<sup>185</sup>

That political freedoms do not have value apart from the value of what they enable people to do, is evident from the examples Kymlicka provides. “We do not suppose that someone who makes twenty marriage choices is in any way leading a more valuable life than someone who has no reason to question her original choice”.<sup>186</sup> Also, “I pursue my writing for its own sake, because there are things which are worth saying. Freedom is valuable because it allows me to say them”.<sup>187</sup> Indeed, if we had freedom but no worthwhile options to choose from, our freedom would be useless. The question, then, “is not whether we must take something as given in making judgements about the value of our activity. Rather, the question is whether an individual can question and possibly replace what is in ‘the given’, or whether the given has to be set for us by the community’s values”.<sup>188</sup>

Does Kymlicka’s argument from rational revisability to neutrality work? Let us return to the most problematic case we have been considering (evangelicals rallying against abortion). Schaeffer’s argument relies heavily on the biblical account of the fall—the idea that humans are abnormal due to sin. This belief, as we saw, leads evangelical Christians to be suspicious about any desires, perceived needs, and theories that go

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<sup>185</sup> Kymlicka, *Contemporary Political Philosophy*, p. 222.

<sup>186</sup> *Ibid*, p. 223.

<sup>187</sup> *Ibid*, p. 223.

<sup>188</sup> *Ibid*, p. 224.

against what they believe to be the unmistakable revelation of God. If, however, everyone is prone to making grave mistakes—everyone is fallen, to borrow the Christian terminology—does it not follow that evangelicals too might be mistaken in their interpretation of religious texts? Some of the verses that evangelicals often cite in support of their opposition to abortion, including Psalm 139:13 (“For you created my inmost being; you knit me together in my mother’s womb.”) and Jeremiah 1:5 (“Before I formed you in the womb I knew you, before you were born I set you apart...”), are perhaps open to different interpretations such that conception does not mark the beginning of a valuable human life. Add to this the fact that not all Christians are agreed about the permissibility of abortion, and Kymlicka’s argument gains momentum; some abortions might be okay even from an evangelical perspective, after all.

We might go further. We might question the biblical accounts of creation and sin, and treat the earlier chapters of Genesis as fiction and/or metaphor. That would take care of the creationism debate in schools; creationism would belong not in the science class but in the literature class. The possibilities are endless. Muslims might be mistaken in believing headscarves to be necessary to protect women’s dignity. The Amish might be mistaken in believing interaction with non-believers to be harmful. Jehovah’s witnesses might be mistaken in believing blood transfusion to void salvation. Confucians might be mistaken in believing patriarchy to reflect the rightful order of the universe. We might all be mistaken; all of us might want to change our beliefs one day. And when that day comes, we would not want to face a concrete wall of conventional-beliefs-engraved-into-law. Neutrality, then, seems to be the only answer—no matter what else we believe.

So it seems that Kymlicka has finally found a CB defence that can be neatly grafted onto perfectionist doctrines such as evangelicalism and make them supportive of

liberal neutrality. But does the acceptance of rational revisability lead all the way to neutrality? In the next three sections I will undertake a more detailed study of what rational revisability implies for evangelicals.

#### 4.5 What's So Special about the State?

Promising as it is, we cannot take rational revisability too far. For one, evangelicals are far from being sceptics; also, taken to the extreme, we would have to admit that even Kymlicka might be mistaken in believing that everyone might be mistaken, and that therefore we might be mistaken in accepting liberal neutrality. Rational revisability must be restricted in its scope and application, in order to serve its purpose as a CB defence of neutrality; otherwise it would undermine itself. Liberal neutralists, indeed, are adamant that their theories are not sceptical. Rawls denies that his political liberalism entails scepticism;<sup>189</sup> Kymlicka also stresses that “scepticism does not in fact support self-determination” because “[if] all ways of life are equally valuable, then no one can complain when the government chooses a particular way of life for the community”.<sup>190</sup> More intuitively, it just doesn't seem right that life is so dominated by mistakes as scepticism suggests it is. Competent adults make mistakes from time to time, but only from time to time; in most everyday circumstances, they seem to reason correctly. At least it is necessary, in order for anyone to lead a worthwhile life, to believe that people reason correctly most of the time. Liberals, then, must insist on only as much possibility of mistake as is necessary to defend neutrality.

The common strategy is to take seriously that possibility only when the *high-risk*

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<sup>189</sup> Rawls, *Political Liberalism*, p. 150-154.

<sup>190</sup> Kymlicka, *Contemporary Political Philosophy*, p. 214.

*sectors* of society are involved. The high-risk sectors, not surprisingly, are those of the government. Perhaps this point is obvious enough from the way I have defined “liberal neutrality” at the beginning of this thesis. However, it is worth repeating: according to liberals, neutrality should be the goal *only of the state*. Rawls, for instance, writes that his political liberalism is “worked out for a specific kind of subject, namely, for political, social, and economic institutions”. He calls these institutions “the ‘basic structure’ of society”.<sup>191</sup> Larmore also emphasizes that liberal neutrality is “a political, not a general social ideal. The liberal state can intervene in an area of social life only if the state has a neutrally justifiable goal that requires that intervention, and only to the extent required by its pursuit of that goal can it justifiably institutionalize neutrality in that area”.<sup>192</sup> Dworkin insists upon the same point: “the liberal conception of equality is a principle of political organization that is required by justice, not a way of life for individuals”.<sup>193</sup>

Individual citizens and groups within the civil society, then, do not need to base all of their judgments on the possibility of mistake. People may discourage their neighbours from having abortions, based on their belief that abortion is wrong; churches and other organizations may do the same, without questioning the validity of their own religious beliefs. As Kymlicka argues, liberal neutrality “does not restrict the scope of perfectionist ideals in the collective activities of individuals and groups. Perfectionist ideals, although excluded from a liberal state, have an important place in human affairs and, hence, an important place in a liberal society”.<sup>194</sup> It is the *state*, and only those sectors of society (such as public education) that are controlled by the state, that need to take seriously the

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<sup>191</sup> Rawls, *Political Liberalism*, p. 11.

<sup>192</sup> Larmore, *Patterns of Moral Complexity*, p. 46.

<sup>193</sup> Dworkin, *A Matter of Principle*, p. 203.

<sup>194</sup> Kymlicka, “Liberal Individualism and Liberal Neutrality”, p. 897.

possibility that people may be mistaken in their values.

As noted above, the liberals' reason for focusing only on the state is the high risk associated with the state's actions. When individuals try to persuade others, or when groups in the civil society encourage the public to uphold certain virtues, those who dissent are usually free not to comply. Refusing to comply, of course, often has undesirable consequences for the people concerned; families and friendships might be broken, and groups might come to hate one another. But such costs are dwarfed when compared to the consequences of state action. A modern state has at its disposal the means to fine, imprison, banish, or even execute those who do not comply with its laws. It is also extremely difficult to avoid having to answer the state. A person who wanted to avoid Mormons, for example, could move to a place like Arkansas where there are few of them. But the state is virtually omnipresent: most habitable land on Earth is governed by one or another state; it is often difficult for a person convicted of a crime in one state to cross borders into another; and there are institutions such as the I.C.P.O. and devices such as extradition agreements that assist states in tracking down convicts who do cross borders. "It is this coercive character of political principles", writes Larmore, "which we have in mind, when we hold... that such principles must be the object of reasonable agreement".<sup>195</sup> Since the danger is greater, the state cannot afford to remain blind to possible mistakes.

In light of this, Kymlicka believes that the dispute between liberal neutralists and their opponents is to be seen "as a choice, not between perfectionism and neutrality, but between social perfectionism and state perfectionism—for the flip side of state neutrality

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<sup>195</sup> Larmore, "The Moral Basis of Political Liberalism", p. 607.

is support for the role of perfectionist ideals in civil society”.<sup>196</sup> He therefore concludes that there should be no real conflict between liberal neutralists and perfectionists or “communitarians”:

Despite centuries of liberal insistence on the importance of the distinction between state and society, communitarians still seem to assume that whatever is properly social must become the province of the political. They have not confronted the liberal worry that the all-embracing authority and coercive means which characterize the state make it a particularly inappropriate forum for the sort of genuinely shared deliberation and commitment that they desire. Despite centuries of communitarian insistence on the historically fragile nature of our culture, and the need to consider the conditions under which a free culture can sustain itself, liberals still tend to take the existence of a tolerant and diverse culture for granted, as something which naturally arises and sustains itself, the ongoing existence of which is therefore simply assumed in a theory of justice.<sup>197</sup>

If Kymlicka is correct, then, liberalism consists of not one, but two programs that are two sides of the same coin: the first is to keep all controversial doctrines out of the state’s decision-making process, and the second is to encourage and support the pursuit of perfectionist (non-neutral) ideals wherever the state’s dangerous power is not involved. As Kymlicka puts it, liberal neutrality is based on “a certain faith in the operation of non-state forums and processes for individual judgment and cultural development, and a distrust of the operation of state forums for evaluating the good”.<sup>198</sup> The two programs must go hand-in-hand; there cannot be one without the other.

#### **4.6 Is Social Perfectionism an Answer?**

While the neutrality of the state, Kymlicka’s first and more obvious program, has been emphasised time and again by liberal philosophers, the corresponding support of

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<sup>196</sup> Kymlicka, *Contemporary Political Philosophy*, p. 248.

<sup>197</sup> *Ibid*, p. 251.

