

Standing and the Sources of Liberalism¹

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ABSTRACT:

Whatever else liberalism involves, it involves the idea that it is objectionable, and often wrong, for the state, or anyone else, to intervene, in certain ways, in certain choices. This paper aims to evaluate different possible sources of support for this core liberal idea. The result is a pluralistic view. It defends, but also stresses the limits of, some familiar elements: that some illiberal interventions impair valuable activities and that some violate rights against certain kinds of invasion. More speculatively, it points to two further sources of support for liberalism, each of which represents a certain kind of social standing: a self-sovereignty compromised simply by being subject to certain kinds of commands and a relational equality compromised by the condemnation of choices with which one's group is identified.

KEYWORDS:

coercion, harm principle, liberalism, liberty, social equality

Whatever else “liberalism” connotes, it connotes at least the idea that it is wrong, or at any rate objectionable, for the state, or anyone else, to “intervene,” in certain ways, in certain, “protected” choices.² A person should not face a fine or jail-time, for example, for her religion or pastime.

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

This is so even when such interventions benefit people, or protect them from harm, by making them less likely to make choices that are worthless or bad bargains.³ Imagine, for example, the Temple of Brainechanics, practiced in the United States since the mid-1800s, spreading slowly to other parts of the globe. It's organized around the half spiritual, half pseudo-scientific ramblings of an obscure, Verne-era science-fiction author. Although these ramblings are too incoherent and untethered to amount to any orienting ethic, the Brainechanics nonetheless devote their entire lives to memorizing the author's ramblings, to celebrating his life, and to drawing more people into the fold, admitting no other relationships and pursuits save those that further these ends. Now imagine that your daughter or son was to join the Temple. You would think, I take it, that they were throwing their life away. If there were any hope of success, you ought to make every effort to dissuade them. All the same, if you are a liberal, committed to religious freedom, you would oppose the state's prohibition of Brainechanics.

Why is this? What accounts for this liberal idea? Even if it is possible to intervene to good effect in theory, it might be said, states will intervene to bad effect in practice. The state's instruments may be too blunt. If long-term imprisonment is the only cure, it may be worse than the disease (Raz 1986 418). Or the state may know less than the chooser. This is often the case with "matching" choices, such as choices about career or mate, whose goodness for the chooser depends on her specific tastes, talents, temperament, endorsements, or values. However, even when I imagine a state that overcame these limitations, I still find myself thinking that it would be wrong for that state to intervene in protected choices. My question is why such interventions, even if they could achieve their intended purpose, would be wrong.

³ I assume that the strongest case in favor of such illiberal interventions, and so the case to be addressed, is that those interventions would benefit people or protect them from harm, and not, say, that they would reduce the incidence of actions that are somehow independently immoral.

There's no reason to expect a single answer. Liberalism is fed by many sources. However, I argue that the sources usually appealed to, while they surely account for much of the liberal idea, can't, even in combination, account for all of it. I then explore the idea that the necessary supplement might lie in the value of certain forms of social standing.

Section 1 argues that the liberal idea resists any simple, compact formulation, such as Mill's Harm Principle. To the question of how the contours of key terms, such as "intervention" and "protected choice," are to be drawn, the only general answer may be the unhelpful answer: as the balance of relevant values (or principles or ideals) implies.

Some of these relevant values are the activities, such as marriage or faith, which illiberal interventions might impair. Some such impairments, which I discuss in section 2, are straightforward. If one is locked up, one can't make pilgrimages. Other such impairments, which I discuss in section 3, are subtler. Even if the interventions leave one free to go through the motions, to put one foot forward then the next on the road to Canterbury, still they may not let one do so "autonomously." Nevertheless, it is not enough to appeal to the impairment of such activities. For there are interventions to which any liberal would object that don't impair, and may even facilitate, such activities.

Other values supporting the liberal idea are rights against forms of treatment that intervention might involve, whether or not that treatment impairs valuable activities. Section 4 considers a right against "force"—against physical invasions of one's body. Section 5 considers a right against "threats"—against invasions of one's "choice situation." However, it is still not enough to appeal to such rights, even together with the points just made about the impairment of valuable activities. For there are interventions to which any liberal would object that neither violate any such right, nor impair valuable activities.

So I turn, more speculatively, to two further sources of support for the liberal idea, each of which represents a certain kind of social standing. Section 6 explores the possibility that merely being subject to certain kinds of commands can itself compromise a valuable social standing. Section 7 suggests that condemning choices with which certain groups are identified may mark them as a kind of underclass, compromising a different kind of social standing. In this latter case, the underlying value is not so much the value to the individual of the liberty that liberal guarantees protect, but instead the value of relations of equality among individuals that liberal guarantees sustain. Or, if it is a form of liberty, it is a form that makes “Liberty, equality, fraternity” a kind of conceptual stutter.

1. What does the liberal idea come to?

What does it mean: that it is wrong for the state, or anyone else, to “intervene,” in at least certain ways, in at least certain “protected” choices about how to live one’s life? Which choices are “protected”? Which “interventions” are wrong? I assume that we have at least some material with which to start: more or less confident judgments that this or that intervention in this or that protected choice would be impermissibly illiberal. As we learn more about the values that ground these judgments, of course, our confidence in some of these judgments may wax, while our confidence in others may wane. I doubt, however, that there is some clear, succinct formula that, by defining terms such as “protected” or “intervention,” encapsulates these judgments and so helpfully mediates between these judgments and the values that ultimately ground them. To the question of how to define these terms, the only general answer may be: as the balance of grounding values implies.

