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Toleration and reasonableness

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Traffic

In the streets of a large city, people drive their cars for different reasons and to different destinations. Because the roads are crowded and because these different journeys cut across each other, with people going different ways through various intersections, there is a potential problem. If two vehicles pass through the same intersection at the same time, there may be a collision, and if there is, one or both of the drivers may fail to reach their destinations. (Indeed, one or both of them may be hurt, maimed or killed and their vehicles damaged, perhaps beyond repair.)

The point of traffic rules is, first and foremost, to prevent such collisions, and ensure that the roads are safe for drivers and their vehicles. But that is not their only point. If the whole point were 'safety-first', it could be accommodated by requiring all drivers to proceed at 5 mph and to stop and get out at each intersection in order to ascertain that it is safe to proceed. But then, few people would get to the destinations they want to reach at anything like the time they want to reach them. Fortunately, the aim of a good set of traffic rules is also to ensure that everyone can proceed to their destinations as expeditiously as possible, under the condition that proceeding to these destinations must not make it impossible for others to proceed expeditiously to theirs. In other words, the streets and the rules governing their use attempt to accommodate everyone's purpose in using them. The rules say: 'No matter where you want to go or why, we will allow you to proceed to your destination. Each of you just has to accept the few restrictions that are necessary to extend this right to each and every other driver.'

So we impose a speed limit, and we ask people to obey stop lights. We have rules about the right of way at uncontrolled intersections. We enforce following distances and overtaking restrictions. Probably nobody gets to her destination as quickly as she would if she had the streets to herself. Probably no one has exactly the sort of trip he would prefer. But the restrictions we think are reasonable. There is no one for whom they destroy the

point of driving. The rules simply modify the way each person pursues her purposes on the streets so as to make her use of them compatible with their use by everyone else.

Liberal algebra

It is not my aim in this chapter to talk about traffic laws. But I believe they provide a useful analogy for thinking about a difficulty – which, I fear, is an irresolvable one – facing modern liberal theories of toleration.

Liberals envisage a whole society, not just a network of streets, in which aims of all sorts can be pursued. As they negotiate their way through life, people aim at different values and pursue different goods. These pursuits pose a problem of social order, which consists in the possibility (likelihood, inevitability) that the activities inspired by various people's aims will come into conflict with one another. Conflicts arise, as they did in the traffic analogy, when the activity of one agent cuts across or collides with the activity of another, in such a way that the actions in question cannot both take place. The legal rules of a liberal order may be viewed, like traffic rules, as a way of dealing with that possibility of conflict. For example, it is the job of property law to address the possibility of conflict between different persons' attempts to make use of the same material resources. They do this, crudely, by indicating for every resource who is allowed to make which use of that resource and when. But it is not just property: there are rules governing the time and manner in which parades and demonstrations can be mounted; and there are restrictions on the exercise of political liberty designed to preclude the possibility of collision between one person's angrily brandished fist and another's arrogantly positioned nose. All these arrangements are supposed to be governed by the liberal ideal of securing order in a way that is fair to the aims and activities of all.

This aspiration of modern liberalism is Kantian in inspiration: Act externally in such a way that the free use of your will is compatible with the freedom of everyone according to a universal law.¹ The idea is that although different people have very different conceptions of value and happiness, a set of constraints can be formulated that, if accepted, would allow each person's pursuit of his own ends to coexist – without conflict – with the pursuit of ends by each and all of the others. Although, in order to avoid conflict, each person has to accept some restrictions, the idea is that no one will be required to labour under such extensive or burdensome restrictions as to make the pursuit of his chosen ends impossible.

Formally speaking, the liberal claim may be described as the task of specifying a set of constraints on conduct (call it set C), satisfying two conditions: (1) no two actions permitted by C conflict with one another; and (2) for each individual who is subject to C, the range of actions permitted by C is adequate for the pursuit of his ends. I shall call these the requirements of *compossibility*² and adequacy. Together they amount to something

like algebraic specifications for the formal structure of a liberal society. Although there is no guarantee that the simultaneous equations of this liberal algebra admit of a solution, liberals remain optimistic. Their optimism is not in a utopian spirit, but in the belief that a practicable set of constraints can be formulated and realised under the familiar circumstances of modernity, taking people as they are, and laws – in only a mildly reformist spirit – as they might be.

Compossibility and adequacy together

To say that two actions conflict, for the purposes of the compossibility requirement, is to say that the performance of one of them interferes with the performance of the other (and perhaps vice versa). Direct physical incompatibility – like two people struggling to use the same tool at the same time – is the clearest type of conflict.

Conflict is not the same as opposition (or disapproval). It means more than that two actions are inspired by rival ideals, or that the agents are opposed, each to the other's action, or that one of them wishes the conduct of the other would not occur. I may oppose or disapprove of someone's conduct without my disapproval (or my own contrary pursuits) conflicting with or impacting adversely upon them. This familiar distinction is of course crucial to our understanding of liberal toleration: as a liberal, I tolerate something even though I disapprove of it; that is, I subscribe to a social structure that makes room even for activities to which I am utterly opposed.

There are, however, intriguing cases in between, one of which I want to put on the table at this stage. Think back to the framework of my traffic analogy. My friends and I are holding a funeral procession for some dear departed colleague. But the procession is continually broken up by bikers weaving noisily in and out of the cortège, to the extent that it seems to us that our procession has been ruined. How should we analyse this case?