<sup>198</sup> *Ibid*, p. 251.

non-state forums, Kymlicka's second program, has seen significantly less discussion in the academia. Perhaps this lack of emphasis on the latter is what causes critics of liberal neutrality, such as Schaeffer, to insist that "the present tragic result" of liberalism "is the loss of humanness *on every level*".<sup>199</sup> Indeed, if perfectionist ideals could be pursued neither by the state nor in non-state forums, Schaeffer's disgruntled response would be quite legitimate. But if a CB defence can show that non-state forums can more than adequately handle perfectionist projects, perhaps the disagreement can be resolved. The task for those who want to take perfectionists on board the neutralist program, then, is to assure the newcomers that non-state forums will do the job.

One example of liberals supporting the operation of non-state forums can be found in Dworkin's argument for state support of the arts—establishing public libraries, museums, galleries; and subsidizing artistic activities. Dworkin argues that the arts are indispensable for the maintenance of a "rich cultural structure"<sup>200</sup> in which many worthwhile conceptions of the good can be pursued. Yet it is difficult for artists to secure the financial and social resources to pursue their artistic goals. The state, therefore, is obliged to support the arts, to the extent to which the necessities of maintaining a vibrant culture demands. To that extent, state support of the arts can remain neutral. But state support must not, according to Dworkin, extend beyond supporting the arts in general. Specifically, the state must not discriminate among artists' different conceptions of the good. Dworkin writes: "state support is designed to protect structure rather to promote any particular content for that structure at any particular time... it should look to the diversity

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<sup>199</sup> Schaeffer and Koop, "Whatever Happened to the Human Race?" in Schaeffer, *Complete Works*, vol. 5, p. 290. Emphasis added.

<sup>200</sup> Dworkin, *A Matter of Principle*, p. 229.

and innovative quality of the culture as a whole rather than to (what public officials take to be) excellence in particular occasions of that culture”.<sup>201</sup> Artists, then, are free to pursue whatever artistic projects their imagination takes them to—as long as they stay within the broad framework defined as “the arts”.

Dworkin’s proposal, however, is not without problems. How does one distinguish what is essential to a rich cultural structure from what isn’t? How does one tell, in other words, what to count as “the arts” and similarly important pursuits? Richard Sinopoli argues that the decision to support the arts rather than something else is either arbitrary or indicative of a concealed conception of the good:

[I]f the principle asserted is that it is better to broaden the range of artistic experiences, why should we not say the same thing about religious experience, on one extreme, and trivial enjoyments like games or marbles or pushpin on the other? If, for example, the southern Baptist faith was dying out, should the state act to preserve it so that this denomination would remain available to future generations? What if, on the other hand, the game of marbles found fewer adherents today than it used to have, as is the case? Should the state endorse marbles clinics to preserve this entertainment for others who might someday enjoy it? ... If it should do so in the case of arts as opposed to marbles, it must be because preserving an artistic heritage is more valuable.<sup>202</sup>

Christine Synowich also casts doubt on the plausibility of a neutralist defence of subsidies for the arts:

[T]he state does not subsidize all options that would otherwise be unavailable. It subsidizes, dare we say, the “good” ones, those conducive to self-determination, creativity, or intellectual development: art galleries, rather than (equally vulnerable) drive-in cinemas. That the liberal state subsidizes art galleries and not drive-ins cannot be explained in nonperfectionist terms.<sup>203</sup>

Since Dworkin denies that liberal policies are based on particular conceptions of the good that might rank some cultural practices above others, it seems that the choice to support

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<sup>201</sup> Ibid, p. 233.

<sup>202</sup> Sinopoli, “Liberalism and Contested Conceptions of the Good: The Limits of Neutrality”, p. 648-649.

<sup>203</sup> Synowich, “The Culture of Citizenship”, p. 538.

art galleries but not the southern Baptist church, or the choice to help keep Shakespeare alive but not drive-in cinemas, or the choice to subsidise ballet but not break-dance, is arbitrary. Or, if the liberal program is not to be arbitrary, it needs a criterion; but if the maintenance of a vibrant culture is the criterion, there seem to be other things beyond the arts that qualify. Religion, especially, may very well be entitled to as much state support as the arts, given how importantly religion figures in many people's lives. Indeed, it is likely that more people place religion as an indispensable element of their lives than they do opera. Why, then, support opera rather than religion?

Liberals could reply that, while religion as a whole may command more support than the arts, few people agree on which religion to support (or whether or not to support religion at all), whereas most can agree that the arts are worthy of state support. State support of the arts, then, would be an object of overlapping consensus. This reply has its share of weaknesses; for one, it is blind to the vast diversity within "the arts" while being attentive to differences among religious and secular conceptions of the good. But it is the merits of the liberal reply, rather than its flaws, that are of interest to me. Disagreements about the worth of different kinds of art, while of immense importance to artists and art critics, do not have a significant impact on state policies. The government can very well remain blind to controversies within the arts; the task of judging the worth of different kinds of art can be left to artists, art critics, collectors, curators of major galleries, and other individuals. In other words, while the state supports the arts, the arts themselves can be safely confined to non-state forums. (Let us exclude, for the argument's sake, the kinds of Nero for whom art involves the burning of a nation's capital.)

On the other hand, religion has the potential to "leak" out of non-state forums into the government sector; evangelicalism is probably just one example of the many

perfectionist religions out there. Unlike state support of the arts which confines most of the disagreements within and among the arts to non-state forums, state support of religion(s) is likely to invite disagreements within and among religions into the state as well. State support of religion, then, cannot be a part of the liberal proposal for the support of non-state forums.

But this leads us to the point where evangelicals, for instance, would stop consenting to Kymlicka's argument from rational revisability. Recall that Kymlicka defends the state's neutrality by suggesting social perfectionism as an alternative to state perfectionism. The argument from rational revisability escapes scepticism, only because perfectionists are allowed free reign in the civil society. Liberal proposals for the support of non-state forums, however, are not applicable to religious and other perfectionist doctrines; support is only available to parts of a society's culture, such as art, that can be safely confined to non-state forums. While the state is marked off-limits to evangelicals, there is absolutely no promise of correlative support for religious pursuits. The neutral state not only refuses to take the evangelicals' opinion into consideration when framing abortion laws and education policies, it also refrains from assisting, financially or otherwise, any evangelical campaign regarding abortion or creationism. Why then should evangelicals accept Kymlicka's suggestion to replace state perfectionism with social perfectionism—when they gain almost nothing in return for what they lose?

Not all evangelicals, of course, look for state support of their projects; many evangelicals feel more comfortable relying on donations and volunteers in the furtherance of their ideals. But John Tomasi suggests that this tendency could be, at least in part, the result of the evangelicals' frustrating encounter with the neutral state:

Urban ministries in particular have long agonized over whether to accept direct

support from government agencies, fearing the mission-constraining strings that might be attached to such support. Some who have accepted public funds have been forced to work a delicate legal and spiritual tightrope, for example, by agreeing to remove all religious references from the publicly funded parts of their programs and to offer religious instruction only as optional, privately funded supplements to their programs.<sup>204</sup>

Given the centrality of religious principles and practices in many evangelical projects in the civil society (for instance, it would be hard to find evangelical programs that do not begin or end with prayer), the “strings” attached to state support can be positively incapacitating. As Kathy Dudley, an evangelical poverty-fighter in urban Dallas, protests: “Our mission is discipleship, so if the government gives money to gain one result of the mission, housing, but at the same time tells us we must give up the mission, that makes no sense”.<sup>205</sup> Michael Olasky, an avid supporter of the Bush administration’s faith-based initiative, therefore demands: “Provided that there are secular options readily available, government officials with the power to reward or withhold grants should not be allowed to consider the form and frequency of prayers that might be offered by, or even required of, participants in faith-based grant programs”.<sup>206</sup>

But the neutral state, obviously, cannot use tax money to subsidise the cost of prayer meetings; if a refusal to subsidise prayer meetings means leaving the whole project unsupported, the neutral state is obliged not to support Dudley’s project at all. If the cost of her mission proved too high to be met by donations alone (a very real possibility since Dudley’s mission involves providing housing to the poor in urban areas), she would have no choice but to give up her work which she presumably believes is an urgent duty imposed on her by God.

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<sup>204</sup> Tomasi, “Should Political Liberals Be Compassionate Conservatives?”, p. 336.

<sup>205</sup> Ibid.

<sup>206</sup> Ibid.

Let us return to the abortion debate. Kymlicka's endorsement of social perfectionism is little comfort to evangelicals who have nearly one million abortions a year in the U.S. alone to stop. Recall Schaeffer's argument in Section 3.3, that such an urgent problem as abortion must be dealt with by the state as well as by groups within the civil society. In fact, we saw that the evangelical view of the state *requires* the state to do its part in stopping abortion; due to the prevalence of sin, evangelicals believe it impossible for civil society groups alone to tackle abortion. Kymlicka, as noted above, says he has "a certain faith in the operation of non-state forums and processes for individual judgment and cultural development";<sup>207</sup> but what about people whose view of human nature does not allow them to have such faith in non-state forums? For evangelical pro-life activists, social perfectionism is not a real alternative to state perfectionism; the two kinds of perfectionism must go hand-in-hand, since both the state and the civil society are plagued by sin and since both must be brought back into God's dominion.

The high risk associated with state perfectionism does not give evangelicals sufficient reason to refrain from trying to influence, for instance, abortion laws and public school curricula. This is because the alternative to facing that risk is viewed as even more devastating for evangelicals. Evangelical projects—whether stopping abortion, teaching creationism to children, or providing spiritually healthy homes to the poor—are too urgent, for those concerned, to be kept away from any one sector of the society. All sectors are plagued by sin, so all sectors must collaborate to fight back. The choice is between the certain evil of social-only perfectionism and a risk of evil associated with state perfectionism; which course would evangelicals choose?

