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Vertical Toleration as a Liberal Ideal

Catriona McKinnon

Abstract: This paper argues that the direct, vertical toleration of certain types of citizen by the Rawlsian liberal state is appropriate and required in circumstances in which these types of citizen pose a threat to the stability of the state. By countering the claim that vertical toleration is redundant given a commitment to the Rawlsian version of the liberal democratic ideal, and by articulating a version of that ideal that shows this claim to be false, the paper reaffirms the centrality of vertical toleration in the Rawlsian liberal account of state-citizen relations.

Keywords:

1. Introduction

Toleration is perhaps the most difficult and necessary of political virtues. Without it, justice (however conceived) is unachievable. Political principles and individual practices of toleration mediate oppositions between individuals and groups that endanger peaceful and mutually beneficial social cooperation by threatening to erupt into violent conflict, to create social segregation, and to breed mutual mistrust. Although not without theoretical difficulties, a conception of toleration as a morally valuable personal practice is well established in the literature; most people accept that, despite being a difficult virtue, personal toleration is not defeated by paradox.¹ Instead, where the action is in contemporary debates about toleration is the question of whether toleration has a place beyond the interpersonal—what I shall call the “horizontal”—sphere. Some key theorists of toleration deny that there is a place for (what I shall call) “vertical” toleration in any political ideal worthy of our allegiance. This claim

¹For an argument that toleration is paradoxical, see David D. Raphael, “The Intolerable,” in Susan Mendus (ed.), *Justifying Toleration: Conceptual and Historical Perspectives* (Cambridge: Cambridge University Press, 1988), pp. 137-54, esp. pp. 142-43. For more nuanced analyses of the difficulty of toleration, see T.M. Scanlon, *The Difficulty of Tolerance* (Cambridge: Cambridge University Press, 2003), or Bernard Williams, “Tolerating the Intolerable,” in Susan Mendus (ed.), *The Politics of Toleration* (Edinburgh: Edinburgh University Press, 1999), pp. 65-76.

marks a notable shift in the history of theories of toleration, most of which have treated it not only as a valuable personal practice, but also—and sometimes more importantly—as a valuable political practice engaged in by the state with respect to various of its members.

Stated in its liberal form, what I shall mean by vertical toleration is this:

*The exercise of restraint by political authorities with respect to interference with citizens whose practices they oppose (and with whom they could interfere) on principled grounds that these practices do not violate the liberal rights of any other citizens.*²

Toleration is, for good reasons, strongly associated with liberal political thinking: the values of most liberalisms *prima facie* provide normatively powerful foundations for the practice of noninterference at the heart of vertical toleration. However, it is precisely this claim that some prominent theorists dispute. On their view, vertical toleration has no place in contemporary societies governed by a liberal democratic ideal: this ideal has made vertical toleration redundant. There are three things to note about (what I shall call) “the redundancy claim.”

1. It is a claim about the absence of a context for vertical toleration, rather than about the circumstances in which vertical toleration ought to be practiced. The claim is that vertical toleration is redundant in the liberal political ideal because relations between citizens and political authorities in this ideal have obliterated the context for vertical toleration.
2. It is a claim about a political ideal and not about political practices that are guided by this ideal but often fail to realize it. Existing flawed and nondemocratic societies in which a context for vertical toleration clearly exists (even if vertical intolerance is the right response in many cases) provide no counterexamples to the claim.
3. It is not the claim that liberal vertical toleration is redundant because it has been superseded by a better conception of toleration, for example, toleration as recognition.³

²Vertical toleration is not the sole preserve of liberal approaches. The values of justice justifying the practice of vertical toleration could, for example, be part of a conservative vision of just social cooperation whereby the exercise of such restraint by the political authorities is thought to be more likely to encourage the self-dependence and entrepreneurship necessary for the continued development of market forces. However, the vast majority of contemporary discussions locate toleration in the liberal tradition, and I shall do the same.

³See Anna Elisabetta Galeotti, *Toleration as Recognition* (Cambridge: Cambridge University Press, 2002); Ingrid Creppell, “Toleration, Politics, and the Role of Mutuality,” in Melissa Williams and Jeremy Waldron (eds.), *Toleration and Its Limits (NOMOS XLVIII)* (New York: New York University Press, 2008), pp. 315-59.

A recent defense of the redundancy claim is given by Peter Jones: “we understand a tolerant regime as one that upholds an ideal of toleration rather than one that itself tolerates the population whose lives it regulates.”⁴ He argues that vertical toleration is obsolescent for liberals given their commitment to a “democratic conception of citizens as people who enjoy equal status and equal rights as members of a common political community.”⁵ In contrast, I shall argue that the context for vertical toleration is a central and permanent part of this conception of democratic political community, and that its practice is, in some circumstances, *required* by a commitment to this ideal conception itself. By describing cases in which the direct, vertical toleration of particular groups of citizens by a regime is possible, permitted, and indeed required, if the liberal democratic ideal to which the regime aspires is to be realized, I shall refute the redundancy claim.