Perhaps an argument could be made that the actions (by us) required for the successful pursuit of our funereal end actually conflict with the actions of the bikers. On this analysis, a set of constraints, *C*, that permitted both the bikers' actions and the mourners' actions would fail the test of compossibility. But that argument may not work: there may not literally be any physical incompatibility – for it may be part of the bikers' aim to weave skilfully in and out of the procession in a way that does not cause any of the funeral vehicles to slow down or any of the mourners to break step.

Even so, there does seem to be a deeper incompatibility. If *C* permits bikers or skateboarders to behave in a way that ruins the procession, then maybe we have to say that *C* fails the test of adequacy. For although it may be true that all the actions or behaviours that the mourners actually need to perform are permitted by *C*, still acceptance of and submission to *C*

means that the mourners' ends are bound to be frustrated by actions of the bikers also permitted by C.

By itself, compossibility is a relation between actions, not directly a relation between ends. Ends come into the picture when we consider adequacy: or rather, the relation between ends – the idea of a Kantian 'kingdom of ends'³ – comes from the combination of compossibility and adequacy, not from compossibility alone. To focus on adequacy as well as compossibility is to indicate our desire for a liberal, not just a Hobbesian, peace. Whether the liberal order respects and makes room for each of us is not just a matter of whether it protects us from collisions. It is a matter of how much room is left for our freedom. And that in turn is not just a question of how many actions are permitted to each of us (whether that rises above a certain minimum or whatever). It is a question of how the permitted minimum stands in relation to the ends we take it upon ourselves to pursue.

Now consider again our example of the bikers and the mourners. The complaint of the mourners is not a complaint that actions they want or need to perform are prohibited. Their complaint is that their actions are frustrated by permissions granted to others. This indicates two possible ways of formulating the condition of adequacy. We may formulate it as:

2a For each individual P who is subject to C, the range of actions permitted to (be performed by) P by C is adequate for the pursuit of P's ends,

or as:

2b For each individual P who is subject to C, the range of actions permitted to anyone by C is such that action within C is adequate for the pursuit of P's ends.

According to (2b), the permissibility of the bikers' actions under C would mean that C fails the test of adequacy so far as the mourners' ends are concerned. But this result would not follow under (2a).

Which of the two should we adopt? I think we have no choice but to adopt the second version, (2b). The importance of complementing compossibility with adequacy is that a liberal theory ought to be concerned about whether each individual has enough freedom for him to flourish as a person with ends of his own to pursue. We are not just interested in reducing conflict; we are trying to reconcile something that is important and adequate in each person's case with something that is important and adequate in the case of each of the others. If we were to reject (2b), and plump for (2a) only, our concern for adequacy would be in danger of appearing implausibly one-dimensional. Although pretending to be concerned with whether a person has room to pursue his own ends, our concern would run out once we were assured that certain actions – in the sense of bodily movements – were available to him. But the pursuit of one's ends is a more complicated matter than that. It depends not just on action – in the sense of bodily movement – in the abstract, but on action under a description, and

the description may well involve a reference to circumstances that include the actions of others.⁴

Maximisation and equality

Apart from the issue between (2a) and (2b), how strong is this requirement of adequacy? The proposition that C must be adequate for the pursuit of P's ends does not entail that P is assured of success in pursuing whatever aims she has set herself. That is her responsibility, or it may be a matter of good or bad fortune, or it may be a matter of competition with others; but at any rate, success is not what the liberal order purports to offer individuals. Adequacy has to do with the efforts one might undertake in pursuit of one's ends: the idea is that a set of constraints fails the test of adequacy if it denies her what one might call a fair shot at pursuing her ends. In many situations, what counts as a fair shot cannot be defined except by reference to the overall structure, and that introduces a potential for circularity, which is reasonably well understood.⁵ But, in other cases we understand the contrast between pursuit and success reasonably well. A set of constraints is not reasonable if it prevents me from ever demonstrating my political convictions in public; but it is not unreasonable simply by virtue of failing to guarantee that I win over any adherents. A set of constraints is not reasonable if it prevents me from doing anything that my religion prescribes in the way of worship; by the same token, it is not made reasonable by the mere fact that my religion itself makes provision for its own attenuated practice under conditions of oppression and persecution. That provision is to be understood as a response by religion to something that the liberal ideal forbids, not as a relaxation of the demands that the accommodation of this religion imposes.

However we define it, the constraint of adequacy is weaker than two other constraints with which might have defined the liberal ideal. One is maximisation (in the case of each individual). Kant, for example, talks about a constitution allowing 'the *greatest possible human freedom* according to laws, by which *the liberty of every individual can co-exist with the liberty of every other*.'⁶ Some of John Rawls's early formulations indicated something similar: individuals are to have a right 'to *the most extensive* basic liberty compatible with a similar liberty for others.'⁷ The idea of maximisation is easy enough to apply in cases where simple Pareto-improvements of liberty are possible: where at least one person's liberty can be enhanced without diminishing that of anyone else. But it is a much more difficult conception to apply when we face trade-offs and the interpersonal comparisons that they involve.

The other somewhat stronger constraint would be a constraint, not just of adequacy but of equality. The Rawlsian formulation just quoted referred not only to compossibility and maximisation but also to the idea of 'a *similar* liberty for others'.⁸ In *Political Liberalism*, the equality constraint

is more prominent: 'Each person has an *equal* claim to a fully adequate scheme of *equal* basic rights and liberties, which scheme is compatible with *the same* scheme for all.'⁹

Equality here may be understood in two ways. It might mean that the liberties must be the same for everyone: if P has a right to do X, then everyone in the society must have a right to do X. Alternatively, it might mean that, even if the liberties are different, their net effect must be such as to enable the persons who enjoy them to advance their respective aims to an equal extent.