Consider a model of such a mediating formula: Mill's (1859) Harm Principle, interpreted or amended in some way (Hart 1963, Feinberg 1984, Raz 1986, Leiter 2013).⁴ As defined by the Harm Principle, protected choices are choices that don't (themselves, nonconsensually) harm others. And protected choices are protected from, roughly, threat, coercion, force, social sanction, enforcement, imprisonment, punishment, and criminalization—Mill's "compelling... visiting with evil"—but not from mere advice—"remonstrating... reasoning... persuading... entreating."

For one thing, it's notoriously unclear what counts as "harm to others." On the one hand, if one harms others simply by helping to make a bad choice available, then the Harm Principle does not protect very much.⁵ On the other hand, if one harms others only when one uses force or violates property rights, then, except in the opinion of libertarians, the Harm Principle protects too much, prohibiting the state from "intervening" to ensure contributions to public services. In search of a middle ground, we might say that one harms others when one fails in a duty owed to others. However, as I argue in section 4.2, it's a mistake to think that interventions are permitted just when the target would otherwise fail in a duty.

Second, some interventions to prevent "harm to self" seem permissible. "End interventions," designed to steer people from bad choices of final, organizing ends, such as religion, career, or relationship, are one thing. But many otherwise liberal states engage in "means interventions," designed to steer people from bad choices of all-purpose materials for

⁴ Another model would be Rawls's (1971, 1993) "list of liberties" or his more abstract specification of "the two moral powers of citizens." But this isn't much of an advance over particular judgments, since it's mostly an abstract description of the valuable activities that illiberal interventions might impair.

⁵ And it protects even less if we replace "choices that don't (themselves, nonconsensually) harm others" with "choices such that intervening in them does not protect others from harm."

pursuing such ends, such as health, safety, or financial security. They impose “sin” taxes, for example, which at least profess to aim at reducing alcohol, tobacco, and sugar consumption (even if one worries that they are politically expedient but regressive ways to raise revenue). They regulate prescription medicine (Conly 2013 18). They require that goods for commercial sale have built-in mechanisms (e.g., seat-belt buzzers) to deter imprudence. One might argue that such means interventions conform to the Harm Principle, on the grounds that the choosers would otherwise harm others, by exposing them, say, to second-hand smoke or higher insurance premiums. But such arguments seemed strained and perhaps not entirely in good faith.

Finally, what sort of intervention is the Harm Principle is supposed to regulate? Threat, coercion, force, imprisonment, punishment, criminalization? As we will see, illiberal interventions need not involve any of these things. In any event, Mill is clear that the Harm Principle is not supposed to regulate advice: simply informing someone of reasons that independently obtain. Yet while it may be permissible for *individuals* to advise one another to avoid a particular religious choice, it seems impermissibly illiberal for the *state* to do so.

2. Cost effects

We turn now to the values, principles, or ideals that might support the liberal idea. To begin with, it might be argued that illiberal interventions involve costs, especially costs that take the form of impairing one’s ability to pursue valuable activities.⁶ Meet Prudie, our recurring

⁶ In both his earlier (1971) and later (1993) work, Rawls takes this approach, arguing that the basic liberties are means to the pursuit of certain abstractly conceived activities, such as the pursuit of a determinate conception of the good, in which citizens (or, alternatively, those whom parties in the original position are supposed to represent) are assumed to have an interest. However, Rawls may not even be trying to answer our question: Why not intervene to lead people to better choices? Since citizens are conceived to have an interest in a determinate conception of the good, *whether or not that conception is worthwhile*, no case can be put to parties in the original position for a more discriminating principle, which would secure the conditions for pursuit of, specifically, a worthwhile conception of the good.

character, whose bad choice of Brainechanics, or smoking, or what have you is the target of an illiberal intervention. Let us give the artificial label “steering” to attempting to get Prudie to do something by means other than simply informing her (as advice does) of the reasons there are to do it independent of that very attempt. One way to steer Prudie away from a bad choice is to *raise the cost*, and to *inform her* that one has raised the cost, of her making it. Threats of forcible imprisonment certainly do this. But so too do threats of other penalties or fines, as well as fees and taxes.⁷

On the one hand, there is the cost imposed on Prudie when the threat is carried out. This unambiguously makes things worse for Prudie. Still, it might serve the greater good, by upholding the credibility of the threat, which steers others. Why then should it be impermissible? If we reply that it violates a right of Prudie’s, then our objection is no longer to the cost imposed, but instead the sort of objection discussed in section 4, to the violation of a right.

On the other hand, there is *threatening* Prudie with a cost if she makes a bad choice. Even if Prudie avoids the threatened cost, the threat itself may wrong her. In general, I argue elsewhere, the usual way a threat wrongs the person threatened is by leaving her choice situation worse than she is entitled to from the threatener (Kolodny 2017). And the threat of the cost tends to make Prudie’s choice situation worse.⁸ The question is why this negative, “cost” effect on

⁷ Fees and taxes tend to differ from penalties and fines in that they (i) don’t condemn the activity, (ii) are insensitive to the intent of the activity, (iii) do not increase abruptly when the activity crosses some threshold, and (iv) do not increase with repetition (Cooter 1984, Cooter and Siegel 2012).

⁸ No doubt, there are difficult questions here about what makes a choice situation better or worse (what Olsaretti 2009 calls “principles of stakes”). I don’t think the value of a choice situation can be reduced to the expectation of the effects of possible exercises of it, based on some probability of those exercises. But I don’t have a general, positive theory to offer. I am just relying on what seem to me plausible particular judgments.