If I am right, then the notable shift in theorizing toleration mentioned earlier is on shaky ground whenever it is justified as required by a commitment to the liberal democratic ideal. And this commitment is ubiquitous on the contemporary theoretical scene. Of course, the shift might still be justified as part of a political theory distinct from—perhaps hostile to—the liberal democratic ideal,⁶ and therein lie the limits of the arguments I make in this paper. But if my arguments succeed within these limits, then they establish a permanent place for vertical toleration in the liberal democratic ideal, and thus reconnect the ideal’s umbilical cord to its ancestors in liberal thinking. I shall use Rawls’s version of the liberal democratic ideal in making these arguments. Rawls’s vision of a society governed by principles of justice as fairness is the most developed of such liberal ideals in modern times: showing that vertical toleration has a place in this vision brings at least this giant back into the fold of a liberal tradition with vertical toleration at its heart. Others might follow.

Let me begin by describing an imaginary state called Liberalia.

2. Liberalia

The citizens of Liberalia—liberal citizens—are political equals, and view themselves as such. Their public debate and legislative decisions are constrained by a Constitution that secures for them many important rights, liberties, and opportunities. This Constitution is derived from a set of

⁴Peter Jones, “Making Sense of Political Toleration,” *British Journal of Political Science* 37 (2007): 383-402, p. 401.

⁵*Ibid.*, p. 386.

⁶See, for example, Glen Newey, “Toleration, Politics, and the Role of Morality,” in Williams and Waldron (eds.), *Toleration and Its Limits*, pp. 360-91.

principles of justice stating that basic rights, liberties and opportunities are to be distributed equally across all citizens, and that economic resources are to be distributed so as to make the worst off among them as well off as possible. In Liberalia, all citizens have the same rights to freedom of conscience and expression, freedom of movement and association, and political engagement and activism; the same opportunities to access education, the various professions, and positions of power and status in Liberalia. Liberal citizens call their principles of justice “justice as fairness,” and the majority of them go beyond mere passive acceptance of these principles as constraints on their social cooperation, and actively commit to and assert these principles as the best ones possible for them.

However, Liberalia is not a society of people all of whom preach and practice the liberalism of their political lives in their personal lives. In Liberalia, people have a diverse range of visions of the good life, accompanied by very different philosophical and metaphysical outlooks. The reason why liberal citizens so divided jointly affirm justice as fairness as the best for them are twofold. First, they are committed to finding some principles of justice on which they can all agree, despite their differences, and are willing to give one another assurances that they will each abide by these principles: they are justice-seekers (after all, the alternative is war and endless conflict, and no liberal citizen wants that). Second, most of them think that the diversity that exists in Liberalia is the inevitable outcome of the exercise of human reason in the conditions of freedom. Most of them think that when people are free from external threat, coercion, manipulation, and oppression, they will naturally come to form different opinions on the big questions of philosophy, value and religion. They think that it is a fact about human judgment that two people reasoning about the same question—for example, the existence of a god—can come to form very different opinions without either of them having exercised their reason faultily, even though each will believe that her own beliefs are true and those of the other are false. In Rawls’s terms, they accept the existence of the burdens of judgment, and their consequences for political life.⁷

The burdens of judgment make pluralism not only a permanent fact of human life, but also (at least potentially) reasonable. The consequences of accepting the existence of the burdens of judgment are that political argument and justification must be made in terms that could not be rejected by a range of people divided by faith, ideology, lifestyle, preferences, allegiances, and values, and yet nevertheless united in their rea-

⁷See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 54.

sonableness.⁸ Most of the people in Liberalia accept that it can be reasonable for others to disagree with them, and as a result view the pluralism that exists in Liberalia as inevitable, and not to be regretted. Most liberal citizens accept that any principles of justice on which they could agree must take account of and reflect the permanence of the reasonable disagreement about the big questions of life that exists in Liberalia. These procedural constraints have consequences for the content of principles fit to govern the shared political life of reasonable people, and justify—thinks Rawls—a liberal vision of justice as fairness. For example, one consequence for political life of acceptance of the burdens of judgment is that all people ought to have equal freedom of conscience, thought, worship, and association, so as to allow everyone in Liberalia to live as they think best, given their differences. Hence, most citizens of Liberalia affirm Rawls's first principle of justice securing an equal and fully adequate scheme of basic liberties for all.⁹

Importantly, most liberal citizens would continue to affirm justice as fairness even if the balance of power in Liberalia were to shift such that it became possible for them to impose their view of the best way to live on other liberal citizens.¹⁰ This is because the reasons for which these citizens affirm justice as fairness are moral reasons in the sense that they are drawn from within their own conceptions of the good; in Rawls's terms, justice as fairness is a "module" in each reasonable conception of the good.¹¹ For this reason, reasonable citizens' commitment to justice as fairness will dominate any expedient reasons for rejecting justice as fairness that could come into existence for them if the balance of power shifts in their favor so as to make it possible for them to force others to live and believe as they do.