The second interpretation takes us back to – and perhaps compounds the problem about – the relation between adequacy and success. Now we have to calculate the relation between ends and activities, not just in terms of adequate pursuit, but in terms of constraints on conduct that secure for each agent the same degree of success in pursuit of his end as is secured for others in pursuit of theirs. We sometimes pretend that we can do these calculations. We ask whether some sect or activity is having to bear an unfair proportion of the restraint required on all sides for an orderly social life, although I am not sure whether we can figure all that out. At any rate, adequacy by itself is sufficient to pose the difficulty that I want to address, so – in the present context – there is no need to consider any idea of equality that goes beyond that.

What about the first interpretation of equality? Does a liberal order assume that the set of liberties made available to one person for the pursuit of his conception of the good will be the same as the set of liberties made available to each other person? The assumption that they will be the same is appealing, for it coincides with slogans about 'the rule of law' and 'equal rights'.

But I think there are good reasons to question it. In the real world, we have to come to terms with the fact that people pursue not only different aims, but aims with different and disparate shapes. Consider the variety of religious conceptions. Some people will belong to small, intensely sectarian groups; some will belong to Churches that are organised on a cosmopolitan scale (such as Islam or Roman Catholicism). For some the essence of religious practice may be community action; for others it may be a cloistered monastic ideal. Some may belong to Churches (like Episcopalianism) that retain some of the official character they had before they were disestablished; some may practice cults like spiritualism that are frowned on in official circles. Some people will be tormented by religious doubt; others will live contented lives of secular atheism; still others will be crusading atheists. Since people's aims are so utterly disparate in their character and content, it is likely that the activities that count as the pursuit of those aims will be different also, and if so, it is likely that the liberties and protections that the parties need or require will differ accordingly.

For example, someone who belongs to an organised Church may think it important to have a right to freedom of worship, whereas a contented

secular atheist may say that he has no use for such a right. By this I mean that if the atheist is asked whether freedom of worship is an important liberty for every person, he may quite reasonably answer 'No'. No doubt, we could abstract from the term 'worship' and find some very vague description (freedom of conscience, perhaps, conjoined with freedom of assembly) that he would recognise as a right that everyone needed. But I think such abstraction would very quickly end up with our saying simply that everyone had a right to pursue his own aims, and that is not being denied. What is in question is whether that universal right entails equal or uniform rights at a more concrete level.¹⁰

A difficult case

Let me now develop an example that, I think, poses a fearful difficulty for this sort of Kantian algebraic liberalism that I have been trying to characterise.

In the modern world, most societies for which liberal arrangements are thought to be practicable contain many persons who satisfy each of the following descriptions. P is an entrepreneurial pornographer: he enjoys pornography, he enjoys catering to others' tastes for pornography, and he rather relishes the shock that his pornographic wares occasion in unwilling passers-by. Q is a devout Muslim: he abhors pornography, but is constantly distracted by P's display of it. Q's concern about pornography is not just a concern for himself – he also despairs of being able to bring up his children as pious Muslims in a social environment polluted by P. P, on the other hand, is fond of saying to his own children things like 'It's a lurid and exciting world out there, my boys. Enjoy!' R is a secular humanist, who has no children and no interest in anyone else's children. He manages to pursue his own aims and hobbies in a way that is impervious to public displays of pornography. He is not one of P's customers, but he is not particularly distracted by P's behaviour; nor for that matter is there any incompatibility between his conduct and ideals and those of Q.

Arguably, it is not possible to find a set of constraints satisfying conditions (1) and (2), above, that can accommodate the ends of P and Q and R. P and R could certainly live together. And Q and R could live together, provided R didn't try to enter Q's mosque in a state of undress, etc. But P and Q cannot live together in a liberal arrangement (with or without R). P's pursuit of his way of life makes Q's way of life impossible; and the conditions for Q's pursuit of his way of life make P's way of life impossible.

The example is schematic but by no means unrealistic. Something like this happens in multicultural settings all the time. Readers will have no difficulty in recognising this as the crux of the difficulty in the Salman Rushdie affair. With slight alterations, we can equate P with Rushdie, and Q with those hundreds of thousands, perhaps millions, of Muslims, in Britain who

were deeply offended by the publication of Rushdie's book, *The Satanic Verses*. So this is the sort of difficult case I want to talk about.

The peremptory response

How difficult is this case? It is often said that this is to be expected, since the liberal principle of toleration was never supposed to be a principle of unrestricted range. Look at Locke on atheism, or even, in his early work, on Roman Catholicism.¹¹ No one can tolerate everything. Some things are necessarily excluded from the scope of toleration. If someone loves murder, or torture, a liberal society cannot guarantee him a niche that is adequate for his purposes. Suppose I get my kicks from enslaving other people: I am an Aristotelian slave-hunter; I go out looking for what I regard as 'natural slaves' to capture, as other people hunt deer or wild boar. Patently this conception of the good cannot be accommodated within the liberal scheme I have outlined. Room cannot be made for me to pursue this end except at the expense of completely frustrating some other people's pursuit of their ends (viz., those who might fall victim to my slave-hunting).

Because cases like these are extreme and distasteful, it is tempting to present the dismissal of the aims of sadists, torturers, slave-hunters, rapists, murderers etc., from the realm of ends to which the liberal claim is said to apply, as obvious and more or less peremptory. But such a response is unsatisfactory.