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<sup>207</sup> Ibid, p. 251.

As Hurka points out, “some perfectionist theories of the good are theories of good *and evil*”.<sup>208</sup> Evangelicalism is one such example; the same belief in human fallenness or “abnormality” that allows evangelicals to initially accept Kymlicka’s argument that everyone might be mistaken, tells them to withdraw their tentative consent and follow the risky path of state perfectionism. Evangelical beliefs, including the belief in sin, cannot be confined to non-state forums; evangelicalism contains the resources to break out when necessary. (Make the belief in sin subject to fallibility as well, and the problem might be fixed; but then we would be dealing with something that isn’t evangelicalism, not to mention that in so doing we invite more scepticism into our political theory.)

Comprehensive doctrines are not blocks of wood that can be carved to fit into any forum. They may contain “loose” beliefs, grown out of tradition, that are not related to their more central tenets in any clear way; these may be trimmed without much hassle. But comprehensive doctrines such as evangelicalism also contain many beliefs that have close logical connections to beliefs at the centre. The latter kind cannot be carved out; to remove them would require a radical alteration of entire doctrines to which they belong. *If* one believes that all human life, including that of foetuses, is sacred beyond comparison, *then* one cannot simultaneously believe that in certain circumstances a foetus’s life may be exchanged for a career! To require otherwise is to require irrationality, no matter how otherworldly the beliefs at the centre might sound like.

The argument from rational revisability, then, cannot be used to circumscribe the government sector as a special forum in which fallibility must be taken seriously. For evangelicals, either both the state and society are fallen, or neither is. If both are fallen,

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<sup>208</sup> Hurka, “Indirect Perfectionism”, p. 47.

there is no point in drawing a line between the two. Taken as a whole, then, Kymlicka's argument is not acceptable to evangelicals.

#### **4.7 I'm Not Doing Business Here!**

Another way to evaluate the acceptability of social-only perfectionism for evangelicals would be to discuss the matter in terms of a metaphor Kymlicka introduces: "the marketplace of ideas". He writes:

Freedom of speech and association allows each group to pursue and advertise its way of life, and those ways of life that are unworthy will have difficulty attracting adherents. Since individuals are free to choose between competing visions of the good life, liberal neutrality creates a *marketplace of ideas*, as it were, and how well a way of life does in this market depends on what it offers to prospective adherents. Hence, under conditions of freedom, satisfying and valuable ways of life will tend to drive out those which are unsatisfying (or so liberals optimistically believe). Liberals endorse civil liberties in part precisely because they make it possible 'that the worth of different modes of life should be proved practically'.<sup>209</sup>

According to Kymlicka, the "competition" is a desirable feature of liberal neutrality; the passage quoted here originally appears as part of an argument in which he tries to convince the perfectionist that liberalism helps people find the best among those options. The marketplace of ideas, i.e. the non-state forums, according to Kymlicka, is where comprehensive doctrines are freely evaluated, chosen, and revised, with as little interference as possible from the state.

Recall how Schaeffer invites his reader to suppose that the evangelical creed were true and then see what follows. "It is possible to take the system the Bible teaches", writes Schaeffer, "put it down in the marketplace of the ideas of men, and let it stand there and

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<sup>209</sup> Kymlicka, *Contemporary Political Philosophy*, p. 248. Emphasis added.

speak for itself”.<sup>210</sup> Schaeffer, in other words, urges everyone to compare evangelicalism with other world-views, and to pick the one that meets humanity’s needs the best. Now, we seem to have found a remarkable similarity between Schaeffer’s method for choosing the best doctrine and Kymlicka’s—a rather unexpected convergence. Of course, Schaeffer is confident that evangelical Christianity will win the day; evangelicalism, he believes, is “the only *theoretical* system that accounts for the truths we know by *pre-theoretical* experience”.<sup>211</sup>

However, in order for evangelicalism to compete with other doctrines, let alone prove superior to them, at the very least it has to be presented as a coherent doctrine. Kymlicka’s marketplace of ideas, which limits all comprehensive doctrines to non-state forums, does not allow this. Given what has been said in the last section, evangelicalism, if confined to non-state forums, would be without viable solutions to problems it says exist. Evangelicalism confined to non-state forums would say, for instance, that sin plagues society and abortion must be stopped. But it would not be able to propose a solution to that problem; for its only solution involves the now inaccessible state. Evangelicalism would also say that the only thing that can end poverty is an approach that fuses spiritual health with financial support from the state. But it would not be able to recommend the only solution it has; for state support, if neutral, cannot have a religious overtone.

If evangelicalism were “on sale” in the liberal marketplace of ideas, it would be perceived by potential buyers as a doctrine that cannot answer its own questions. This would be a gross misrepresentation of the doctrine, which is designed to operate both

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<sup>210</sup> Schaeffer, “Escape from Reason”, in Schaeffer, *Complete Works*, vol. 1, p. 265.

<sup>211</sup> Pearcey, *Total Truth*, p. 313. Also see Schaeffer, *Complete Works*, vol. 1.

through the state and in non-state forums. Evangelicalism, in effect, is only acceptable to the liberal marketplace of ideas in a handicapped, distorted, “decaffeinated”<sup>212</sup> condition. The logical thing for a seller to say when faced with such rules is: “*There’s no way I’m doing business here!*”

Non-state forums, then, are not at all a friendly marketplace for evangelicals to promote their products (morals). What is alarming about this is that evangelicals, and similar perfectionists, can choose to withdraw from the marketplace of ideas, seeking to set up *their own marketplace*. The withdrawal of evangelicals and other perfectionist groups from liberal forums, in fact, is a very real possibility that has deeply troubling consequences. Given their frustrating encounter with the liberal state, some evangelicals are likely to rule out the state and its official channels in planning the next step for the furtherance of their causes. Often, frustrating encounters with the state leads people to crowd into their own ghettos, where they may evade the watchful gaze of officials.

The most common, and perhaps the most innocuous, form of such ghetto-forming and self-segregation is for religious parents to pull their children out of public schools. Many religious parents in the United States already send their children to religious schools where it is free to pray and discuss creationism. Others choose home-schooling for their children. There is also evidence that Muslims in Europe are seeking to do the same, as Gereluk observes:

In the UK, for instance, Muslim parents who cannot find single-sex schools for their adolescent girls are often tempted to send them back to Pakistan during this period of their life. [In France,] the main option for Muslims who wish to leave the secular state system is to enrol their children in *Ecoles Confessionnel*, which are most often Catholic private schools. In their eyes, it is a lesser evil: a school that believes in a higher Being, rather than the total exclusion of religion in state

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<sup>212</sup> Newman, “Exit, Voice, and ‘Exile’: Rights to Exit and Rights to Eject”, p. 45.

schools.<sup>213</sup>

For liberal educators who want children to grow in a diverse environment and thus learn the virtue of toleration, the self-segregation of anti-liberal groups into their own schools, and the increasing homogeneity in public schools that follows, is a serious concern. What will children learn in a school that is packed with people of the same faith, where every parent and teacher tells them that the secular, neutral state is a great evil? If the withdrawal of evangelical children from public school is disconcerting, the case of Islam is even more alarming. Bart Jan Spruyt, suspects that Muslim ghettos in major Dutch cities are responsible, at least in part, for breeding radicals who have become a threat to the Dutch society at large; he points out that the recent murders of Pim Fortuyn and of Theo van Gogh, both of whom were critical of Islamic culture, were perpetrated not by terrorists from the Middle East but by those who were born and raised in the Netherlands.<sup>214</sup>

Of course, evangelicals and most other perfectionists would strongly agree with liberals that criminals should not be a concern for the question of political legitimacy. Also, Islam in Europe is a very different matter from evangelicalism in the United States. Still, we must not forget that the Pilgrims on board the *Mayflower* were seeking, among other things, a place to exercise their religion with as little interference as possible from the British government and the Church of England. Recall also that Schaeffer suggests leaving as an option for evangelicals faced with laws they do not accept (see Section 3.3).

A large group's willingness to withdraw from the common "marketplace", regardless of its practical consequences, signifies that the rules which govern the common

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<sup>213</sup> Gereluk, "Should Muslim Headscarves Be Banned in French Schools?", p. 263.

<sup>214</sup> Spruyt, "Can't We Discuss This? Liberalism and the Challenge of Islam in the Netherlands".

marketplace might not be in conformity with the liberal principle of legitimacy. Some of those who choose to withdraw are *the ones who have not been given a CB defence of neutrality* that works with their comprehensive doctrines. Evangelicalism, as I have argued, is one such example. Neither Larmore nor Dworkin nor Kymlicka provides a CB defence that can persuade evangelicals to accept neutrality. Acceptance of Kymlicka's CB defence requires evangelicals to abandon some of their most deeply held beliefs and present their doctrine to the larger society in a handicapped, "decaffeinated" condition, such that the presented doctrine is not even capable of giving answers to its own questions. Even as evangelical perfectionists acknowledge that they make mistakes, and even as they may be as concerned as the liberals are about the dire consequences of ill-informed state action, it is unclear that they will accept Kymlicka's argument at the end of the day—if that acceptance comes with such a high price tag as it does for them.