⁸There is, of course, a huge amount of debate in the literature on Rawls about what, exactly, affirmation of the existence of the burdens of judgment means, and whether it is consistent with Rawls's declared aim of providing justifications for his principles that "stay on the surface, philosophically speaking." John Rawls, "Justice as Fairness: Political not Metaphysical," in *John Rawls: Collected Papers*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 1999), pp. 388-414, at p. 395. Key pieces are: Brian Barry, *Justice as Impartiality* (Oxford: Clarendon Press, 1995), esp. section 27; Joseph Raz, "Facing Diversity: The Case of Epistemic Abstinence," *Philosophy & Public Affairs* 19 (1990): 3-46; David Estlund, "Making Truth Safe for Democracy," in David Copp, Jean Hampton, and John E. Roemer (eds.), *The Idea of Democracy* (Cambridge: Cambridge University Press, 1993), pp. 71-100. For my purposes, the cogency of these criticisms does not matter: any one, or all, of them could succeed and my arguments in subsequent sections showing the place for vertical toleration in the Rawlsian liberal ideal would remain unaffected.

⁹See Rawls, *Political Liberalism*, pp. 331-39.

¹⁰See *ibid.*, pp. 147-49.

¹¹See *ibid.*, pp. 144-45.

My description of Liberalia so far has focused just on what most citizens affirm and accept. But not all people in Liberalia share the majority's view of the pluralism that exists in their society. Although Liberalia is an ideal society, and is viewed as such by most of its citizens, it nevertheless contains some people who do not accept that disagreement on some of the big questions can be reasonable, and as a result do not affirm justice as fairness as their preferred set of principles for reasons drawn from within their own moral compass. In particular, imagine that in Liberalia there is disagreement between the majority and some minority groups with respect to how the law ought to treat the Liberalian controversial social practice of wearing bowler hats.

In Liberalia, the practice of wearing a bowler hat is exclusive to men, and is associated with a religion that was the established one in the society that preceded Liberalia in which it was illegal for men to be seen in public without a bowler hat. Many people in Liberalia continue to practice this religion, and many (although not all) men of this religion can be seen wearing bowler hats: it is a practice of great significance to many of them. The laws of Liberalia remain silent on the practice because the religion with which it is associated forms part of the pluralism so characteristic of Liberalia, and bowler hat wearing violates no one's rights; indeed, many ideal liberal citizens practice this religion. However, there are some liberal citizens who do not want the law to remain silent on the practice of bowler hat wearing. One group hankers for a return to the earlier state: they think that anyone who does not share their religion exercises their reason in faulty ways, and that the Constitution and laws of a society should as a result reflect their religious values and make alternative religious practices impossible. The "milliners" want bowler hat wearing in public places to be legally required of all men. A separate group has an opposing opinion: the "secularists" think that the freedoms protected in Liberalia should not include the freedom to wear a bowler hat. The secularists think that true freedom of religion for all is secure only when public and political life is purged of all religious symbolism and practice; as a result, they call for a legal ban on bowler hat wearing in public.¹² The milliners and the secularists are as opposed to one another as they are to justice as fairness.

¹²A careful and subtle analysis of the varieties of secularism according to which such arguments might be made is Cécile Laborde, *Critical Republicanism* (Oxford: Oxford University Press, 2008). I take no account here of the subtleties she identifies.

3. Neutrality and Vertical Toleration in Liberalia

In Liberalia, then, there are three groups divided on the question of bowler hat wearing and the law: milliners, secularists, and the reasonable majority who commit to justice as fairness for moral reasons, and whose support for the state realizing this vision of justice secures stability.

Given a commitment to justice as fairness, the law should remain silent on the practice of bowler hat wearing, i.e. what the secularists and the milliners want is ruled out in a just society. But this is not my focus here. Rather, in order to address the redundancy claim made by Jones, I shall ask: how should the majority in Liberalia authorise their political representatives to treat the milliners and the secularists? There are at least two liberal ideals to which they might appeal in giving such direction: neutrality, and vertical toleration. As already stated, vertical toleration is:

The exercise of restraint by political authorities with respect to interference with citizens whose practices they oppose (and with whom they could interfere) on principled grounds that these practices do not violate the liberal rights of any other citizens.

If vertical toleration is the ideal that governs the treatment of milliners and secularists in Liberalia, then political authorities oppose what they do, have the power to interfere with it, but do not exercise this power for the principled reason that what the milliners and secularists do violates no one's rights.