It is unsatisfactory, first, because it doesn't help us with more problematic cases – cases like the one I have developed. In the example of the pornographer and the Muslim, we concluded that P and Q cannot live together in a liberal arrangement any more than our imagined slave-hunter and his victims could live together. But, even if the incompatibility between P and Q is like the incompatibility between the slave-hunter and his victim, it is not clear who, in the case of P and Q, is like the slave-hunter and who is like the victim. Is P like the slave-hunter because he insists on flaunting his pornographic wares in a way that makes Muslim life impossible for Q? Or is P like the victim because his exhibitionism is crowded out by Q's imperious insistence on a certain sort of pious environment? If a liberal society cannot accommodate P and Q together, then which of them should it throw out? P or Q or both? And what is the principle on which that is to be decided?

Second, the strategy of peremptorily excluding certain ends as unreasonable or clearly unacceptable, etc. from the ambit of toleration underestimates the ambition associated with the liberal model itself. Liberalism makes a very strong claim: namely, that it is the liberal algebra itself that provides the reasons for excluding these ends. The point of liberal algebra is to explain the wrongness (and hence the legitimate excludability) of things like murder, rape, assault, fraud, and non-consensual sadism. The prohibition of such actions is supposed to be explained and justified in virtue of

their being comprised in any set of constraints *C* that satisfies adequacy and compossibility. That explanatory point is simply defeated if it turns out that the success of the liberal claim relies on our presupposing that of course such ends and actions can be excluded.

Rawlsian ‘reasonableness’

Modern liberals in the Kantian and Rawlsian tradition wildly overestimate their ability to think through these cases. They are led to do so by their possession of technical jargon, philosophical terminology that they use to characterise – but cannot use to justify – the idea of an unacceptable action, or an aim that may legitimately be excluded from the Kantian kingdom of ends.¹²

Consider the terminology of reasonableness – the contrast between the reasonable and the rational – put about by John Rawls and his followers. Persons are reasonable, says Rawls, when the conceptions of the good for which they demand accommodation are adopted and put forward in a way that is sensitive to the need for a fair scheme of cooperation. The liberal commitment to allowing individuals to pursue their aims is complemented by an insistence that individuals be reasonable in choosing what aims to pursue. Each person must take into account that he lives in a society with others, each of whom in turn has a life to lead by his own lights. Each must take account of this situation in conceiving his ethical and religious aims and obligations. Though individuals view themselves as ‘self-originating sources of claims’ in the sense that the pursuit of the good as they conceive it carries weight in its own right without being derived from any antecedent social conception, still they must not think of themselves as ‘tied to the pursuit of the particular final ends they have at any given time, but rather as capable of revising and changing these ends on reasonable . . . grounds.’¹³ People must be prepared to tailor and discipline their conceptions of the good so they fit together into a just and practicable social structure. As Rawls puts it:

The principles of right, and so of justice, put limits on what satisfactions have value; they impose restrictions on what are reasonable conceptions of one’s good. In drawing up plans and in deciding on aspirations men are to take these constraints into account. We can express this by saying that in justice as fairness the concept of the right is prior to that of the good.¹⁴

In the present context, the concept of the right is the concept of a regime regulated by compossibility and adequacy. Individuals are entitled to choose only those ends that they have reason to believe may be accommodated within a regime governed by these constraints. They may not simply cling to their given religious or ethical convictions without regard to their implications for the compossible practice of other people’s aims and pursuits.

Fair enough. But how does it cut in our difficult case? Given that P and Q cannot together satisfy the constraints that interest us, which of them is to be regarded as unreasonable? Is it P or Q who has chosen a conception of the good that is incompatible with liberal assumptions?

The difficulty becomes even more acute if we imagine that P was once a fanatical pornographer to the point of rampant exhibitionism and voyeurism, in a way that used to offend people like R, but that he underwent expensive therapy and re-education so that his residual pornographic ideals could fit reasonably into a liberal society. Unfortunately, he had not counted on having to accommodate himself to Q's sensitivities as well as R's, and he is inclined to draw the line at this point, insisting that he has already given up as much as he can reasonably be expected to give up. And something similar may be true of Q. Perhaps he used to believe that he could not pursue the pious life of Islam and bring up his children as good Muslims in a society desecrated by the mere presence of unbelievers like R. But he painfully changed his outlook, so that he could live at peace in England with neighbours like R. But now the problem of P has come up. Is it reasonable to expect Q to accommodate himself further to this sort of blasphemous presence? (More reasonable, I mean, than to expect P to pull in his horns to accommodate the sensitivities of Q?)

Perhaps we can appeal to some other aspect of Rawlsian reasonableness to help us here. For it is well-known that 'unreasonable' has two meanings in Rawls's later work. On the one hand, as we have just seen, it refers to a person's acceptance of the subjection of the good to the right: his willingness to tailor his ends so that they can be practised on fair terms with the practice of the ends of others, similarly disciplined. On the other hand, 'unreasonable' is used by Rawls to refer to a conception of the good whose divergence from other conceptions is not intelligible in light of what he calls 'the burdens of judgment'. This is a quasi-epistemic conception, comprising the various hazards, vicissitudes and perspectives involved in the conscientious exercise of people's powers of reason and judgement in the circumstances of modern human life.¹⁵ I don't want to go into this in any detail – it is quite familiar to Rawls aficionados, and quite important. What I want to stress is that although Rawls casts the net of this quasi-epistemic sense of the reasonable quite wide – leaving open the possibility that reasonable people will come up with quite different conceptions of the good,¹⁶ and stressing that 'many of our most important judgments are made under conditions where it is not to be expected that conscientious persons with full powers of reason, even after free discussion, will arrive at the same conclusion'¹⁷ – although he concedes all that, Rawls does think that a society will be justified in controlling and excluding aims that are unreasonable in this epistemic sense, 'so that they do not undermine the unity and justice of the society'.¹⁸