Prudie's choice situation isn't outweighed by the positive, "influence" effect on Prudie's choice of making her more likely to choose what was better for her. Among other things, the cost effect tends to be lower when the cost is attached, as it is in Prudie's case, to an option that is not valuable to the threatened person (Kolodny 2017).

In any event, the cost might not be very high: a night in jail (Kleiman 2009) or, if we imagine away technological limitations, a whine that persists until Prudie abandons the bad choice. Moreover, illiberal steerings needn't threaten costs at all. They might instead *increase the benefit or lower the cost* of Prudie's avoiding the bad choice. They might make the *psychological* feat, as it were, of the bad choice *harder* or *less likely*, by mind control, "choice architecture" (Thaler and Sunstein 2008), or simply issuing a command to someone reflexively disposed to comply. They might make *successful execution* of the disfavored choice harder or less likely even if one could otherwise, psychologically choose it. This might be done by making it difficult or impossible to obtain the necessary means.⁹

3. Value-of-compliance effects

Even if an illiberal steering's influence effect outweighs its cost effect, it still might not improve the choice situation overall, because of its negative, "value-of-compliance" effects. Precisely because it was influenced by intervention, Prudie's "good" choice may lack the value that it would otherwise have. Intervention might corrupt the motives of the good choice (Dworkin 2000 217, 218, 269). Or intervention might leave so inadequate a range of acceptable alternatives that the good choice does not count as "selected" (Raz 1986). But not all illiberal interventions corrupt motives or preclude selection (Hurka 1993). Moreover, appealing to

⁹ These means might be commodities or services, whose sale or provision might be prohibited, even if their use was not. Or the means might be institutional or associational supports: the enforcement of a contract, the recognition of a marriage, or the mere presence of likeminded people.

corrupting motives or precluding selection does not explain why there is a liberal objection to steering in particular. After all, without deliberate steering, a choice can become too expensive on the open market, or go out of fashion, with precisely the same effect on its cost and availability that a deliberate steering would have had. Yet few clamor to halt or reverse those processes so that the option can be selected or chosen from pure motives.

Deliberate steering, however, has an effect that other changes in cost and availability do not. It may make the good choice no longer “independent.” On the “subjugation model,” this is because steering makes Prudie the steerer’s “tool,” make her do his will. On the “achievement model,” it is because steering makes the good choice no longer her “own” achievement. To be sure, not all steering undermines independence. Meryl Streep’s career as an actor is presumably independent, even though studios pay her to perform. For Raz, independence is undermined when the steering is “coercive”: so compelling that Prudie has “no other choice” and accordingly is justified or at least excused in complying.¹⁰ This suits the subjugation model. It’s when another sees to it that one has “no other choice” that it seems most apt to say that one has become their tool, or that one’s will has become theirs. For Dworkin, by contrast, independence is undermined by “end steerings,” which are motivated by judgments that a certain way of life is good or bad (2000 282; 2011 369). This line suits the achievement model. If someone intervenes on the basis of a judgment that certain way of life is good or bad for Prudie, then they have done the work for Prudie, as it were, and it is not her “own” achievement.

However, few illiberal interventions, even when backed by threats of long-term imprisonment, are compelling. If they were, prisons would be empty (Kolodny 2017). And

¹⁰ Note the some threats are non-coercive, so understood, whereas some non-threats, such as bodily restraint, are coercive. Threatening to frown unless you stay put doesn’t relieve you of blame for staying put, whereas mutely tying you down surely does.

neither illiberal compelling steerings on the subjugation model, nor illiberal end steerings on the achievement model, compromise the sort of independence that matters. Consider, first, the subjugation model. Supposing for the sake of argument that the criminal law is compelling, it compellingly steers us away from the bad choice of a “life of crime.” Perhaps this makes us tools of the state insofar as we make the general, “negative” choice of “not a life of crime.” But this surely does not make us tools of the state insofar as we choose some specific, “positive” alternative to a life of crime: some relationship, career, or faith within the law. Next, consider the achievement model. Setting aside public efforts, there are all manner of private efforts to end steer people to appreciate the arts or find a particular religion. These efforts range from private support for the arts, to private provision of houses of worship and religious texts. Surely these private efforts don’t objectionably diminish one’s achievement in appreciating the arts or finding religion.

4. A right against force: invasion of the body

Let us turn now to the idea that even if illiberal interventions benefit people, or protect them from harm, they are still impermissible, because they violate “rights,” understood as constraints on bringing about better outcomes. In this vein, Feinberg (1986 27) models “autonomy as sovereignty” as something like the right of an owner over her property, or of a sovereign nation over its territory. However, Feinberg’s descriptions of what the right protects can be as vague as they are rousing. “The life that a person threatens by his own rashness is after all *his* life; it *belongs* to him and to no one else. For this reason alone, he must be the one to decide—for better or worse—what is to be done with it” (59). Which actions violate his right “to decide what is to be done with his life”? Just about any action affects “his life” in *some way*.

Feinberg's analogies to property and territory, however, suggest a more definite, if literal-minded, answer. The right protects against physical incursion into one's bodily space. Indeed, liberalism aside, one might think that we have a right against such force, whose core incident is expressed by the:

Force Constraint. It wrongs someone to use force on her, unless she consents to it, or some other condition lifts the constraint. The mere fact that the use of force would achieve a greater good is not such a condition on its own.¹¹

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

4.1. The Responsibility Principle

One challenge for this approach is that the state is permitted to use nonconsensual force in *some* cases. Most libertarians accept the elementary Lockean idea that:

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

¹¹ To cover the famous trolley case, we might prefix: "Except where the force is the flip-side of the greater good, not a means to, or a side effect of a means to, the greater good..." (Kamm 2006).