Turning to neutrality, this relates to the "common ground" between people participating in an overlapping consensus of justice as fairness in conditions of reasonable pluralism.¹³ Neutrality (Rawls calls it "neutrality of aim")¹⁴ does not discriminate between people with permissible conceptions of the good (judged as such by reference to justice as fairness) in (a) the distribution of opportunities to pursue a conception of the good, and (b) with respect to the distribution of assistance to take advantage of these opportunities. In other words, neutrality of aim ensures equal opportunity for all to pursue their (permissible) conception of the good, and an equal distribution of assistance to enjoy these opportunities (which might, of course, mean no assistance is given to anyone).¹⁵

If neutrality is the ideal that governs the treatment of milliners and secularists in Liberalia, then, if what the milliners and secularists do vio-

¹³Rawls, *Political Liberalism*, p. 192.

¹⁴See *ibid.*, pp. 192-93.

¹⁵See *ibid.*, pp. 193-94.

lates no one's rights (as laid down by justice as fairness), the political authorities have no grounds for opposing what they do because what they do is not impermissible according to the "common ground" at the heart of an overlapping consensus. This fact means that the political authorities are not permitted to interfere with the milliners and secularists.

Both ideals—vertical toleration and neutrality—require that the state does not interfere with the milliners and secularists. However, this is not what is at issue in making or rejecting the redundancy claim. Rather, what matters is how the justification of state noninterference ought to be conceived: what is the ideal that justifies it? On Jones's view, neutrality fills up all the space in relations between political authorities and citizens. It is a requirement of this neutrality, he thinks, that the ideal of toleration is realized in key social and political institutions, enabling the tolerant resolution of conflict between individuals in opposition to one another. For him, the neutral state acts as a kind of referee in disputes between opposed parties, and its institutions aim at conflict resolution through toleration. But political authorities themselves must, insofar as they are neutral, abstain from opposition towards their citizens; thus, the institutions and procedures they create and maintain to enable conflict resolutions between citizens are not themselves instruments of opposition.¹⁶ Because vertical toleration is a response to the direct opposition of the state to (some of) its citizens, it is obsolete in the ideal liberal polity wherein political authorities conform to the principle of neutrality. Neutrality obviates state-citizen opposition and so destroys the context for vertical toleration. On this view, neutrality has supplanted vertical toleration, and rendered it redundant.

I think this objection to vertical toleration has some purchase, in some contexts. I also think that the ideal of neutrality is a valuable part of the liberal ideal. However—pace Jones—I disagree that neutrality fills up all the political space of state-citizen relations in an ideal society, because what (certain types of) milliners and secularists do generates legitimate opposition towards them on the part of political authorities also committed to the ideal of neutrality with respect to other types of acts. It is true that in Liberalia, the vertical toleration of citizens towards whom the political authorities are required to be neutral is obsolescent. Neutrality requires withholding the opposition to which toleration responds, and so contexts for neutrality cannot be contexts for toleration. However, neutrality has limits, even in Liberalia: political authorities there are *not* re-

¹⁶ "[W]e should not look for the disapproval that is essential to the idea of toleration within the rules and institutions of the tolerant society. Rather that disapproval will be located in the population whose lives the rules and institutions regulate." Jones, "Making Sense of Political Toleration," p. 389.

quired to be neutral towards *all* their citizens across the *whole* range of values they hold, and with respect to all the ways in which they pursue goals informed by these values. I shall claim that the place for vertical toleration in Liberalia is beyond the limits of neutrality, and that there are contexts in which neutrality is not appropriate that are contexts for vertical toleration. Showing this will show that neutrality and vertical toleration are complementary parts of the liberal ideal as a whole, and will achieve the reconnection of the (Rawlsian version of) the liberal ideal with its roots. It will also prompt some important reflections on what it is to think in terms of political ideals, and why they matter. To see all of this, let us return to the question of bowler hats.

4. Liberalia Revisited

The milliners want bowler hat wearing to be legally required; the secularists want to ban it. How should the ideal liberal citizens of Liberalia authorize their political agents to treat the milliners and the secularists? A key issue is whether the milliners or secularists act on their declared political aims by trying to take the law into their own hands. Perhaps some of the secularists use force to knock bowler hats off the heads of those they see wearing them, or verbally intimidate and insult men they see wearing bowler hats in the street. And perhaps some of the milliners form cadres who attack men not wearing bowler hats in public. When either the milliners or the secularists act in these ways, they violate the basic rights of the men they target, as defined by justice as fairness, which include the right to physical integrity and the right to freedom of expression (including dress). When milliners or secularists do these things in Liberalia, they perform violent crimes.

With respect to violent milliners or secularists, the liberal state quite rightly acts to prevent them from committing crimes, and prosecutes and punishes them when they do. Do criminally violent milliners and secularists provide a context for vertical toleration in the ideal liberal state? The nature of the criminal acts not tolerated in these cases makes this an unpromising line of argument against the redundancy objection. Liberalia is an *ideal* world in which everyone is willing to abide by just laws. But this is precisely what the criminal milliners and secularists are *not* willing to do: they violate the rights to physical integrity and freedom of expression of bowler hat wearing and bareheaded men. And they do so deliberately and with forethought as a way of pursuing their unreasonable conceptions of the good. Of course, there are many real-world and non-ideal examples of intolerance of criminals such as these by states that at least claim to be liberal and democratic. But as I noted in the Introduc-

tion, this does not impugn the redundancy claim, which concerns only the constitution and values of the liberal ideal. Because criminally violent milliners and secularists are ipso facto unreasonable, and thus properly thought of as absent from that ideal, they provide no counterexample to the redundancy claim.