## Chapter 5

### Why It Won't Do to Bite the Bullet

#### 5.1 Excluding Evangelicals

Rawls makes it clear that his theory of liberal neutrality “is not reasonable in the first place unless in a suitable way it can win its support by addressing each citizen’s reason, as explained within its own framework”.<sup>215</sup> Since there are evangelicals in modern constitutional democracies who do not support liberal neutrality (which undermines the CF defence), and since there seems to be nothing that liberals can say to persuade them to accept neutrality (which undermines the CB defence), it seems that neutrality is not a reasonable principle. The same uneasiness plagues Ackerman’s defense as well. Ackerman imagines that his account of neutrality is “a place well within the cultural interior that can be reached by countless pathways of argument coming from very different directions”,<sup>216</sup> yet we found that his Citadel of Neutrality is considered forbidden territory by evangelicals. How can liberal neutralists respond to this challenge?

An easy way out for liberal neutralists would be to “bite the bullet” and admit that evangelicals, for instance, cannot accept neutrality. But that does not make neutrality illegitimate, the response would say, because evangelicals can be *excluded*. As we saw in section 2.1, to exclude people means *not requiring their consent* when evaluating the legitimacy of a political principle. Since evangelicals seem incapable of consenting to liberal neutrality, it is tempting to simply exclude them and carry on with neutrality—business as usual. So let us review what Rawls has to say about excluding people with

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<sup>215</sup> Rawls, *Political Liberalism*, p. 143.

<sup>216</sup> Ackerman, *Social Justice in the Liberal State*, p. 12.

certain comprehensive doctrines.

Reasonable persons, we say, are not moved by the general good as such but desire for its own sake a social world in which they, as free and equal, can cooperate with others on terms all can accept... By contrast, people are unreasonable in the same basic aspect when they plan to engage in cooperative schemes but are unwilling to honor, or even to propose, except as a necessary public pretense, any general principles or standards for specifying fair terms of cooperation. They are ready to violate such terms as suits their interests when circumstances allow.<sup>217</sup>

Unreasonable doctrines are a threat to democratic institutions, since it is impossible for them to abide by a constitutional regime except as a *modus vivendi*. Their existence sets a limit to the aim of fully realizing a reasonable democratic society with its ideal of public reason and the idea of legitimate law.<sup>218</sup>

Rawls, therefore, argues that people who subscribe to “religious fundamentalism” must be excluded.<sup>219</sup> But exactly what is meant by “fundamentalism”? The Oxford English Dictionary defines it as “a form of Protestant Christianity which upholds belief in the strict and literal interpretation of the Bible” or “the strict maintenance of the ancient or fundamental doctrines of any religion or ideology”. But those who write on the topic seem more to follow the popular usage, which is variously associated with a tendency to subscribe to sexist (and possibly also racist) morals of the past, a tendency to discredit scientific evidence, or, especially with reference to Islamic fundamentalism, a tendency to engage in violence. These popular definitions are hinted by the next set of Rawls’s descriptions, where he writes that fundamentalists are “ready to violate” political rules.

Now, while terrorist groups such as Al Qaeda fit most or all of these criteria, it is difficult at the beginning of the 21st century to find Christian groups that do the same; we have yet to see Christians torturing women for indecency or flying jet aircrafts into skyscrapers (despite accusations that the Bush administration, for instance, rallies

<sup>217</sup> Rawls, *Political Liberalism*, p. 50.

<sup>218</sup> Rawls, “The Idea of Public Reason Revisited”, in Rawls, *Political Liberalism*, p. 489.

<sup>219</sup> Rawls, “The Idea of Public Reason Revisited”, in Rawls, *Political Liberalism*, p. 484, 488.

religious voters in support of war). Evangelical Christianity is more complex than Al Qaeda's mottoes; it fits some of the usual criteria but not others. It is true that the evangelical argument against abortion, for instance, is based on their particular beliefs about supernatural realities. Not everyone is willing to accept those arguments, though of course it is part of the evangelical argument that everyone should accept them. However, evangelicals are not "ready to violate" the terms of cooperation "as suits their interests". Rather, their departures from liberal neutrality are principled—in fact, quite *predictable*. Nor are they usually motivated by self-interest; their motivation is to put into practice what is entailed by their metaphysical beliefs, and those who depart from biblical teachings in pursuit of self-interest often face severe censure from their coreligionists.

Furthermore, it is not the case that evangelicals find it "impossible... to abide by a constitutional regime except as a *modus vivendi*". Schaeffer upholds the U.S. Constitution not as a regrettable compromise but as a desirable institution; likewise, he calls upon evangelicals to engage in lobbying and protest first, leaving disobedience only as a last resort. What evangelicals want, then, is a different interpretation of a constitution which they otherwise find agreeable, rather than a completely new, theocratic constitution.<sup>220</sup>

Larmore's descriptions of excludible people are even less true of evangelicalism.

He writes:

For many fanatics and would-be martyrs... civil peace is not so important. Here, then, is a limit to the neutrality of my argument for political neutrality, but it is not, I think, a very grave one. Why must a political value be made justifiable to those who are scarcely interested in rational debate about justification anyway? A liberal

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<sup>220</sup> John Whitehead, constitutional attorney and a colleague of Schaeffer's, makes it clear in his book, *The Second American Revolution*, just what he thinks is wrong with the mainstream interpretation of the U.S. Constitution. For instance, he argues that the First Amendment should be interpreted as ensuring that America is free *for* religion, not free *from* religion as the language of neutrality suggests. Likewise, he understands the separation of church and state to mean that the state should not interfere with religion, rather than that religion should not interfere with the state (see, in particular, p. 93-100).

political system need not feel obliged to reason with fanatics; it must simply take the necessary precautions to guard against them.<sup>221</sup>

Most evangelicals in the U.S. and elsewhere, however, are far from being terrorists or warmongers (despite popular accusations against Mr. Bush); they think highly of civil as well as international peace, as noted above—though a few groups such as Operation Rescue, whose tactics few evangelicals endorse, might be more militant than the rest. As Jon A. Shields notices, Christianity “furnishes powerful teachings that movement leaders can use to temper and educate moral passions”.<sup>222</sup> The following words of the President of Right to Life Michigan, an evangelical pro-life group, are probably more representative of mainstream evangelical tactics: “Let us work together spreading the message of life in ways that recognize the dignity of all those created in the image of God... May we not spread hatred and bitterness. May we not tear down others to advance ourselves”.<sup>223</sup>

Lastly, it would be plain false to assert that evangelicals are “scarcely interested in rational debate about justification”. Evangelicals place heavy emphasis on reason and justification; there can be no better example of careful reasoning, I think, than Schaeffer’s inference from evangelicalism’s foundational tenets to his call for protest. Moreover, evangelicals are not blind to scientific and philosophical arguments pertaining to issues such as abortion. The largest evangelical groups with political agenda, such as the Christian Coalition, the National Right to Life Committee (NRLC), and Concerned Women for America (CWA), are almost invariably committed to educating their activists in the relevant secular as well as religious arguments.<sup>224</sup> Stand to Reason, an organisation

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<sup>221</sup> Larmore, *Patterns of Moral Complexity*, p. 60.

<sup>222</sup> Shields, “Between Passion and Deliberation”, p. 93.

<sup>223</sup> *Ibid.*, p. 98.

<sup>224</sup> *Ibid.*

that trains 40,000 activists every year, “encourages all of its trainees to become ‘Christian Ambassadors’”.<sup>225</sup> Focus on the Family, another group, published an article titled “Don’t Swing That Bible” discouraging evangelicals from relying too heavily on Bible verses in their arguments with nonbelievers.<sup>226</sup> The result is that evangelical pro-life activists, for example, frequently call upon scientific findings about the various stages of pregnancy to persuade others that the 24-week guideline set by *Roe v. Wade* is inadequate. Schaeffer’s book, *Whatever Happened to the Human Race?*, is one example; while Schaeffer provides religious arguments, the co-author, Everett Koop—a renowned physician who later became Surgeon General of the United States—provides facts in support of the pro-life position, such as that fetuses younger than 24 weeks can still survive with adequate help. As Shields writes, “one of the great and unrecognized ironies of the abortion debate is that pro-choice leaders want to frame abortion as a religious issue, while their pro-life opponents want to highlight philosophical and scientific objections to abortion.”<sup>227</sup> The truth, meanwhile, is that “although Christian leaders draw on scripture to promote the deliberative norms, they also argue that appeals to theology should be scrupulously avoided in public forums”.<sup>228</sup>

The tendency of evangelicals to use scientific evidence in their arguments, to be sure, does not make them neutralist. If, for instance, scientific evidence only allowed them to support a ban on abortion after the first two months of pregnancy, they would still argue that abortion must be prohibited anytime after conception; that is how they argue for a ban on “morning-after pills”. Furthermore, the general consensus is that creationism

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<sup>225</sup> Ibid, p. 99.

<sup>226</sup> Ibid, p. 102.

<sup>227</sup> Ibid, p. 103.

<sup>228</sup> Ibid, p. 103.

contradicts scientific findings, and yet evangelicals insist on its inclusion in public school curricula. As Shields admits, “because the opinions of Christian activists are still ultimately grounded in their faith, they are not open-minded in the sense that they would readily change their opinions in the face of new evidence”.<sup>229</sup> The evangelicals’ policy recommendations are ultimately based on their belief in supernatural creation, fall, salvation, and the Lordship of Christ over the entire universe; to get all of what they want, evangelicals have no choice but to invoke those beliefs sooner or later.