It is not hard to see why he would want to do this. But it is hard to see why he would want to say it. For a view may be mad but harmless, or a

whole society may comprise stupid but perfectly compossible beliefs. The real danger for Rawlsian theory is the converse: views that are reasonable in the sense of not crazy, but whose reasonableness is problematic in the sense of their orientation to compossibility with others. I have argued elsewhere that these definitions of 'unreasonable' can come apart.¹⁹ Militant Islam provides an example of a comprehensive conception whose claims are not at all unreasonable in the quasi-epistemic sense, but may seem nevertheless unreasonable in the sense of openness to accommodation with other conceptions.

At any rate, I do not think unreasonableness in the epistemic sense – in the burdens of judgement sense – provides any basis for distinguishing between the conceptions of P and Q. An alternative strategy, within the fabric of late Rawlsianism, may be to ask whether Q's – the Muslim's – sensitivities can be stated in publicly accessible terms? If they cannot, then maybe they have no claim to be respected in a liberal society, for Q cannot state his complaint against P, and against the system that permits P, in publicly accessible terms.²⁰ On this approach, the trouble with Q's insistence on a certain sort of moral environment, free from pornography and blasphemy, is that it depends on premises that are internal to his religious faith, and that might seem perhaps arbitrary from an external point of view.

This does show, I think, some of the difficulties involved in defining adequacy. If our constraint were success as opposed to adequacy, presumably the success criterion would have to be understood on the terms posed by each conception of the good. It is of no use to say that one's pursuit of one's own aims is successful, if it does not seem successful by one's own lights. And the same must surely apply to adequacy – even accepting a distinction between adequacy and any guarantee of success. I don't think there is any way of saying that a set of permissions is adequate for the practice of a religion except by paying attention to how that set of restrictions seems from the internal point of view of the religion. To abandon any interest in that would be, in effect, to abandon any real concern for adequacy. An externally stated adequacy condition – which was quite at odds with internal conceptions – would be arbitrary and unmotivated. So there is a delicate line to walk here. We want reasons affecting the constraint set to be stated publicly. But by subjecting the constraint set to a criterion of adequacy, we accept that it is important to comprehend how it seems from the point of view of each of the conceptions that it purports to accommodate. So I think we have to say something like this. Even if this particular aspect of Q's faith cannot itself be comprehended publicly – and often it can – still, we can publicly comprehend Q's good-faith insistence that not being allowed to practise it undermines his conception of the good. (By analogy, one does not need to grasp the mysteries of transubstantiation in order to understand the difficulties that any general prohibition on the consumption of wine would pose for the Catholic practice of the Mass.)

The original position

A similar result may be reached by considering the thought-experiment that dominated Rawls's earlier work. Consider the predicament of someone in the original position who thinks it possible he turn out to be a person like Q. Of course, people in the original position do not know which aims they will want to pursue. No one thinks of himself as a Muslim, say, while he is in this choice situation. But the parties have general knowledge, and they know that aims of this sort are commonly pursued. Each must therefore take into account the possibility that he will end up holding an aim of this sort. With this possibility in mind, how should he bargain or deliberate? Now Rawls's argument for religious liberty goes as follows:

[I]t seems evident that the parties must choose principles that secure the integrity of their religious and moral freedom. They do not know, of course, what their religious or moral convictions are, or what is the particular content of their moral or religious obligations as they interpret them. . . . Now it seems that equal liberty of conscience is the only principle that the persons in the original position can acknowledge. They cannot take chances with their liberty by permitting the dominant religious or moral doctrine to persecute or suppress others if it wishes. Even granting (what may be questioned) that it is more probable than not that one will turn out to belong to the majority (if a majority exists), to gamble in this way would be to show that one did not take one's religious or moral convictions seriously, or highly value the liberty to examine one's beliefs.²¹

However, if one thinks it possible that one will turn out to be Q, then one might think it possible that an acknowledgment of equal religious liberty for certain others – say a cult of pornographic Satanism by P – will be inimical to the practice of one's faith. On the other hand, each person in the original position will also think it possible that he adheres to the outlook of P or to some similar conception that sits ill with the sensitivities of a person like Q. Contemplating this possibility, the guy in the original position will be reluctant to sign up for any principle of sensitivity that limits his freedom in this regard.

So the person in the original position is in a bind. He wants to leave room for the possibility that he may hold sensitive religious convictions, and he wants to leave room for the possibility that he may hold a conception whose practice sits ill with those sensitivities. What is he to do? He cannot gamble with his ability to discharge whatever religious obligations he turns out to hold, by plumping either for a principle that favours a given sensitive aim or for a principle that favours pornographic aims. He faces a dilemma. The actual impossibility of aims of these various types is represented in the intractability of this decision problem for each person behind the Rawlsian veil of ignorance.