This granted, it is nevertheless important to note that some types of criminality are not inconsistent with citizenship—even *fully reasonable* citizenship—in Liberalia. Liberalia is an ideal liberal world because the majority of its reasonable citizens uphold and affirm (for moral reasons) a conception of justice as fairness, and are willing to abide by laws derived from this conception. But even in a world entirely populated by fully reasonable people in this sense, some crimes may be committed. For example, inadvertently imposing risks on, and/or causing harm to, others in breach of a duty of care owed to them, and as a result of a lack of foresight, could provide the *mens rea* for a variety of crimes in Liberalia. That a person is guilty of criminal negligence does not establish that she is not willing to propose and abide by fair terms of social cooperation: negligence is an omission, and is consistent with being committed in general terms to just principles of social cooperation at the highest level. The ideal state of Liberalia is not a fairytale world populated by people who never do wrong. In Liberalia, neutrality is to be practiced towards people insofar as their comprehensive (moral, religious, philosophical) *doctrines* are reasonable. But to be a criminal is to have performed an *act*, of some description (often, a rights-violating act). As the example of negligence shows, being a criminal need have nothing to do with the nature and content of one's beliefs, the doctrines that inform them, or willingness to abide by fair principles of cooperation. Instead, criminality can relate to failures of conduct judged as such in virtue of faults such as negligence: I can be fully willing to abide by principles of cooperation I judge to be fair by reference to my reasonable comprehensive doctrine, and yet unintentionally violate particular standards of conduct derived from these principles. Thus it is possible, in Liberalia, for reasonable criminals to fall within the scope *both* of the ideal of neutrality—insofar as their doctrines and dispositions are reasonable—and of the ideal of vertical toleration, insofar as what they do is judged to be (criminally) impermissible by (ultimate) reference to principles of justice, and so beyond the limits of toleration. The ideal citizens of Liberalia meet constraints of reasonableness that relate to how they conceive of their differences with others (the burdens of judgment), and how they are willing to manage them (a sense of justice); action so constrained may nevertheless sometimes cause wrongful harm of which the authorities are rightly (vertically) intolerant. This is the first way of showing that the

conditions of vertical toleration exist even in Liberalia, wherein the ideal of neutrality governs relations between the state and citizens insofar as they have reasonable comprehensive doctrines, and a general willingness to abide by fair principles of social cooperation.

Turning now to noncriminal, law-abiding milliners and secularists in Liberalia, they do not cause wrongful harm to others, nor violate anyone's rights, but stand opposed in their beliefs and values to Liberalia's political ideals and principles. This does not render them criminal: there are no thought-crimes in Liberalia. What I shall call "passive" milliners and secularists reject the permanence of reasonable pluralism and as a consequence want the liberal state to promote their own ends and values even though this would crowd out opportunities for others to do the same. They need not be thought of as motivated by prejudice or malice. It may be that they wish no direct ill to others: their principal aim is to build a state in their own image, and they may give little thought to, or simply be indifferent towards, what the consequences of that would be for those unlike them. Or they may be paternalists: they might think that it would be better for these others to convert to their religion, or to abandon their outdated religious worldview. Although the passive milliners and secularists do not actively seek to harm those they oppose (they obey the law, and so on), and so pose no imminent threat to security,¹⁷ they nevertheless do actively seek to convert others to their way of thinking and would practice oppression if they had the political power to do so. The passive milliners and secularists commit to justice as fairness for expedient reasons, but do not commit to it on morally principled grounds; in other words, they commit to justice as fairness as a *modus vivendi* given their present lack of political power to practice intolerance.¹⁸ The political conception of justice as fairness is not a module in their worldview, but rather, at best, is something they accept that they must put up with, given their present lack of power. Their reasons for complying with just laws are principled, but not moral.

The activities of passive milliners and secularists, albeit lawful, pose

¹⁷It is for this reason that the treatment of passive milliners and secularists is not determined by Rawls's remarks on citizens who are politically unreasonable insofar as their exercise of liberty of conscience poses a "reasonably certain or imminent" threat to the public order and stability necessary for everyone else's freedom of conscience. Rawls claims that these citizens lie outside of the limits of toleration because the state has an "enabling right" to interfere with them in order to perform "its duty of impartially supporting the conditions necessary for everyone's pursuit of his interests and living up to his obligations as he understands them." John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, Mass.: Harvard University Press, 1999), p.187.

¹⁸Cf. Noah Feldman, "Morality, Self-Interest, and the Politics of Toleration," in Williams and Waldron (eds.), *Toleration and Its Limits*, pp. 392-405.

a nascent threat to the roots of Liberalia's stability. For this reason, the state ought to oppose them. To see why, consider what makes Liberalia stable over time, as a way of seeing what the passive milliners and secularists threaten to damage.