Still, Rawls and Larmore’s descriptions of unreasonable and hence excludible doctrines do not seem to fit evangelicalism very well. Those descriptions appear better suited for militant fundamentalists who want a return to theocracy, or for terrorist groups such as Al Qaeda. Why, then, should evangelicals be excluded?

## 5.2 The Test of Reasonableness

Rawls’s and Larmore’s descriptions quoted above are perhaps only meant as an illustration, and a rather stereotypical one at that. We would do better to ask what makes people and their doctrines unreasonable in the first place, rather than what unreasonable people and their doctrines look like. Our key to this inquiry is the passage quoted above where Rawls says that reasonable people are willing to “cooperate with others on terms all can accept”.<sup>230</sup>

As we saw in Section 2.5, reasonableness, according to Rawls, is associated “first, with the willingness to propose and honor fair terms of cooperation, and second, with the

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<sup>229</sup> Ibid, p. 112.

<sup>230</sup> Rawls, *Political Liberalism*, p. 50.

willingness to recognize the burdens of judgment and to accept their consequences”.<sup>231</sup>

Proposing and honouring fair terms of cooperation in a world where the burdens of judgment prevent agreement requires that people give each other justifications for laws that are neutral among competing doctrines. As Rawls writes, “reasonable persons see that the burdens of judgment set limits on what can be reasonably justified to others”.<sup>232</sup>

People, then, can be classified as unreasonable merely in virtue of their refusal or failure to give neutral reasons for the laws they propose. To put it another way, whoever wants to cooperate with others in a constitutional democracy and yet does not accept liberal neutrality, is unreasonable.

If all critics of liberal neutrality can be termed unreasonable and promptly excluded, it should not be difficult for liberal neutrality to satisfy the liberal principle of legitimacy; for only the voice of neutralists would count. But this sounds too easy and somewhat circular even at first glance. Instead of stopping here and waving away evangelicals as excludibles, we should ask *why* Rawls’s test of reasonableness must serve as a criterion for exclusion. Why should people who are not willing to propose and honour “fair terms of cooperation” be excluded? Why should neutralism be the only way to satisfy those requirements? Who decides what is meant by “fair terms of cooperation”?

Rawls believes that political principles are just only if “all citizens as free and equal may reasonably be expected to endorse [them] in the light of principles and ideals acceptable to their common human reason”.<sup>233</sup> Since he believes his own theory to be just, it is obvious Rawls believes that his test of reasonableness, which may be termed the

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<sup>231</sup> Rawls, *Political Liberalism*, p. 48 note 1.

<sup>232</sup> *Ibid*, p. 61.

<sup>233</sup> *Ibid*, p. 136-137.

centrepiece of his theory, is acceptable to all “free and equal citizens” in light of their “common human reason”. This is also clear from the way Rawls’s thought experiment, the original position, is set up. People in the original position are expected not to presuppose any particular comprehensive doctrine, such that they may find political principles that are completely independent of, and neutral among, the various doctrines that conflict with one another. The test of reasonableness, then, is generated by “free and equal citizens” reasoning on the basis of their “common human reason”. Since it does not presuppose the truth or falsity of any particular doctrine, it is qualified to adjudicate among those doctrines. Rawls, therefore, calls his theory “*freestanding*”.<sup>234</sup>

The test of reasonableness is freestanding, however, only if “free and equal citizens” and “common human reason”, among others, are freestanding concepts. In other words, in order for the test of reasonableness to be used as a criterion to exclude certain comprehensive doctrines and not others, what “free and equal citizens” can endorse in light of their “common human reason” should not depend on the truth or falsity of any particular comprehensive doctrine. For only then can we say that the exclusion of doctrines such as evangelicalism is not a problem for legitimacy; only if the test of reasonableness is freestanding can we say that even evangelicals, unbeknownst to them, are obliged by their “common human reason” to exclude their own doctrine and accept neutrality. Otherwise the test would be circular, for it would have been formulated with one or another comprehensive doctrine in mind. It would fail to meet the liberal principle of legitimacy, for the exclusion of evangelicalism and certain other doctrines would be based on a criterion which not everyone accepts.

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<sup>234</sup> Ibid, p. 10.

What has been said about evangelicalism in the last two chapters, I believe, shows that “free and equal citizens” and “common human reason” are not freestanding concepts. In order for those concepts to result in the principle of neutrality, they must be understood in a particular way. Or at least they must *not* be understood in a particular way. Recall, for a second time, the evangelical view of human nature, which follows from their belief in a theistic (rather than random or impersonal) creation and a historical (rather than metaphorical) fall. Humans are valuable, according to evangelicalism, because they are created in the image of God. Nothing other than this origin is relevant, it is said, when a person’s value is in question. But humans, unfortunately, are flawed according to evangelicalism. Humans deliberately sinned at a certain point in time, and the consequences of that original sin plagues every human endeavour ever since. Every aspect of human nature has become “abnormal” due to sin, according to evangelicalism. Desires and even perceived needs must be checked against the law of God before they can be admitted as genuine; apparently good reasons, too, must undergo scrutiny because they might reflect the desires of sinful nature.

The Bible says: “you will know the truth, and the truth will set you free” (John 8:32). Freedom, for evangelicals, is freedom from sinful nature (which is what salvation is all about), rather than freedom to pursue what sinful nature causes people to want. “Free and equal citizens”, then, for evangelicals, are not citizens who are deemed equally capable of choosing and/or revising comprehensive conceptions of the good. Rather, they are citizens who are free in the sense of being able to suppress and/or transcend the desires of sinful nature, and equally valuable as God’s image-bearers. Similarly, “common human reason” means something different for evangelicals from what Rawls takes it to mean. Reasons that reflect abnormality due to sin do not count, because those

aren't what human reason is supposed to follow. "Free and equal citizens" who arrive at political principles in light of their "common human reasons", then, from the evangelical's perspective, would choose principles that are very different from Rawls's test of reasonableness.

Proposing and honouring "fair terms of cooperation" should also mean, for evangelicals, something different from giving neutral reasons. Recall that evangelicals understand Larmore's "equal respect for persons" (ERP) in such a way as to stall the inference from ERP to neutrality (see Section 4.2). For evangelicals, people are properly respected only if they are respected as God's image-bearers; people's sense of self-worth, likewise, does not depend on whether or not they are free to live by the comprehensive doctrine of their choice, but by their divine origin. Meanwhile, people are flawed owing to their own sin; desires that are the result of sin must be carefully cut out. Fair cooperation among such people would mean giving each other, not neutral reasons, but reasons that are fit for God's image-bearers—albeit in an abnormal condition—to live by.

The test of reasonableness, then, is derived from concepts the meanings of which can and do vary. The disagreement between liberal neutralists and evangelical perfectionists reaches far deeper than Rawls and other liberals believe it to be. It seems that, in order to arrive at Rawls's test of reasonableness, people must presuppose particular understandings of "free and equal citizens", "common human reason", and "fair terms of cooperation". Or at least they must rule out evangelical and similar understandings of those concepts.

Is the test of reasonableness freestanding then? I, for one, cannot think of a definition of "freestanding principle" that can afford to be based on contested concepts. Applying the test of reasonableness to exclude certain doctrines and not others, therefore,

is circular; for only a genuinely freestanding principle is suitable for the job.

As Michael Huemer argues, for each person “it is for his own comprehensive doctrine to judge the value of being reasonable. If he judges that serving the will of God is more important than being reasonable in Rawls’s sense, as surely he will”.<sup>235</sup> If the test of reasonableness were based on “common human reason” that is accessible no matter which comprehensive doctrine one believed in, Huemer would be wrong. However, since Rawls’s premises for his test are not as independent of comprehensive doctrines as he believes it to be, Huemer’s remarks are valid. One cannot use a test of reasonableness that understands “freedom” in a certain way, to make valid decisions about the acceptability (in the public arena or anywhere else) of a doctrine that understands “freedom” in a different way. Rawls’s test of reasonableness cannot lay down verdicts that meet the liberal principle of legitimacy, because the neutral state still excludes evangelicals and similar groups for reasons not everyone can accept. The neutral state, then, fails to satisfy the liberal principle of legitimacy.<sup>236</sup>

### 5.3 Numbers and Other Avenues

Liberal neutralists might accept that excluding evangelicals can be problematic from legitimacy’s point of view, and still propose to exclude evangelicals. The reason for the exclusion, then, would be that it is necessary in practical politics to exclude some

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<sup>235</sup> Huemer, “Rawls’s Problem of Stability”, p. 382.

<sup>236</sup> Some might believe that my argument here turns Rawls’s political liberalism into comprehensive liberalism, with its own set of core metaphysical beliefs from which the rest of the theory is derived. The question as to whether or not Rawls’s liberalism is comprehensive as it stands, or whether or not Rawls has to abandon political liberalism in favour of comprehensive liberalism in order to meet certain challenges, is a huge one on which there has been much debate. That question, however, is beyond the scope of my present inquiry. For the purposes of my thesis, it suffices to say that a particular element of Rawls’s theory—the test of reasonableness—seems to presuppose the acceptance of contested concepts.

people, whose views are so much at odds with those of others such that it is impossible for there to be a consensus. If legitimacy is impossible in practice anyway, why not exclude some people and make life easier?