If some state-of-naturalist, Flintstone, violates a natural prohibition on the use of force, then the Force Constraint is lifted for the purposes of deterring wrongful uses of force. Given this, why can't we argue similarly for (Conly 34–5):

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

That is, why isn't the Force Constraint also lifted in Prudie's case, for the purposes of deterring bad choices like hers? What's the difference between Flintstone and Prudie?

The liberal's best answer to this challenge, I think, is to invoke the:

Responsibility Principle: The fact that force would protect others from their own choices carries no (or at least diminished) weight in lifting the Force Constraint.

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

To understand what justifies the Responsibility Principle, we must first understand what justifies the Force Constraint and Natural Imposition. Underlying the Force Constraint, I submit, is the target's interest in controlling others' uses of force against her. Now this interest must be balanced against the burdens others bear in providing the target with this control. So we are led to the:

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

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

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

Moreover, just as to provide Flintstone with even better opportunity (e.g., to require his present consent) in order to impose a deterrent would burden others severely, so too to provide Prudie with even better opportunity (e.g., to require her present consent) in order to impose a deterrent would burden others. Just as others rely on the deterrent in Flintstone's case to protect them from harm, so too they rely on the deterrent in Prudie's case to protect them from harm. If the state gives Prudie better opportunity to avoid force, by requiring her consent after violation,

then it must give the same opportunity to everyone. But that means depriving them of the threat's protection. For if one can avoid the threatened force merely by refusing consent to its imposition, then threat loses its power to influence. It no longer protects.

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

To be sure, much will depend on whether it is fair to treat the harm to Sage as "his responsibility." Was he in a position to know what he was getting into? Was his judgment impaired by disease or drink? It seems fairer that Prudie's control should be limited so as to protect Sage from his faultlessly ignorant or impaired, so-called, lower-c "choices," than from his well-informed, cool-headed, capital-C, *Choices*.

Thus, the Responsibility Principle lends principled support to an idea that Arneson 1989, 2005 calls an "unacceptable halfway house": namely, the idea that "soft-paternalistic" force—which enforces directives that prohibit ignorant or impaired "choices" (e.g., "You may not engage in this activity until you have passed a quiz and a breathalyzer test")—may be permissible when "hard-paternalistic" force—which enforces directives that prohibit Choices—may not be. "Soft-paternalistic" force on Prudie is justified as a way of protecting Sage (as

always via a credible deterrent) from harms that wouldn't, in the relevant sense, be due to his Choices. That is like protecting Vic from Flintstone. "Hard-paternalistic" force on Prudie, by contrast, would have to be justified as a way of protecting Sage from his own settled will. That isn't like protecting Vic from Flintstone. At that point, it's up to Sage, not Prudie, to protect himself. The objection to "hard-paternalistic" force against Prudie—or, rather, to following through on forcible threats meant to deter Choices—is *not that it is paternalistic*. It is instead that it is *unfair*, at least to Prudie's interest in control over others' use of force against her. For Prudie's control is limited in order to provide protection that Sage could provide for himself. By contrast, "soft-paternalistic force" against Prudie—or, rather, following through on forcible threats meant to deter "choices"—provides protection that Sage cannot provide for himself, just as the force against Flintstone provides protection that Vic cannot provide for himself.

4.2. Contrasts: Libertarian Principles and the Duty Principle

Although the Responsibility Principle seems to me the liberal's best response to the present challenge—to distinguish Prudie from Flintstone—two other responses are more common in the literature.

First, libertarians respond to the challenge with either the:

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

or the:

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

The trouble, in brief, is this (Kolodny 2016). No one who accepts Natural Imposition can accept the Strong Principle. For suppose that, after his violation, Flintstone is reformed or incapacitated

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

Other liberals respond to the challenge—to distinguish Prudie from Flintstone—with the:

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

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

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

Finally, there are two error theories for the Duty Principle: explanations of why it is so natural to think that deterrents may be forcibly imposed only for the violation of a duty. First, it is easy to confuse the Duty Principle, which *forbids using force* when the target hasn’t wronged others, with the almost tautological *Condemnation Principle*, which *deems unfitting condemning the target for wronging others* when he hasn’t, in fact, wronged others. If we grant, for the sake of argument, that “unfitting” implies “impermissible,” and that punishment involves condemnation for wronging others, then the Condemnation Principle forbids the state from punishing choices that don’t wrong others (Husak 2005). But it would not forbid the state from, as it were, “subtracting” from punishment the element of condemnation for wronging others. The state could still condemn that choice as bad and impose other, nonexpressive aspects of the penalty (compare Tadros 2016, ch. 6). Yet that would be impermissibly illiberal.

Second, it is easy to confuse the Duty Principle with the rough generalization that if the target had a duty to X, her opportunity to avoid force by X-ing was adequate. This is because the

target cannot cite having to forgo the benefits of violating a duty to X as a reason why his opportunity to avoid force by X-ing was inadequate. Still the opportunity to avoid force by X-ing can be adequate even if the target had no duty to X. This is especially likely to be so in Prudie's case, where X-ing is just abstaining from a bad choice.

4.3. Must illiberal intervention involve force?

If the Responsibility Principle is correct, then the state is not permitted to follow through on *forcible* deterrents of Choices. So far, so good for the liberal idea. The trouble is that some interventions, which any liberal would want to rule out, do not use force. Imagine (to take an example from Kolodny 2016) the Omittite Empire. Their Emperor, the Guardian of the Ladder, need not put violators of his directives in prison. This is because each Omittite, to survive the elements, must descend into his naturally carved hole each night. Every morning, the Guardian drops the Ladder into each hole to enable its occupant to climb back up. His deterrent is simply to withhold the Ladder, confining the occupant there for a fixed period. Suppose an Omittite, "Holton," violates some illiberal directive, and so the Guardian, as announced, does not drop the Ladder into Holton's hole for several months. This isn't a use of force or an "active harming." It's simply a failure to aid. Yet it seems that no liberalism worth the name would countenance the Guardian's threatening imprisonment for violating illiberal directives. All the same, he uses no force, nor violates any other familiar deontological constraint. So, in sum, the Force Constraint does nothing to prohibit illiberal interventions that *don't* use force.