In Liberalia, the majority of citizens affirm justice as fairness for reasons derived from their own conceptions of the good, which are diverse and divided. The political and social institutions required and permitted by principles of justice as fairness—both organs of the state, and spontaneous organizations that evolve in civil society—create a social world delivering what Rawls calls “the good of political society”¹⁹ to liberal citizens. It is this good that motivates them to act in accordance with, uphold, or defend these institutions, if necessary.²⁰ A key good-making feature of political society structured by justice as fairness is its equal provision of the social bases of self-respect to all citizens.²¹ As Rawls stressed throughout his life's work, self-respect is “perhaps the most important primary good.”²² Self-respect combines self-value with self-confidence in a way essential for well-being and practical reasoning aimed at the good life, however that is understood by the agent. Self-value is a matter of nonsubservience, and self-confidence is assured by the achievement of congruence between self-conception and self-expression in at least some areas of life of importance to the person, and also often by participation in communities of shared interests in which this achievement is recognized and esteemed by similar others.²³ Many life plans informed by diverse conceptions of the good can provide a context for self-respect so long as those who pursue them realize significant self-set goals, and are not subservient to anyone else. The significance of self-respect as a natural primary good is registered in the inclusion of the social bases of self-respect on the list of social primary goods,

¹⁹Rawls, *Justice as Fairness: A Restatement* (Cambridge, Mass.: Harvard University Press, 2001), p. 198.

²⁰For example, through voting in accordance with the common good, paying taxes, or undertaking civil disobedience, when the circumstances require it.

²¹A further good is the achievement of intergenerational justice (see Rawls, *Justice as Fairness*, p. 201). Also important, although hardly ever mentioned in analyses of Rawls, is fraternity, whereby by joining together in a just society people “agree to share one another's fate.” John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), p. 102; see also Rawls, *A Theory of Justice*, rev. ed., pp. 90-91. An instructive exception is David Estlund, “Liberalism, Equality, and Fraternity in Cohen's Critique of Rawls,” *Journal of Political Philosophy* 6 (1998): 99-112.

²²Rawls, *A Theory of Justice*, p. 440. See also pp. 92, 107, 443, 543-45, and Rawls, *Political Liberalism*, pp. 106, 203, 318, 319.

²³See Catriona McKinnon, *Liberalism and the Defence of Political Constructivism* (Basingstoke: Palgrave Macmillan, 2002), chap. 3. See also Thomas E. Hill, Jr., *Autonomy and Self-Respect* (Cambridge: Cambridge University Press, 1991), esp. chaps. 1 and 2.

which provide the currency of justice as fairness. The social bases of self-respect are a set of opportunities for people (with a diversity of reasonable conceptions of the good informing their life plans) to develop self-respect through their behavior and interaction with others.

[S]elf-respect depends upon and is encouraged by certain public features of basic social institutions, how they work together and how people who accept these arrangements are expected to (and normally do) regard and treat one another. These features of basic institutions and publicly expected (and normally honored) ways of conduct are the social bases of self-respect.²⁴

Although self-respect cannot be provided directly with political measures,²⁵ political and social conditions can present severe obstacles to it such that whole swathes of persons are systematically damaged. Caste systems, segregation, class divisions, rigid gender roles, and other forms of social hierarchies are the most obvious forms of social organization that cause such harm. In these cases people in less privileged groups are (inter alia) viewed and treated as having less value than those who oppress and dominate them; and this can affect the self-conceptions of the oppressed in ways damaging to self-respect (evinced in the “Uncle Tom” figure).²⁶ In addition, more subtle forms of injustice related to distributional inequalities can deprive people of the social bases of self-respect by creating social exclusion and inequalities of opportunity for them to develop and refine their talents.

There are many ways in which Liberalia provides its citizens with the social bases of self-respect, from ensuring equal rights to freedom of association and expression for all, to guaranteeing equality of opportunity to attain positions of political, economic, and cultural power and influence, to operationalizing forums for political debate in public reason that are maximally inclusive and prioritize no one conception of the good over any other.²⁷ However, what matters for my purposes here is Rawls’s claim that “[i]n securing these things political society answers to [citizens’] fundamental needs.”²⁸ The delivery to citizens of goods such as the social bases of self-respect is the catalyst that enables the theoretical justification of principles of justice as fairness also to serve as the source of citizens’ allegiance to the institutions so justified. Without allegiance

²⁴Rawls, *Political Liberalism*, p. 319.

²⁵See Rawls, *Justice as Fairness*, p. 60.

²⁶For discussion of the “Uncle Tom” figure, see Hill, Jr., *Autonomy and Self-Respect*, chap. 2.

²⁷For an excellent discussion, see Joshua Cohen, “Democratic Equality,” *Ethics* 99 (1989): 727-51, p. 737. See also McKinnon, *Liberalism and the Defence of Political Constructivism*, chap. 5.