Numbers, however suggest that this is not a wise move. Centuries of exposure to modern science, curiously, has not made a noticeable impact on people's acceptance of theistic religions—at least in the United States. Nancy Pearcey points out that, contrary to popular misconceptions, the rate of religious adherence in the United States has steadily increased from 17 percent in 1776 to 45 percent in 1890 and to 62 percent in 1980,<sup>237</sup> a development she credits to the success of evangelicalism. A survey carried out by sociologists in 1988 revealed that 64 percent of the residents of North Carolina supported school prayer and 74 percent supported the teaching of creationism,<sup>238</sup> and what is more, people with more knowledge of biology were found to be just as likely to support creationism as others.<sup>239</sup> The trends continue: in a recent survey, “about nine out of ten adult Americans [said] they never doubt the existence of God”.<sup>240</sup>

To be precise, the figures above are misleading; as Hugh Helco points out, “only 45 percent of Americans strongly agree that the Christian faith is relevant to their lives these days. Only about one-fourth of Americans say they base their own moral decision making primarily on the principles and teachings of their religion”.<sup>241</sup> “Only 42 percent of Americans say they are absolutely committed to the Christian faith”,<sup>242</sup> and “the [percentage] of Americans actually attending any place of worship in the previous week is

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<sup>237</sup> Pearcey, *Total Truth*, p. 258.

<sup>238</sup> Woodrum and Hoban, “Support for Prayer in School and Creationism”, p. 313.

<sup>239</sup> *Ibid.*, p. 316.

<sup>240</sup> Helco, “Is America a Christian Nation?”, p. 65.

<sup>241</sup> *Ibid.*, p. 66.

<sup>242</sup> *Ibid.*, p. 67.

probably closer to 20 percent rather than the widely publicized and self-reported figure of 40 percent”.<sup>243</sup> Considering the fact that evangelicals are generally more committed to church membership and attendance than people of any other religion in America,<sup>244</sup> a significant part of that 20 percent would be hardcore evangelicals (as opposed to liberal or separatist Christians).

Other sources report evangelicals to comprise between 25 and 33 percent of the American public, and if one is asked what the situation is outside of the United States, it is said that between 10 and 12 percent of Canadian citizens are evangelical.<sup>245</sup> According to Hoover et al, Canadian evangelicals are just as likely to support anti-abortion laws and similar policies as their American coreligionists; the only noticeable difference is that Canadian evangelicals support a more liberal economy than American evangelicals do.<sup>246</sup>

Now, 25 percent of U.S. citizens translate to more than 70 million people, and 10 percent of Canadians would be 3.2 million. While that number is far from making evangelicals a majority as earlier statistics might suggest (perhaps except in a few states in the American South), it is unlikely that a state that excludes 10 to 25 percent of its adult citizens from its lawmaking process would be able to call itself legitimate in any sense of that word. In comparison, African Americans and Hispanics together comprise about 26

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<sup>243</sup> Ibid, p. 72.

<sup>244</sup> Kosmin, Mayer, and Keysar, “American Religious Identification Survey 2001”, p. 15. The rate of church membership is 83% among evangelicals, while no other religion or Christian denomination exceeds 70% in that regard. Note that the rows labelled “evangelicalism” in many of the charts in Kosmin, Mayer, and Keysar’s report counts only those who declare themselves evangelical without declaring membership in more conventional denominations (such as Baptist, Methodist, or Presbyterian churches). Given the fact that evangelicals do not have their own denomination and that therefore their number is distributed among the various churches, there are probably many more evangelicals in the U.S. than the approx. 1 million that the survey finds.

<sup>245</sup> Hoover et al, “Evangelicalism Meets the Continental Divide”, p. 354.

<sup>246</sup> Ibid, p. 363.

percent of the American citizenry;<sup>247</sup> to exclude them would be a recipe for disaster. The fact that evangelicals are less visible than racial minorities (both in colour and in their significance for recent political developments) should not lead liberals or any other group of policymakers to overlook their faith and political agenda.

Let me go over a couple of remaining avenues for liberal neutralists to take. For one, it might be argued that the overlapping consensus on neutrality need be only on the “constitutional essentials”. This is the approach that Rawls takes when he argues that his theory only concerns principles “(a) which specify the general structure of government and the political process... and (b) which specify the equal basic rights and liberties of citizens”.<sup>248</sup> Larmore also admits that a neutral state “may and generally will assign nonconstitutional decisions to less demanding rules, and notably to majority voting. On such issues the appeal to controversial ideas of the good may in fact be legitimate.”<sup>249</sup> This response, however, suffers from an oversight regarding how modern constitutions work. A modern constitution not only *prescribes* what form a state will take (will it be a presidential democracy or a parliamentary democracy, and how many houses will the legislature contain?), but also *circumscribes* the kinds of laws that can be made, notably through the device known as *judicial review*. In most liberal democracies, any lower-level statute that is deemed to violate the rights and freedoms of citizens as listed in the constitution can be overturned by the Supreme Court (or whichever institution is endowed with equivalent powers).

If individual statutes and policies cannot be declared unconstitutional, there is little

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<sup>247</sup> “2005 American Community Survey: Data Profile Highlights”.

<sup>248</sup> Rawls, *Political Liberalism*, p. 228.

<sup>249</sup> Larmore, *The Morals of Modernity*, p. 126.

point in having a constitution; it is not the lofty ideals engraved in the constitution but mundane statutes and policies that govern the everyday affairs of a state's citizens. If laws are made that reflect the views of a majority religion (such as evangelicalism in the American South), a case like *Roe v. Wade* is sure to appear before the courts; and if the constitution only allows neutral laws to be made, those laws will be overturned. On the other hand, if the constitution allowed non-neutral laws to be made, there would seem to be no point in calling that constitution neutral. If any neutralist were concerned about people being subject to laws to which they could not consent, she would not support a constitution that could not overturn such laws.

Furthermore, because a constitution is related to lower-level laws in this way, those who push for non-neutral laws often also push for a non-neutral constitution (or at least a constitution that is "neutral" or "impartial" in a different sense). In *The Second American Revolution*, the evangelical Whitehead focuses his attacks squarely on the neutralist understanding of the Establishment Clause of the First Amendment.<sup>250</sup>

Whitehead believes that choosing how to read the Establishment Clause has everything to do with abortion, school prayer, the teaching of creationism, and like matters; for he recognises that state laws reflecting evangelical beliefs would not last long if the neutralist federal government decided to intervene. Shifting the focus of liberal neutrality from mundane statutes to the constitution, then, does not make the disagreement of evangelicals any less disconcerting for liberal neutralists.

Finally, a liberal neutralist might object that, without the constraint of neutrality, political theory becomes too inclusive. If evangelicalism cannot be excluded, as I have

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<sup>250</sup> Whitehead, *The Second American Revolution*.

argued, because it is presented as a consistent comprehensive doctrine which offers its own understanding of concepts such as “freedom” and “common human reason”, does it not follow that any comprehensive doctrine with its own understanding of those concepts must be accommodated? In other words, if the test of reasonableness is lost, what criterion do we have left to exclude those who must be excluded—Nazis, Al Qaeda, and some of the more militant, theocratic Christians?<sup>251</sup>

This is an important objection which, if sound, could lead to a *reductio ad absurdum* of my entire argument so far. However, I do not think that it works. In this thesis I am asking if the liberal principle of neutrality satisfies the liberal principle of legitimacy—a principle that forms the basis of modern constitutional democracy. So the focus of my argument is on citizens of modern constitutional democracies (Americans, Canadians, etc.), who already accept some principles that make democracy possible: majority rule and the rule of law, for instance. Rawls, as we saw towards the end of Chapter 2, also limits the applicability of his theory to modern constitutional democracies. My question, therefore, has been whether or not the liberal principle of neutrality is legitimate in the sense of being acceptable to most citizens of modern constitutional democracies. I have answered that question by pointing out that there are people, such as evangelicals, who usually accept a democratic constitution but who do not (and cannot) accept the extra constraints imposed by neutrality. The existence of such people shows that neutrality is not legitimate. But people who accept neither democracy nor neutrality are irrelevant to my inquiry; Nazis and Al Qaeda are excluded even before the question about neutrality is asked, because they do not even accept the usual rules of constitutional

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<sup>251</sup> I thank Professor Will Kymlicka for reminding me of this objection.

democracy. Regarding those who engage in ethnic cleansing or those who view violence as a first choice rather than as a last resort, I repeat Larmore's answer: just "guard against them".<sup>252</sup>

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<sup>252</sup> Larmore, *Patterns of Moral Complexity*, p. 60.

## Chapter 6

### Neutrality and Legitimacy

#### 6.1 Inattention to Detail

Why do liberals make the mistake of not paying sufficient attention to the structure and content of comprehensive doctrines that make those doctrines incompatible with neutrality? Why are liberals, from Ackerman to Rawls to Dworkin to Kymlicka, so confident that neutrality should win no matter what else may be true about particular comprehensive doctrines? This is no occasion to try my hands at constructing a complete error theory; nonetheless, let me briefly go over one shortcoming of contemporary liberal theory which I believe to be responsible for the failure of neutralists to construct a successful CF or CB defence.

The problem, I believe, is with the liberal understanding of how comprehensive doctrines operate and what they mean for their adherents. Rawls, for instance, asks how it may be possible “for those of faith, as well as the nonreligious (secular), to endorse a constitutional regime even when their comprehensive doctrines may not prosper under it, and indeed may decline”.<sup>253</sup> He concludes, as we would expect a neutralist to, that “[w]hile no one is expected to put his or her religious or nonreligious doctrine in danger, we must each give up forever the hope of changing the constitution so as to establish our religion’s hegemony, or of qualifying our obligations so as to ensure its influence and success”.<sup>254</sup> This is a wrong answer to a wrong question. While there are people who desire political influence (and even hegemony) for its own sake, most people who demand

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<sup>253</sup> Rawls, “The Idea of Public Reason Revisited”, in Rawls, *Political Liberalism*, p. 459.