The generalisation

Here is a general formulation of the difficulty. We take a set of individual ends $\{e_1, e_2, \dots e_n\}$ for which no set of constraints can be designed that satisfies the requirements of adequacy and compossibility, and we consider that the exclusion of just one particular end – say, e_n – would remove the difficulty, leaving us with a set of ends – $\{e_1, e_2, \dots e_m\}$ – that can be ordered by liberal principles. This, then, is seen as a fact about e_n which warrants its exclusion not on any intrinsic or qualitative ground (its wickedness or offensiveness as an end), but simply on the ground of its formal incompatibility with other ends in the set, in relation to the systemic requirements of a liberal order. On this basis, we say that activities in pursuit of e_n may legitimately be prohibited in a liberal society, and that e_n itself may be proscribed as an end, in the sense that people must recognise a responsibility to come up with something other than e_n as their account of what makes their respective individual lives worth living.

The difficulty is fairly obvious. If the problematic set of ends we began with suffers from impossibility, this is presumably on account of some conflict between activities in pursuit of e_n and activities in pursuit of some other end – say, e_m . It is not the intrinsic quality of e_n that warrants its exclusion but only its affront to compossibility. So why is that not a ground for excluding e_m rather than e_n from the set of acceptable ends? Why should the blasphemer's ends be excluded rather than the particularly sensitive aims of the pious? After all, there is a sense in which each places burdens on the other. Or why should restrictions be placed on the person whose way of life requires an environment free of pornography rather than on the person whose life style involves the flaunting of pornographic images? The purely formalistic liberal strategy seems incapable of answering these questions.

Types of aim

Perhaps we can distinguish among types of end, and rule certain types out because of their inherent incompatibility with liberalism.

There are some aims that people pursue that are simply aims for themselves, aims whose successful pursuit by them does not require the involvement or participation of anyone else. Without prejudice to the content of these purposes, I shall call them protestant aims. The spirit of a protestant aim is captured in John Locke's characterisations of religious practice:

seeing that one man does not violate the right of another by his erroneous opinions and undue manner of worship, nor is his perdition any prejudice to another man's affairs, therefore, the care of each man's salvation belongs only to himself. [...] Every man in that has the supreme and absolute authority of judging for himself. And the reason is because nobody else is concerned in it, nor can receive any prejudice from his conduct therein.²²

Protestant aims may be contrasted with communal aims. It is the mark of a communal aim that it cannot be successfully pursued by anyone unless all or most of the members of a specified community are also involved in its pursuit. An example is the aspiration to work and worship in the life of an established Church, such as the Church of England (if not in its present form, then in at least some of its earlier manifestations). A person with this aim may enjoy the mingling of ecclesiastical and local politics in the life of the parish; he may revel in the fact that his bishop is also a legislator in the House of Lords; he may welcome the use of state funds for church buildings; and he may take pride in the special role his Church plays in the official ceremonial life of the nation. None of these attitudes can be sustained unless all other British subjects play a part in the activities of his Church, whether they like it or not: they must be affected by parish government, bound by a legislature that includes bishops in the second chamber, required to pay taxes for the support of the Church and to endure the Anglican liturgies in ceremonies of coronation, the opening of Parliament, etc. Methodists, Roman Catholics and atheists in the population might welcome the disestablishment of the Church of England and the separation of Church and State. But for many Anglican parishioners, that will undermine much of what they cherish in their faith. An independent Episcopalian Church, of the kind found in the United States, faithful to Anglican liturgies but purged of its official status, may not answer to their aspirations at all. Other examples of communal aims along these lines, include forms of religious establishment like the institution of *Sharia* (Islamic law) in a Muslim society.

Now, perhaps we can insist that liberalism need not tolerate or accommodate communal aims, inasmuch as such aims are directly in conflict with liberalism's own aspiration to set out the structure of a free society. Such an approach would focus on the difference between conceptions of the good life that are adopted and followed purely as individual aims, and conceptions of the good that purport to govern a whole society. Suppose for a moment that we are dealing with a conflict in society between a particular protestant aim, Y, and a full-blown communal aim, Z. Suppose too, that Z is a communal aim that claims the whole population of the society, including the adherents of Y, as the relevant community to which it is to be applied. Then one reason for objecting to Z – one reason for singling out Z as the aim to be excluded for the sake of compossibility – is that Z is in effect a competitor to the liberal ideal of compossibility itself. Z is a competing principle of social organisation. If this is so, then obviously adherents of liberal compossibility must reject Z, since they are not in a position to tolerate competition at this level.²³

The trouble with this line of argument is that it works only for the clearest cases of aims that purport to compete with compossibility. Standing between protestant and communal aims are aims that I shall describe as 'sensitive'. Our earlier case of the funeral procession, at the beginning of

the chapter, provides a good example. If the mourners require everyone to participate in the procession, their aim is a communal one. Usually, however, they require only some forbearance or mark of respect: their complaint against the bikers is not that the bikers are failing to join the procession. Their complaint is that the bikers are failing to modify their pursuit of their own (perhaps perfectly legitimate) aims, in a way that would be sensitive to the conduct of the funeral.

A very well-known example of such demand for sensitivity is that of millions of Muslims in the West, responding to the publication of Salman Rushdie's book *The Satanic Verses*. Many who condemned the book emphasised that while they do not require others to become Muslims or abide by *Sharia*, there are limits on their own ability to practise their faith under conditions of insult and blasphemy.²⁴ The followers of Islam take their faith to be sensitive to the behaviour of others in society, inasmuch as its proper practice requires them to exact a certain respect on the part of others or at least the avoidance of offensive displays of disrespect.