²⁸Rawls, *Justice as Fairness*, p. 200.

with these roots and this character, the maintenance and replication of these institutions over time through the collective and free will of citizens who view these institutions “as one of the significant achievements of their history” would not be possible.²⁹ In Liberalia, just institutions endure because they command the support of those whose lives are structured by them: stability grows from the ground up, and is rooted in citizens’ own conceptions of the good, which justice as fairness promotes. This support is freely given down the generations because, in delivering goods such as the social bases of self-respect to all, political institutions answer to the social needs of people who view themselves as free and equal, and yet are reasonably divided on the big questions, and who desire to live together peacefully and profitably. As Rawls puts it, “those who grow up under just basic institutions—institutions that justice as fairness itself enjoins—acquire a reasoned and informed allegiance to those institutions sufficient to render them stable.”³⁰

What has all of this to do with the passive milliners and secularists, and the liberal state’s relation to them? The passive milliners and secularists pose no imminent threat to public order, or to anyone’s rights, and thus cannot be interfered with by the liberal state in the name of protecting public order, safety, and the conditions necessary for equal liberty. However, their agitation to convert others to their commitment to oppression could erode the support given to the liberal state by its citizens by convincing them that adjustments to the liberal limits of toleration are required so as to exclude certain groups (either those who wear hats, or those who don’t, depending on which group is doing the talking).

Imagine that the secularists were to successfully recruit erstwhile fully reasonable people to their cause of lobbying to have bowler hat wearing made illegal, perhaps by (within their rights to freedom of expression) promoting racial and cultural stereotypes, and by stoking up fear and suspicion on the back of this. My claim is not that the threat to Liberalia’s stability in these circumstances relates to any violation of the rights of bowler hat-wearing men: the promotion of such stereotypes is legally permitted in Liberalia,³¹ and the lobbying will—quite rightly—never succeed. The law and political institutions in Liberalia are legiti-

²⁹Rawls, *Political Liberalism*, p. 204.

³⁰Rawls, *Justice as Fairness*, p. 185.

³¹Of course, there are many cans of worms here related to, for example, whether offense counts as harm from a liberal perspective, and/or whether racist speech can be an illocutionary speech act that does something to those it smears from which the law ought to protect them. See McKinnon, *Toleration*, chaps. 7-10, for discussion. For my purposes here, all that has to be true of the law in Liberalia is that it permits some racist speech in some circumstances, creating the possibility of address to others, however limited. I take this to be uncontroversial.

mate because they realize principles of justice as fairness that could not be rejected by free and equal people in conditions of reasonable pluralism. The emergence of a substantial unreasonable minority (or even a majority, or the entirety) of citizens in Liberalia who oppose the law and political institutions with this character leaves their legitimacy untouched. My claim about stability is, rather, that the emergence of such groups degrades and damages the bottom-up allegiance given to the state by citizens, without which the maintenance of just institutions will require top-down force and coercion. It does this in at least two ways. First, and most simply, the number of citizens freely giving their allegiance to the just state is reduced. Second, and possibly more damaging, those whose freedoms are questioned (the bowler hat-wearing men) by the emerging substantial minority have their social bases of self-respect depleted when fellow citizens aim to deny to them freedoms they claim for themselves. For bowler hat-wearing men, the emergence of such a minority makes it clear to them that many of their fellow citizens do not view them as free and equal, and are not willing to exchange reasons with them—in particular, are not willing to engage with their own accounts of the significance of bowler hat wearing to them—in justificatory debate about the legal limits of freedom of expression. The failure of civility on the part of the emerging minority risks undermining the social bases of self-respect for those they oppose by damaging mutual recognition in public political debate, which supports the convictions of all parties that others accept them as free and equal citizens, notwithstanding their religious and cultural differences.³²

These are the senses in which the passive milliners and secularists pose a threat to stability in Liberalia. What the passive milliners and secularists do constitutes a direct, albeit permissible, attack on Liberalia's stability. Importantly, this is the case not simply because the passive milliners and secularists reject the burdens of judgment at the heart of the justification of justice as fairness. Rather, the attack is on the foundations of stability in the present support political authorities have among the reasonable majority of citizens in Liberalia. The liberal state affirms principles and ideals that generate and perpetuate this support, and will quite properly use the law to protect these ideals qua stability generators. As Rawls puts it,

[A] constitutional regime [may take] certain steps to strengthen the virtues of toleration and mutual trust, say by discouraging various kinds of religious and racial discrimination (in ways consistent with liberty of conscience and freedom of speech) ... [and in so do-

³²For discussion of civility, see Catriona McKinnon, "Civil Citizens," in Catriona McKinnon and Iain Hampsher-Monk (eds.), *The Demands of Citizenship* (London: Continuum, 2000), pp. 144-64.

ing] it is taking reasonable measures to strengthen the forms of thought and feeling that sustain fair social cooperation between its citizens regarded as free and equal.³³