5. A right against threats: invasion of the choice situation

We have just been considering a right against *force*. Why not consider instead a right against *threats*? After all, even if the Guardian doesn't use force, he nevertheless threatens. This right

would protect against not physical incursions into one's "personal space," but instead against a certain class of *changes to one's choice situation*.

The proposal faces three basic objections. First, we don't have a right against *all* changes to our choice situations. Others change our choice situations left, right, and center without violating our rights. Nor can we say that we have a right against, more specifically, changes to our choice situations that take the form of announcing an intention to X unless we Y. People can offer us, without our leave, to X unless we Y. The right must be against a still more specific class of changes. It's tempting to reply: "The relevant class is of 'coercive announcements,' whatever 'coercive' means in plain English (or, alternatively, of 'threats,' whatever 'threat' means in plain English)." The trouble is not that "coercion" has multiple meanings (Berman 2002). Nor is it that these meanings have vague boundaries. The trouble is none of these meanings, even when applied to definite, non-borderline cases, serves the present purpose. Some uses of "coercing" mean: "*using force* on someone so that they do something, or at least so that their body is located or arranged in a certain way." But that's back to the proposal of section 4: a right against force. Other uses mean: "announcing an intention to *use force against* the addressee unless the addressee does something." But this does not account for the Guardian's forceless threats. Other uses mean: "announcing an intention to *wrong* the addressee unless the addressee does something." But, again, we are supposing that following through on the threat is not itself wrong. Other uses mean: "steering so compellingly as to excuse or justify compliance." But, again, many real-world threats of imprisonment don't compel.¹² Other uses

¹² Raz seems to suggest, at several points, something like a right against coercion so understood. Compelling steering can be wrong, even when beneficial, because it expresses disrespect for, or lack of concern for, autonomy (1986 378, 416). But this is puzzling. The value of autonomy, for Raz, derives from the value of an independently selected worthwhile life. The steerings that we are presently considering *better* enable one to live such a life (Quong 2011 58).

mean “announcing an intention to X unless the addressee Y’s where that *announcement itself wrongs* the addressee.” But then the announcement has to wrong independently of the right.

Second, what evidence do we have of a right of the kind that the liberal needs? It might be said that such a right best explains why certain announcements wrong us. But we can explain this well enough without such a right. For the most part, as we noted at the start of section 2, such announcements wrong us by leaving our choice situations worse than we are entitled to from the announcer (Kolodny 2017).

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

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

Perhaps the lesson to draw is that we have a right not against force or threat, but against being addressed by certain commands, even when not backed by any further penalties.¹³ At least, we

A further puzzle is that Raz seems to suggest that coercion will nonetheless be *interpreted* as expressing disrespect for, or lack of concern for, autonomy, unless it takes place within a relationship of trust (1986 157, 419; 2001). But Raz apparently grants that coercion *to get someone to fulfill his duties of autonomy*, even without trust, won’t be so interpreted, since he does not suggest that such coercion faces the same objection. So why does only coercion (without trust) for the sake of *coerced’s* autonomy, but not coercion for the sake of *others’* autonomy, express disrespect the *coerced’s* autonomy? Wouldn’t one expect precisely the opposite?

¹³ Illiberal interventions might also be said to violate a right against “paternalism”: aiming to benefit someone, in ways to which she in advance refused, or now refuses, to consent, by means other than advice. However, illiberal interventions in Prudie’s choice need not be paternalistic. They might aim not to benefit Prudie, but instead to please God. Or they might aim to benefit others, who consent to it (de Marneffe 2010 81). Moreover, many suggest that

have a right against being addressed by the commands of a “de facto authority.” A “de facto authority” in my (idiosyncratic) usage, is an (individual or corporate) agent whose commands are generally obeyed, for whatever reason: whether from a belief in the agent’s moral authority, fear of the consequences of disobedience, a reflexive disposition to comply, or temporizing calculation. By contrast, a universally ignored sidewalk crank, who urges “Repent!” to each passerby, would not be a de facto authority.

Suppose that this right, like the right against force, was a right to enjoy adequate control over subjection to such commands—“adequate” as balanced against the burdens that others would have to bear to provide one with greater control. Then analogues to the Avoidance and Responsibility Principles would follow. And they would single out for special concern the state’s commands to desist from Choices. For, while we may control, at least by a right of exit, our subjection to certain de facto authorities, such as churches in a liberal order, we don’t control

paternalism is wrong because it expresses that Prudie’s judgment about her own good is inferior (Shiffrin 2000; Quong 2011; Cornell 2015; Cholbi 2017). But why then isn’t it wrong simply to report the same fact, or to express, by similar actions, that her judgment about her responsibilities to others or to impersonal values is inferior?