It is, of course, not only Islam that is sensitive in this way. There are similar Christian concerns about blasphemy. Launching a private prosecution of *Gay News* for blasphemous libel in 1977, Mary Whitehouse explained, 'I simply had to protect Our Lord.'²⁵ Some Muslims feel that Christian denominations have lost their substance, because they have ceased to be so sensitive:

Many writers often condescendingly imply that Muslims should become as tolerant as modern Christians. After all, the Christian faith has not been undermined. But the truth is, of course, too obviously the other way. The continual blasphemies against the Christian faith have totally undermined it. Any faith which compromises its internal temper of militant wrath is destined for the dustbin of history, for it can no longer preserve its faithful heritage in the face of corrosive influences. The fact that post-Enlightenment Christians tolerate blasphemy is a matter for shame, not for pride.²⁶

Some have even argued that all religious convictions should be understood to be sensitive in this way, so that a claim can be made on behalf of any believer to the forbearance of others so far as his own faith is concerned.²⁷

The point I want to make is that the solution we considered a moment ago – the solution that purports to rule out any aim (such as an illiberal communal aim) that directly competes with liberalism – will not work for merely sensitive conceptions of the good such as modern Islam. The Islamic faith held by Q in our example is not a competitor with liberalism. On the contrary, as I said before, we can imagine that Q has modified his faith precisely so that it can fit into certain forms of liberal society.

Someone may reply that perhaps the sensitivity of Islam is the shadow cast by its historic pretensions to compete with the liberal vision. Those pretensions are concealed at the moment, but it is no secret that many Muslims do aspire to the realisation of illiberal systems of Islamic law.

However, there is no guarantee that this is true of every sensitive conception, no guarantee that it is true of sensitivity in general.

In any case, we are simply not in a position to say that the only aims entitled to respect in a liberal order are those that have no connection, logical or genealogical, with full-blown views about the good society. Thoughtful people do not form their conceptions of the good life in isolation from any thought of what a good society would be. For most people, views about the consideration and assistance they owe to others form an important part of their personal ethic, and it would be utterly artificial to suppose that those views were in turn unrelated to wider ideas about what we might owe each other in society. It might be tidier, from the liberal point of view, if people's conceptions of the good life were defined strictly as individual aims, rather than as fragments of theories about how best to organise a human society. It might be tidier if individual aims were unrelated to any thinking about the problems and possibilities posed by large numbers of humans living together. But it is utterly unrealistic. Such a requirement would exclude not only all communal aims, and most sensitive aims, but most protestant aims as well.

Who is causing the problem?

We are not even entitled to say that sensitive aims are the cause of impossibility. A set of aims that includes some that are sensitive is not necessarily impossible. A sensitive aim may coexist with a number of others, provided that their practice does not encroach on the sensitivities specified. For example, the following set of religious aims:

S: {Islam, pious Christianity privately practised, pious Judaism privately practised}

seems a perfectly compossible set. It is true that the inclusion of a sensitive aim, X, in any set of other aims does indicate a potential for impossibility. For one of the other aims *may* involve practices that offend the sensitivities of the proponents of X. For an aim to be sensitive is for its proponents to be concerned as part of the pursuit of their own aim about the aims that others pursue and the activities that others perform. So there is always a danger that X will sit ill with some other aim in a given set. It is not necessary for impossibility that there be protestant aims in the set. A given sensitive aim may be incompatible with other sensitive aims if the practices of the latter do not accord with the sensibilities of those who practise the former. The sensitive forms of Islamic faith that I have mentioned may sit well with certain protestant forms of Christian piety, but sit ill with the militant proselytising of an evangelical Christian faith.

I should emphasise finally that, although the presence of a sensitive (or a communal or a competitive) aim seems necessary for intrinsic impossibility, we should not say that such aims are the cause of impossibility.

The cause of impossibility, where it occurs, is the combination of X with some other aim that sits ill with it. The presence of both is necessary; taking either one away would resolve the impossibility.

In a situation of impossibility, each party to the conflict can insist that she is choosing her convictions from a set of compossible aims. Consider again the conflict between Salman Rushdie and the followers of Islam. Rushdie will say that he is choosing his aim (the freewheeling secular exploration of a cosmopolitan inheritance) from a set that includes a number of aims that others pursue in modern society. He will say that he is perfectly willing to live and let live, so far as those other aims are concerned. He may, for example, oppose the shallow values of Hollywood, but he does not propose to ban or picket any films. He may oppose traditional Christian values as well, but he is perfectly prepared to live in peace with their proponents, adjusting the pursuit of his own ideals accordingly. True, the set from which he chooses does not include all possible aims. Most prominently, it does not include the sensitive aims of Islam (which *The Satanic Verses* offended). But the Rawlsian formula recognises this: some aims must be excluded in the name of reasonableness if compossibility is to be secured.

The trouble is: his Islamic opponents can make exactly the same sort of claim. They too have chosen their (sensitive) aim from a compossible set (like S, mentioned earlier), a set that includes many of the other aims pursued in modern society. They do not agree, for example, with Christians about the nature of Jesus, or with the Jews about the extent and scope of God's revelation, but they have shown themselves willing to live in peace and mutual toleration with a number of Christian and Jewish denominations. As much as the set from which Rushdie chooses his aims, theirs is not all-inclusive. Specifically, it excludes aims that involve as part of their pursuit a willingness to blaspheme the name of the founder of their religion. They exclude that in the name of reasonableness: they cannot see why Rushdie and others should regard themselves as entitled to pursue such an aim, given that there are two million Muslims living with them in Britain.