<sup>254</sup> Rawls, “The Idea of Public Reason Revisited”, in Rawls, *Political Liberalism*, p. 460.

laws that reflect their doctrines cannot be less concerned about the number of new adherents they will gain by doing so. At best, political influence is desired as an instrument for the realisation of certain ideals. One thing Rawls did get right is that most perfectionist agendas are far from being consequences of “rivalries for power, status, or economic gain”.<sup>255</sup> People demand that laws reflect their particular doctrines, *because they believe those doctrines to be true*. As Brian Barry observes:

Once concede that it is merely a matter of whose preference gets satisfied and it is indeed hard to deny that someone who wants to have his “external preferences” to count is being greedy. But of course someone who really believes that homosexual acts are sinful and wicked will disclaim any notion that they should be prohibited to please him. Rather, he will say that if it is a matter of pleasing anyone it is a matter of pleasing God. But really, he will add, pleasing is not what it’s all about. Homosexual acts are wrong and that is why the law should prohibit them.... for someone to be prepared to say “Homosexuality is wrong but that’s just my private opinion” he or she must already have swallowed a large dose of liberalism.<sup>256</sup>

Evangelicals want anti-abortion laws because they believe that it is a duty of the state to prevent abortion. Many of them would continue to support their causes even if they were told that the attainment of their demands would actually decrease the likelihood of their own success or that of their religion; Schaeffer, for instance, urges evangelical Christians to demand anti-abortion laws even while he believes that the passing of such laws would entail tremendous costs and sacrifices on the part of individual believers whom he thinks must bear the burden.<sup>257</sup>

Speaking of religions and other comprehensive doctrines in terms of “conceptions of the good” is also misleading, for such doctrines are not limited to an account of what it

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<sup>255</sup> Rawls, *Political Liberalism*, p. 58.

<sup>256</sup> Barry, “How Not to Defend Liberal Institutions”, in Douglass, Mara, and Richardson, *Liberalism and the Good*, p. 52-53.

<sup>257</sup> Schaeffer and Koop, “Whatever Happened to the Human Race?” in Schaeffer, *Complete Works*, vol. 5, p. 348-352.

is good for people to do. World-views such as evangelicalism, as we have seen, encompass a vast territory ranging from cosmology, human nature, epistemology and psychology (as being abnormal due to sin), to beliefs about the origin of political authority and the proper role of the state. While “conceptions of the good” that simply enumerate desirable and undesirable courses of action for private individuals may enjoy the choice of applying their prescriptions either to the state or to non-state forums, “comprehensive doctrines” with deep metaphysical bases do not have that choice; their position on the social-perfectionism-versus-state-perfectionism debate is often determined by deep metaphysical beliefs that form the core. What this means, as I argued in Chapter 4, is that individual components of highly systematic comprehensive doctrines (where “systematic” is not meant to preclude being based on scientifically unverifiable claims such as the existence of God) cannot be arbitrarily taken “on” and “off”.

The neutralists’ oversight of details about perfectionist doctrines is conspicuous in a number of other debates that involve religion, including debates in which some neutralists, for their own neutral reasons, take sides with those of faith. One example is the recent and ongoing controversy in France over the headscarves (*hijab*) worn by Muslim schoolgirls. Known as *l’affaire du foulard*, the controversy seems to be the French and Islamic equivalent of the American and Christian debate surrounding school prayer. Put simply, the problem is: should the French government, which does not support any particular religion, allow Muslim young women to wear headscarves in state-operated schools and thereby practice their religion in public institutions? Supporters of prohibition such as Elisabeth Badinter argue that the *hijab* is a sign of sexism and oppression: “Putting a veil on the head, this is an act of submission. It burdens a woman’s whole life. Their fathers or their brothers choose their husbands, they are closed up in their own

homes and confined to domestic tasks, etc.”<sup>258</sup> Anglo-American writers, meanwhile, are usually of the opinion that the head gear of schoolgirls should not be the concern of a state in the first place, whatever religious ideological connotation a particular garment might carry with it. But few seem to take interest in the opinion of the young women who wore headscarves to school and got expelled as a result. The truth, surprisingly, is that a number of Muslim girls in France *choose* to wear headscarves after having been raised without wearing them:

No one seemed to think that a girl might cover her hair as a sign of piety, although the girls themselves invariably offered this reason. The research on scarf-wearing schoolgirls suggest that they generally adopt Islamic dress at key moments of life transition: when they first leave home or graduate from school, or as part of defining themselves independently from their role in their family. Ironically, some girls whose mothers do not themselves wear headscarves point to their own scarves as signs of their success in breaking with immigrant traditions and finding a place in France—a place they say they have found through the books, teachers, and lectures now available to them.<sup>259</sup>

Islam in France is different from Islam in Iran or Afghanistan. Many of the young women who are at the centre of the current controversy are children of immigrants from former French colonies in North Africa. They, according to John Bowen, learned about Islam not so much from their parents as while they were struggling to establish their racial identities. “Few had learned Arabic at home; many learned about Islam from books, cassettes, teachers, or speakers at gatherings such as that at Le Bourget, and they came to see the international and rationalized versions of Islam as they found in these sources as purer than the half-remembered traditions kept up by their parents.”<sup>260</sup> If so, they are *not* simply following their parents’ tradition; they are *not* victims of patriarchy who would get

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<sup>258</sup> Moruzzi, “A Problem with Headscarves”, p. 662.

<sup>259</sup> Bowen, “Muslims and Citizens”.

<sup>260</sup> Ibid.

“closed up in their own homes and confined to domestic tasks”. Some girls wear headscarves even in the face of opposition from their parents.<sup>261</sup>

All of this suggests that there is more to *l'affaire du foulard* than a blind clash between liberal law and illiberal tradition, or between “religious fundamentalism and the secular state”<sup>262</sup> as Anna Elisabetta Galeotti makes it out to be. Many young women who wear headscarves in France are modern and well informed; they have reasons to wear headscarves other than to obey the traditional patriarchy. As Dianne Gereluk explains:

For Muslims, adolescence is a period in life where girls and boys are particularly vulnerable, and one in which proper guidance from the family is essential to their development. Any exposure to sexual relationships, ranging from sexual harassment to premarital relations, is potentially very damaging. In one way, the *hijab* is significant in covering the girl, not as a sign of oppression, but for the girl to be seen as a human being rather than as a sexual object.<sup>263</sup>

Gereluk’s view, in short, is that many French Muslims think of the *hijab* not as a symbol of oppression but the very opposite: a device of protection. In fact, it is said that the Qur’an supports this view, as can be seen from the following verses:

And those who annoy believing men and women undeservedly bear (on themselves) a calumny and a glaring sin. O Prophet! Tell thy wives and daughters, and the believing women, that they should cast their outer garments over their persons (when abroad): *that is most convenient, that they should be known (as such) and not molested*. And Allah is Oft-Forgiving, Most Merciful.<sup>264</sup>

And say to the believing women that they should lower their gaze and guard their modesty; that they should not display their beauty and ornaments except what (must ordinarily) appear thereof; that they should draw their veils over their bosoms and not display their beauty except to their husbands, their fathers, their husband’s fathers, their sons, their husbands’ sons, their brothers or their brothers’ sons, or their sisters’ sons, or their women, or the slaves whom their right hands possess, or male servants free of physical needs, or small children who have no

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<sup>261</sup> Ibid.

<sup>262</sup> Galeotti, “Citizenship and Equality”, p. 586.

<sup>263</sup> Gereluk, “Should Muslim Headscarves Be Banned in French Schools?”, p. 268.

<sup>264</sup> Surah al-Ahzab ayah 58-59, <<http://www.usc.edu/dept/MSA/quran/>>. Italics added. Note that translating the Arabic Qur’an into any other language renders it inauthentic; this English translation, therefore, would be seen by Muslims as an interpretation, rather than the literal meaning, of Muhammad’s writing.

sense of the shame of sex; and that they should not strike their feet in order to draw attention to their hidden ornaments. And O ye Believers! Turn ye all together towards Allah, that ye may attain Bliss.<sup>265</sup>

For Muslim women in modern France who take the Qur'an as seriously as evangelicals do the Bible, then, wearing the *hijab* is an act of self-defense—warning everyone around them that they should be seen as pious Muslims rather than as objects of sexual desire.

Given the space, this is not the occasion to delve into the theological principles that make the *hijab* an effective protection against sexual harassment; but we can make an informed guess. As in the case of evangelicals who believe a nearly complete ban on abortion to be an effective protection against the loss of sacred lives, presumably, the Islamic practice also follows from certain views on human nature (why do women need to be protected by garments that hide their sexual appeal—are men so vulnerable to desire?) and Allah's providence (recall that both verses quoted above close with praises of Allah). A ban on headscarves, then, for French Muslims, amounts to a demand that they expose themselves to the present, irrevocable harm of being looked upon as mere objects of sex.

While liberal neutralists are not as univocal in denouncing headscarves in French public schools as they are in denouncing prayers in American public schools, Islam contains the resources to oppose neutrality if the need arose. They believe, like evangelicals, that “all authority in the universe is vested in God, who is the omnipotent and omnipresent creator of the universe and whose sovereignty is therefore absolute”.<sup>266</sup> Caliph Abu Bakr, the first successor to Mohammed, famously pronounced: “As I obey God and His Prophet, obey me; if I neglect the laws of God and the Prophet, I have no

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<sup>265</sup> Surah an-Nur ayah 31, <<http://www.usc.edu/dept/MSA/quran/>>.