Alternatively, illiberal interventions might be said to violate strictures on the model of Rawls’s (1993) “Liberal Principle of Legitimacy.” Underlying such strictures is the idea that certain forms of treatment pose a “problem” that makes such treatment impermissible, unless those so treated could “reasonably accept” grounds that, if true, would justify it (Nagel 1991, Freeman 2007, Larmore 2008, Cohen 2009, Estlund 2008, Gaus 2011, Quong 2011 168, Tadros 2016, Ch. 8). But, first, if what presents the problem is, as is usually intimated, force or threat against Prudie, then why should reasonable acceptability to her play any part in solving it? Why isn’t a sufficient solution, as sections 4–5 suggested, giving her adequate opportunity to avoid force and leaving her choice situation no worse than she is entitled to? Second, illiberal intervention need not involve force or threat, as we saw with the Omittites and our Trusting Future. (Nor need illiberal intervention involve attitudes, such as resentment, that presuppose that Prudie has a duty to act otherwise, which according to Gaus 2011 is the problem that reasonable acceptability must solve.) Finally, some illiberal interventions might be reasonably acceptable, because they are justified on grounds that are generic or compatible with a wide range of particular views (Arneson 2014; however see Cohen 2009 238), or on grounds of a particular view held by every member of a given society (see Quong’s puritans, below).

our subjection to the de facto authority of the state; it is inescapable.¹⁴ This is so even if the state, as with the Omittites, wields no force, or, as in our Trusting Future, makes no threats. So, if the state's commands were to desist from Choices, we would not have adequate control over our subjection to those commands. According to the Responsibility Principle, the right would stand as a bulwark against them.

Granted, a right against commands may seem like moral shadow boxing. Commands do not invade anything "real," one wants to say, such as one's body, or property, or choice situation. Suppose, however, that what is to be protected is a kind of social standing. Then it is perhaps less mysterious that there should be a right against being addressed by those commands that, in virtue of being routinely obeyed, have social reality as commands. For whatever else one's social standing may depend on, it would seem to depend on how one is addressed, where that in turn depends not simply on what is said to one, but also on the broader, recognized significance, in one's society, of what is said. The conjecture, then, is that one enjoys a certain kind of social standing insofar as de facto authorities, whether individual or collective, do not, in ways that one does not adequately control, command one. One is sovereign over oneself, one might say. No other earthly authority, individual or collective, tells one what to do, or "bosses one around."¹⁵

One might be tempted to say that such commands are "only symbolically" important. But this would be as misleading as saying that a (seeming) friend's falseness was "only

¹⁴ The state's commands might also be special because its de facto authority, unlike that of a church in a liberal order, is "final": because it occupies the highest point in the hierarchy that regulates the distribution of other de facto authorities. The right, we might say, is more seriously violated by the commands of a final de facto authority.

¹⁵ To be sure, a right against commands would place great weight on the distinction between commands and other speech acts. How commands differ from advice is perhaps clear enough. But how they differ from promises of rewards is less so. Perhaps, though, promises of rewards for desisting from bad choices, if they were generally accepted, would themselves be objectionably illiberal.

symbolically” important. For a friend’s loyalty is not so much a symbol, as a constituent of the friendship. Likewise, not being subjected to such commands, we are speculating, is partly constitutive of the relevant social standing. Moreover, like friendship, this social standing may be partly constituted by attitudes toward the social standing itself (in addition to the attitudes toward commands that constitute de facto authority). In a society with no conception of this form of social standing, no conception of people as sovereign over themselves, the social standing itself cannot exist, just as in a society with no conception of friendship, friendship itself cannot exist. In that society, instances of that kind of value are simply not to be had.

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

On the one hand, this right against commands might seem to prohibit too much. It would prohibit, rigoristically, means interventions in Choices that took the form of commands, such as, perhaps, sin taxes on cigarettes. And, left to itself, this right against commands would imply,

implausibly, that such means interventions are objectionable to the same extent and for the same reasons as parallel end interventions, such as sin taxes on religious articles.¹⁶

On the other hand, this right against commands might seem to prohibit too little. Just as it would permit, plausibly, state funding for the arts, insofar as such funding does not command anything, but merely makes options available, it would also permit, implausibly, parallel funding for a specific church. And it would permit state advice to stay away from Braineconomics.¹⁷ In sum, this speculative right against commands would extend the coverage of liberal protections beyond the range of the previous sections, by supplying an objection to illiberal commands not backed by force or threat. But, one might worry, it would not extend the coverage far enough.

7. Disparities of consideration and social standing as an equal

I turn, then, to an idea of Raz 2001: that illiberal interventions somehow treat those who are identified with the choices that they target as “second-class citizens.”¹⁸ As I would put it, illiberal interventions constitute, or encourage, relations of superiority and inferiority between members of groups that are socially identified with certain choices, just as, in other contexts, certain measures or institutions constitute, or encourage, relations of superiority and inferiority between members of groups defined along the lines of race, class, ethnicity, or gender. They put

¹⁶ Perhaps, though, as Stephen White points out to me, one might try to argue that commands about means are less of an assault on the relevant social standing than commands about ends.

¹⁷ Might one suggest a right against advice by de facto authorities? But warning about the risks of smoking, or offering statistics on good career and relationship “matches,” does not seem objectionably illiberal.

¹⁸ Raz suggests, more precisely, that paternalistic coercion assigns the coerced second-class status. This in turn undermines trust, without which he argues that paternalistic coercion is subject to objection (see note 12). But why not cut out the middleman? Assigning second-class status is objectionable in itself. We needn’t go on to argue that it vitiates the defense against a different objection (i.e., to paternalistic coercion without trust). Moreover, what assigns second-class status is not coercion, but condemning choices with which some are identified. Also compare Wall and Klosko 2003, Wall 2005, Christiano 2006, Nussbaum 2011, and, especially, Eisgruber and Sager 2007.

members of one group—in a sense that is immediately familiar, even if its analysis is elusive—“beneath” members of another.