Such measures might include educating children to the knowledge that apostasy is not a crime in Liberalia,³⁴ or enacting legislation making racial discrimination in employment practices illegal. However, what the state will not do is prevent the passive milliners and secularists from publicly expressing their opinions on bowler hat wearing and law, or from recruiting people to lobby groups with the aim of changing the law, despite the fact that the state has the power to prevent them from doing these things, and despite the fact that this is exactly what they aim to do to others, and so are in no position to complain if they themselves are oppressed.³⁵

Two of the basic rights all people in Liberalia have are to freedom of expression and freedom of association. In Liberalia, these freedoms are extended to the passive milliners and secularists, despite the fact that this creates the risk that the conditions necessary for the allegiance the liberal state requires for stability will be undermined. The restraint of political authorities in Liberalia is justified on principled grounds by reference to the importance of protecting the conditions enabling each person to live as she sees fit, for example, through upholding a principle of equal liberty. In other words, that freedoms such as freedom of speech and association are extended to intolerant citizens in Liberalia shows that there is still scope for such states to practice vertical toleration with respect to some of their citizens, for example, the passive milliners and secularists. So long as passively intolerant people remain in Liberalia—indeed, so long as there is any possibility of their existence—the circumstances of vertical toleration with respect to some sets of citizens will continue to exist in this place. Thus, at least with respect to Liberalia, the redundancy objection is defeated.

5. Ideal Theory

By way of conclusion I shall indicate some additional attractions of my argument that extend beyond internecine disagreements between Rawlsians—and even liberals per se—and which relate to the point of having political ideals.

One way in which to respond to my defeat of the redundancy claim is to argue that passive milliners and secularists have no place in Liberalia,

³³Rawls, *Political Liberalism*, p. 195.

³⁴See *ibid.*, p. 199.

³⁵See Rawls, *A Theory of Justice*, rev. ed., pp. 192-93, for discussion.

because they are not fully reasonable. This addresses only one part of my argument for vertical toleration as a liberal ideal, and it leaves untouched my claim that reasonable criminals are properly thought of as citizens of Liberalia. Although I agree that the passive milliners and secularists are only partially reasonable, I offer two reflections to support my claim that they, too, are properly thought of as part of Liberalia's population.

First, in Liberalia people are willing to obey statutes and regulations derived from principles of justice. And the passive milliners and secularists do just that: what they do conforms to the requirements of justice, even though their reasons for action are not moral reasons. The fact that passive milliners and secularists act for reasons of expediency does not make them criminals, because they nevertheless obey the law. And there are no thought-crimes in Liberalia.

Furthermore, the impulse to define the ideal context as one in which people not only do the right thing, but also always for the right reasons, risks misconstruing the purpose of using this context as a starting point for thinking about politics. Laying out a blueprint for an ideal liberal society is interesting only insofar as it is useful, that is, can help us in constructing a theory of transitional justice to move us from where we are to closer to the ideal,³⁶ "to guide the course of social reform."³⁷ Theorizing away people like the passive milliners and secularists leaves us with an impotent political ideal in this respect. The context for vertical toleration is an indispensable and permanent part of any ideal fit to guide thinking in the present.

Second, when people affirm justice for reasons of expediency—as do the passive milliners and secularists—we get closer to the ideal than when they abandon compliance altogether. And there are good reasons to think about the political treatment such people are owed by keeping them as part of the population of Liberalia. Consider Rawls's remarks that

The liberties of the intolerant may persuade them to a belief in freedom ... provided that [an intolerant sect] is not so strong initially that it can impose its will straightaway, or does not grow so rapidly that the psychological principle has no time to take hold, it will tend to lose its intolerance and accept liberty of conscience.³⁸

Rawls thinks—perhaps better, hopes—that those who start off by affirming principles of justice as a *modus vivendi* will be transformed into fully reasonable citizens providing greater stability for the just liberal state: "the ideal of citizenship can be learned and may elicit an effective desire

³⁶See Ingrid Robeyns, "Ideal Theory in Theory and Practice," *Social Theory and Practice* 34 (2008): 341-62.

³⁷Rawls, *A Theory of Justice*, rev. ed., p. 215.

³⁸*Ibid.*, pp. 192-93.

to be that kind of person.”³⁹ Unless vertical toleration is practiced with respect to people like the passive milliners and secularists, then this hope is dashed; but unless we include such people in the liberal ideal polity, we lose principled arguments for tolerating them that are consistent with—indeed, derived from—liberal ideals. If we conceive of Liberalia as exhaustively populated by fully reasonable people who unanimously agree on justice as fairness for moral reasons—that is, as a place in which neutrality fills up all the space of politics—then Liberalia is nothing but a pretty fantasy, and the worst suspicions of self-styled hard-nosed people who wonder what political philosophy has to do with the “real world” may be confirmed.⁴⁰

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³⁹Rawls, *Political Liberalism*, p. 71.

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