<sup>266</sup> Iqbal, “Democracy and Justice: Islam's Political Message Restated”, in Bontekoe and Stepaniants, *Justice and Democracy: Cross-Cultural Perspectives*, p. 242-243.

more right to your obedience”.<sup>267</sup> To ignore this element of Islam could result in a situation where none of the neutralists’ CF and CB defences hit the proper target, as is the case in their encounter with evangelicals. And yet, neutralists do not seem concerned, for instance, about Islamic reasons for wearing headscarves.

Similarly, in the Canadian debate surrounding exit rights for apostates among Hutterites, conspicuously absent is a careful consideration of what a devout Hutterite would have to say about the matter. As Dwight Newman explains:

The Hutterian Brethren are a religious group that found sanctuary in North America after three centuries of transit from one European state to another to escape persecution for their communal form of life. From the 1500s, a central tenet of the faith has been a belief that “God from the beginning ordained naught private for man, but all things to be common”, with the baptismal vows taken by members including an acknowledgment “that no one shall have any private possessions any more.”<sup>268</sup>

This belief becomes an obstacle when a person wants to exit the Hutterite community. No Hutterite has private property; either he was born a Hutterite and never had property or he renounced all of his property when he entered the Hutterite community. So when he changes his faith and leaves, he cannot take anything with him—in principle, not even his clothes. In *Hofer v. Hofer*,<sup>269</sup> two apostates sued the Hutterite community for their share of the community’s wealth, and lost.

Liberal neutralists who write on the topic usually try to reach a solution one way or another by asking whether or not neutral reasons would entitle ex-Hutterites to some of their former community’s wealth. One proposal is that the Hutterite community should provide “exit funds” to apostates that would be sufficient for them to make a living

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<sup>267</sup> Ibid, p. 246.

<sup>268</sup> Newman, “Exit, Voice, and ‘Exile’: Rights to Exit and Rights to Eject”, p. 65-66.

<sup>269</sup> 13 DLR 3d 1 (1970).

elsewhere. Meanwhile, financial restraints aside, few are concerned about the fact that:

[to] impose on such a religious community a requirement that it provide for 'realistic rights to exit' would be tantamount to calling for the abandonment of an article of faith and would insist upon an end to the very purpose for which the group exists... [It would be] an ongoing requirement that this group violate its religious tenets and undermine its pursuit of religious community.<sup>270</sup>

Again, the opinion of devout Hutterites is overlooked in the mainstream discussion as if it were utterly irrelevant. To be sure, political theorists are entitled to reach any decision they would like concerning any group of people. But if such decisions were to be enforced upon citizens of liberal democracy, those who are affected by that enforcement must be able to consent to it—for that is the requirement of the liberal principle of legitimacy. And in order to find out if someone is in a position to consent to a political arrangement, one has to know what exactly that person believes.

## 6.2 Myths and Facts

The liberal neutralists' inattention to detail results in three misconceptions about comprehensive doctrines, each of which is responsible for the failure of each of the three attempted defences of neutrality discussed in Chapters 3, 4, and 5. The first misconception is the idea that it is usually possible to choose between neutrality (social perfectionism) and state perfectionism as two different *modes* of applying any given comprehensive doctrine. This belief allows Rawls to argue, as we saw in Chapter 2, that people need make only slight adjustments to their world-views in accepting neutrality. But this is false. As we saw in Chapter 3, comprehensive doctrines such as evangelicalism have core beliefs that demand both social perfectionism and state perfectionism. Neutralism is not

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<sup>270</sup> Newman, "Exit, Voice, and 'Exile': Rights to Exit and Rights to Eject", p. 66.

an option for evangelicals; the choice between neutralism and perfectionism is already determined by the evangelical creed. The consensus-finding (CF) defence of neutrality, which says that everyone can consent to neutrality as a matter of fact, therefore fails.

The second misconception is the idea that there are “magic principles”, so to speak, the acceptance of which virtually guarantees the endorsement of the liberal principle of neutrality. Equal respect for persons, free choice, and rational revisability are advanced by liberal neutralists as such principles. But none of the proposed principles are capable of persuading evangelicals to accept neutrality. The evangelical doctrine contains beliefs about God and human nature that require non-liberal understandings and applications of the proposed “magic principles”. Often, the evangelicals’ understanding of familiar liberal principles, such as ERP, leads them to perfectionism rather than neutrality. I have argued in Chapter 4, therefore, that the consensus-building (CB) defence of neutrality also fails.

The third misconception is the idea that accepting the basic rules of constitutional democracy implies accepting neutrality as well. This misconception features largely in the proposal, discussed in Chapter 5, to exclude evangelicals. The kind of cooperation that makes constitutional democracy possible, it is argued, requires that “free and equal citizens” use their “common human reason” to propose and honour “fair terms of cooperation”—a requirement which Rawls, for one, believes is tantamount to a requirement of neutrality. From this Rawls argues that all citizens of modern constitutional democracies are obliged, in virtue of their commitment to constitutional democracy, to accept the liberal principle of neutrality. However, I argued that there are citizens of modern constitutional democracies who do not agree to neutrality, due to their beliefs about God and human nature that lead to non-Rawlsian understandings of the concepts “free and equal citizens”, “common human reason”, and “fair terms of

cooperation”. Rawls’s test of reasonableness, which is based on a particular understandings of those concepts, is therefore not as “freestanding” as Rawls believes it to be. When the test of reasonableness so loses its freestanding status, I have argued in Chapter 5, it can no longer function as a criterion for excluding certain comprehensive doctrines from the political arena.

My conclusion, then, is that *the liberal principle of neutrality cannot meet the requirements of the (equally liberal) principle of legitimacy*. Neutralists have yet to provide reasons for frustrating, for instance, evangelical perfectionist efforts, which everyone including evangelicals can accept. Rawls’s, Dworkin’s, and Kymlicka’s arguments may be good enough reasons for someone with a liberal view of the world to endorse neutrality, but they are not fit to persuade people with world-views such as that of evangelicals. Brian Barry worries that defences of liberal neutrality are “usually offered for general consumption by people who have no use for it themselves”,<sup>271</sup> that is, people whose beliefs already make room for neutrality. This must not be the case; when it comes to *legitimacy*, each and every citizen matters. As far as is possible, liberal neutralists owe a justification of their policies to every person affected by such policies, and especially to every person who have already signed up, for various reasons, to the usual rules of majoritarian, representative, constitutional democracy.

Granted, for any political decision that is made, some people will have to face frustration. As Sinopoli nicely sums up, “accepting one’s losses gracefully when conceptions of the good are in dispute is, in certain circumstances, to do no more than to

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<sup>271</sup> Barry, “How Not to Defend Liberal Institutions”, in Douglass, Mara, and Richardson, *Liberalism and the Good*, p. 54.

be a good citizen of a reasonably just liberal state”.<sup>272</sup> Nevertheless, if anyone is obliged not to turn down demands without giving reasons that are acceptable to the person whose demands are turned down, liberals are. Non-liberal groups, of course, might not care about the liberal principle of legitimacy; evangelicals might consent to constitutional democracy for reasons other than those that derive from social contract theory. Such is only to be expected, since there does seem to be an “overlapping consensus” on constitutional democracy in our society. Liberals, however, cannot dispense with the principle of legitimacy; for after all, even the defence of liberal neutrality relies heavily on that principle (as we saw with Rawls in Chapter 2, and with Larmore and Dworkin in Chapter 4). If liberal neutralists impose their political philosophy upon people whose world-views do not allow them to consent, and without giving genuinely freestanding reasons as to why it is proper for neutrality to override perfectionist considerations, neutralists end up being no different from the tyrants they condemn.

In the case of evangelical Christians as well as with Muslims and other religious groups, if there is any chance of tension between neutral laws and the faith in question, liberal neutralists are obliged—by their own principle of legitimacy—either to find a CF defence that works in the case of that group, to provide a CB defence that tells the group why neutrality is compatible with their faith, or to find independent or “freestanding” reasons to exclude the group. Otherwise a significant minority could end up being subject to laws they cannot accept. However, in the case of evangelicals, as we have seen, neutralists do not appear capable of following any of the three options. In the case of other religions and comprehensive doctrines, neutralists seem unwilling to take the necessary

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<sup>272</sup> Sinopoli, “Liberalism and Contested Conceptions of the Good: The Limits of Neutrality”, p. 662.

steps for ensuring success in any of the three routes. Thus liberal neutralists are unable to muster the resources to meet the test of liberal legitimacy.

It is beyond the scope of this thesis to propose a viable alternative to liberal neutrality. However, there is an old Chinese saying: “know your enemy and know yourself, and you will win every battle” (知彼知己百戰百勝). How would neutralists offer successful defences of their view if they do not take seriously the views of their perfectionist critics? Especially in the case of the CB defence which tries to locate elements in otherwise perfectionist doctrines that serve to shift the balance in favour of neutrality, but also in the case of the CF defence and exclusion, knowledge of details about perfectionist religions and philosophies are a must. Even if evangelicals, for instance, refuse to give arguments for *their* policy recommendations that liberals can accept, neutralists are still obliged to give them arguments for neutrality that *they* can accept; for it is none other than the neutralists such as Rawls and Kymlicka whose theories are importantly related to the liberal principle of legitimacy. Unless that principle is satisfied, we have little choice but to suspect that liberal neutrality, ironically, is not liberal enough.

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