What are relations of social superiority and inferiority? Elsewhere I suggest that they consist, in part, in asymmetries in power and de facto authority, especially where they are inescapable and “final,” occupying highest point in the hierarchy that regulates the distribution of power and de facto authority (Kolodny 2014). And I suggest, more relevantly for present purposes, in disparities of “consideration.” These disparities of consideration are pervasive patterns of responses toward people, in virtue of their being believed to have certain traits (such as having an ancestor with dark skin), that mark them as “higher” or “lower” in a social hierarchy.¹⁹

Consideration, our focus here, eludes easy analysis. On the one hand, merely recognizing someone’s special attributes or accomplishments needn’t amount to a disparity of consideration, marking him off as belonging to a higher caste. Buyers in a slave market can recognize special skills or strength in their prospective purchases. On the other hand, disparities of consideration need not (although they usually do) take the form of unequal respect for people’s “independent” claims: that is, claims to things other than relations of equality themselves, such as claims to a good choice situation. And they need not (although they sometimes do) take the form of a judgment that some lack the basis, such as humanity or rationality, for moral standing: for

¹⁹ Some might say that disparities of consideration are objectionable only because, if recognized, they carry psychic costs. But this is like saying that the insincerity of one’s (seeming) friend matters only if one finds out about it. Moreover, I doubt that we can identify which psychic costs matter, and explain why they matter, in a way that does not depend on some prior objection to disparities of consideration and to the resulting social inequality. If, for example, the inferior internalize the lesser consideration, so that they are less pained by it (or if the superior are buoyed by the greater consideration) is this an unambiguous good? Furthermore, recognition of lesser consideration presumably has these psychic costs because people attach importance to the disparity of consideration itself. Why second-guess them?

bearing the full range of rights and duties. People can be assigned to a lower order without such judgments. To think otherwise is to underestimate our genius for social distinctions.

Still, we can list some necessary conditions of consideration. First, consideration spreads to the person as whole; it isn't cabined to a particular aspect. Second, the responses that constitute consideration are apt to be triggered (when someone is thought to have the trait) in a wide range of social contexts (compare Lippert-Rasmussen 2014). Third, the responses that constitute consideration, unlike love and friendship, are agent neutral. Members of the higher caste are favored over members of the lower caste, whoever does the favoring. Finally, the responses that constitute consideration aren't mere detached appraisals, but have practical import, for how to treat the target of the response.

While what is primarily objectionable is the pattern of responses that constitute the disparity of consideration, particular responses can be wrong by helping to constitute or sustain it, or by endorsing it. These responses can wrong different parties in different ways: the specific target, if any, of the response; the members of the group defined by the trait; and, in the broadest sense, everyone, including those outside that group, whom that pattern deprives of relations of equality. Many paradigm cases of wrongful discrimination are wrong, at least in part, because they are such responses (Hellman 2008, Scanlon 2008). Of course, many cases of wrongful discrimination are wrong in addition, or instead, for other reasons, such as not equally respecting people's independent claims (Moreau 2010, Arneson 2013b, and Lippert-Rasmussen 2014). But these are distinct wrongs, and, in principle, discrimination can wrong by contributing to a disparity of consideration, without failing to meet anyone's independent claims.²⁰

²⁰ Hellman 2008 gives the example of black prisoners under apartheid being issued more comfortable, but demeaning, short pants.

Which brings us to the intervention against Brainechanics. Just picture it—and you needn't go to extremes. There aren't any house-to-house searches or forced confessions. Rather, when the practice of Brainechanics is so blatant that peace officers can't pretend that it escaped their notice, they will issue a citation, which will escalate, after repeated violation, from a warning to confiscation of ritual equipment, a small fine, or a night in jail. Nothing terribly ham-handed or Orwellian. Yet how could this fail, in a social world anything like those we are acquainted with, to mark Brainechanics as “beneath” others?²¹

Why is this? Because, I suggest, the measures in question express, and encourage the expression of, condemnation of Brainechanics, not necessarily as a practice that wrongs others, but as no way to live. And in a social world anything like ours, to condemn that choice is to rank those who are socially defined by the choice as inferior. In this context, there is no way to distinguish condemnation of the trait from subordination of the identity that trait is assigned. Compare the tension in declaring: “People are just objectively uglier when they have the physical characteristics associated with your race. But I don't mean that in a racist way.” It's not just a matter of disentangling the trait from the identity in one's own thoughts, or of conveying to others that one has so disentangled them. It's also a matter of what the context even makes it possible to say (Eisgruber and Sager 2007, Hellman 2008).

The suggestion, then, is that, despite everything else that might be said in favor of the intervention, it shares some of the characteristics of certain paradigm forms of, e.g. racial, discrimination and so is objectionable for much the same reason. And that objection is

²¹ This may explain why banning a religion strikes Rawls and his readers as an obvious paradigm of *unequal* liberty (1971 §33). On reflection, this is puzzling, since the ban leaves everyone with equal liberty (and, assuming the religion is not valuable, with liberty of equal value). It removes the *same* option from *everyone's* menu, like a prohibition of alcohol or perjury. Perhaps the sense that it would institute a kind of inequality stems from our recognition that it would assign members of the religion subordinate status.

standardly treated as something approaching a side-constraint. The argument, “Yes, it would be discrimination, but think of the gains in efficiency!” scarcely gets a hearing. And even if the objection should not be treated as a side-constraint, it is nonetheless an objection of no small weight in the scales.

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

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

“shedding” one’s racial identity (e.g., “passing”). Second, it might be said that being a Brainechanic is due to a flaw: namely, poor judgment. “Race,” by contrast, involves no such flaw. True, but personal flaws don’t, in general, justify different grades of citizenship.²²

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

To be sure, it is not wrong in the same way for an individual (or private association) to give such advice. The state remains special, despite all that we have done to question the importance assigned to force and coercion. First, even if the state does not use force or threats, it nonetheless wields final, inescapable, and overwhelmingly superior de facto authority, as well as other forms of power, over individuals. Consequently, each individual is, in a manner of speaking, “subordinate” to the state. Or, more carefully, the fact that the state wields final,

²² Does a concern for social equality then give us a reason to refrain from otherwise justified criminal penalties on the grounds that they condemn the choice to commit crime and so condemn the criminal (Wall and Klosko 2003 20; Wall 2005 299–300)? To begin with, not all criminal penalties need to target an existing identity, as a “career criminal,” or assign a new identity, as “convict.” In many cases, it would be better if they focused on particular violations of the law, imposing the regrettably necessary deterrent cost in a way that is more or less cabined from the rest of the target’s social identity. In those cases in which targeting a existing criminal identity (e.g., as a mafioso or militant white supremacist) or assigning a new identity as a convict (e.g., by long-term incarceration) seems more acceptable, the criminals have not simply broken the law, but moreover wronged others in grave ways. Since their stigmatization is more or less the flip-side of insisting on the equal standing of their victims, it is unclear how a concern for the equal standing of all concerned could counsel mitigating such stigmatization. By contrast, Brainechanics does not wrong anyone or deny anyone’s equal standing.

inescapable, and overwhelmingly superior power and authority over individuals risks their being subordinated to those individuals whom the state represents. Second, the state defines a basic social standing, citizenship, with respect to which people are equals regardless of other hierarchies within private associations. For both of these reasons, if the risk of disparities of consideration is already live—if, say, there is a history of disparities of consideration among certain groups—and the state affiliates itself with one of the relevant groups against another, this itself can contribute to the disparity, not simply causally, but also constitutively. Third, individuals cannot but form and express judgments about the worth of certain choices. This is part of their deciding how they themselves are to live. The state, by contrast, does not need to make up its mind. Finally, these very differences, in turn, provide a context within which private individuals can effect a distinction between condemning the choice and denying equal standing. One citizen can preface her advice to another with something like the line Hall puts on the lips of Voltaire (“I disapprove of what you say, but I will defend to the death your right to say it”): “While (i) you are, or would be, making a mistake in remaining within, or joining, the Temple, (ii) I oppose any intervention in your doing so that threatens your standing as an equal member of our shared society.” The advice is thus focused explicitly on the value of the choice and not the social standing of the person. The state, by contrast, can’t say this without a kind of pragmatic contradiction. For, in saying (i), the state does the very thing it commits itself to oppose in (ii).

Which measures “condemn” or “affiliate” is a contingent matter. As is the nature of symbols, a great deal will depend on history and context. In particular, the fact that a line was drawn in the past may give crossing it a significance that it would not otherwise have. The establishment of a Federal Church of America is not only constitutionally, but also morally,

unthinkable. But comparable alarm about the Church of England, given what it has become, may seem provincial (like certain arguments for the necessity, in all times and places, of judicial review of primary legislation).

Now, this account—which might be caricatured, with some justice, as “liberalism as identity politics”—has an obvious limitation. It protects only those choices that are associated with an identity that might attract a disparity of consideration. Religious affiliation—along with its negative image, the rejection of any religious affiliation in an overtly religious society—may be such a choice. But other choices are not associated with such an identity. Choices of means, such as health or finances, and of some ends, such as engagement with the arts, need not be associated with social identities. So, on this account, if end intervention is usually more objectionable than means intervention, it is because social identities usually coalesce around ends rather than means.

These implications are not unwelcome, since these interventions don’t seem objectionably illiberal, at least not in the way in which a ban on Brainechanics would be. However, other such interventions, which do not mark an underclass, do seem objectionably illiberal. Consider a system that steers people toward good career or relationship “matches.” In principle, everyone’s options might be pared back equally (e.g., each astrological sign might be banned from dating exactly one other sign). Or, to take an example put to me by Jon Quong, consider a homogenous, puritanical society in which all agree that sex outside of marriage is bad. Even in such a society, criminal penalties for fornication would seem intuitively illiberal, despite there being no non-puritans to be subordinated. To explain why these interventions are illiberal, then, we must hope that the resources marshaled in the prior sections suffice.

These examples, incidentally, illustrate how social equality, discussed in this section, is a different kind of social standing from self-sovereignty, protected by the right against commands, discussed in the previous section. On the one hand, self-sovereignty can be compromised even when one is the social equal of other individuals. For one can be subject to the commands of a *collective* de facto authority, without being subject to the *superior* de facto authority of any other *individual*. On the other hand, as the case of the state advice reflects, one can suffer from a disparity of consideration, and so stand to others as inferior, without being subject to the commands of a de facto authority.

8. Conclusion

I began by canvassing familiar justifications for liberalism. Illiberal interventions can deprive people of the means to valuable activities, and they can violate rights against force. While these justifications are an important part of the story, I suggested, our liberal impulses outstrip what they can, even jointly, explain.

This led us to search for further, less familiar, justificatory materials. In a frankly speculative spirit, I considered a possible right against commands, understood to comprise a kind of social standing, of self-sovereignty. I also suggested that a disparity of consideration, and so a loss of a different kind of social standing, of equality, can be wrought by condemning choices with which social groups are identified. Adding these more conjectural materials to more familiar ones might let us keep better faith with our liberal sentiments. Whether they are more than conjecture, however, is another matter.

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