So there is an impasse. Rushdie is being reasonable and he is choosing from a compossible set – one, however, that excludes the sensitive aims of modern Islam. The followers of Islam are being reasonable and choosing from a compossible set – but one that excludes what they regard as blasphemy. In each case, the feature of the excluded aim that leads to its exclusion is precisely a feature that is central to the practices of the proponent of that aim. Rushdie cannot live the life he wants to lead unless he can treat his religious heritage as playfully as he did in *The Satanic Verses*. His opponents cannot live the life they want to lead unless they can vindicate the name of the Prophet. Who is to give way? Neither the idea of compossibility, nor the Rawlsian idea of reasonableness or the constraints of right, indicates an answer.

To put it another way, several Kantian kingdoms of ends are imaginable. In one, people like Salman Rushdie write their novels as they please, and others practise their religions as they please, but the domain of religion is restricted to those that do not translate mere offence into pressure for a legal requirement that others refrain from blasphemy. In another kingdom of ends, a sensitive religion like Islam is practised and other individual ends (including alternative religious faiths) are tolerated, but Rushdie-style blasphemy is excluded by a broad framework of respect for Islamic faith and perhaps for any other faith that demands it. From the point of view of compossibility, there is nothing to choose between these worlds. People like Rushdie are going to feel intolerably constrained in the second kingdom of ends; but then those who burned his book in Bradford evidently felt intolerably constrained in the first place.

Asymmetry?

The hunch that there must be a solution to this problem rests, I think, on the view that there is an asymmetry to conflicts such as the one we have been discussing. Someone may say, 'The Islamic militants are trying to kill Rushdie whereas he is not trying to kill them.' But leave aside the particular issue of the *fatwa*, which is, in a sense, a response to the conflict rather than the basis of it. Consider the view of those more moderate Muslims who are not trying to assassinate anyone but who still think that in a just society the publication of books like *The Satanic Verses* would not be allowed.²⁸ Then the alleged asymmetry presumably goes like this: 'All Rushdie is doing is offending their sensitivities, whereas they are proposing to limit his liberty.' Is this difference, between what they propose to do to him (restrict publication) and what he proposes to do to them (insult their faith), sufficient to determine the issue in favour of one party or the other?

Again, the answer is 'No'. Recall the earlier discussion of equality and difference, and our rejection of any simple notion of equality as a constraint on our algebra. I suggested there that if people's aims and activities are quite different in their character and content, then it is likely that the liberties and protections that they respectively require in order to pursue their aims will differ accordingly. What Rushdie needs, for example, is freedom of speech, freedom to publish (and be damned?), and protection from the wrath of those he expects to offend. What his Islamic opponents need is something different: protection from blasphemous insult. But though the needs are different, they are on a par so far as the theory of compossibility is concerned. For, in abstract terms, each requirement is what is necessary for the pursuit of the aim in question. From this abstract point of view, there is no asymmetry. What Rushdie demands encroaches on the pursuit of Islamic aims, and what the Muslims demand encroaches on the pursuit of Rushdie's aims. Each is demanding something that would make life intolerable for the other. Thus, nothing is gained in the argument by pointing

out that the rights the Muslims demand are rights that Rushdie, for example, would be happy to repudiate. They may claim the right to be protected from blasphemy or from demonstrations of disrespect for their cherished beliefs. If the line of argument I am exploring here is correct, it is no reply to this claim that secular atheists are willing to disown any such protection. For example, the fact that Salman Rushdie does not need to be protected from ridicule in order to be able to pursue his own good does not show that others do not need such protection in order to be able to pursue theirs. Different aims may require different liberties and different protection.

Can we say perhaps that his demand (for freedom) is not intentionally or intrinsically opposed to the pursuit of their aim, while their demand (for protection from such blasphemy) is intrinsically and intentionally opposed to the pursuit of his aim? After all, there is nothing intrinsically anti-Islam in a demand for freedom of speech, whereas there is something intrinsically anti-infidel in a demand for respect for the Prophet. This will not do either. Both positions can be described abstractly without reference to the other: his is a demand for freedom, theirs is a demand for respect. On the other hand, even the abstract specification in each case makes reference to the idea of an other: respect is always accorded by someone, freedom is always freedom from someone's constraint. Anyway, under certain descriptions, Rushdie's claim is inherently inimical to theirs, for what he claims is exactly the right to make fun of a heritage that is theirs as well as his. On their account (which we must take seriously) it is part and parcel of Islam 'to vindicate the reputation of God and his spokesman against the militant calumnies of evil';²⁹ freedom to blaspheme is freedom to assault Islam. In any case, it is not at all clear why the intentionality of the conflict should make a difference. Extrinsic conflict (such as conflict arising out of scarcity) is as much a source of impossibility as intrinsic, and we should still have to deal with that impasse even if a given demand on scarce resources made no reference at all to any other demand.

Aggressive liberalism

Perhaps in the end what liberals have to do is simply to bite the bullet and insist – in an explicitly partisan way – that the only aims whose inclusion can be countenanced in a compossible order are aims that are positively imbued with the idea of such an order. Compossibility, they might insist, is not only a liberal idea, but an idea for liberals, that is, an idea for those who have formed their life plan in the specifically protestant spirit characteristic of modern individualism. I have my doubts about this aggressive liberalism, though I have advocated it elsewhere (as a solution to certain difficulties afflicting liberal neutrality) in the following terms:

It is true that the liberal has a decidedly individualistic account of what constitutes a conception of the good life. . . . But so what? The liberal has not arbi-

trarily plucked her account of what it is to have a conception of the good life out of the air. She has settled on that view . . . because of the fundamental principles and values that underlie her position. She thinks that the shaping of individual lives by the individuals who are living them is a good thing; and she fears for the results if that process is distorted or usurped by externally applied coercion, even the coercion of *Gemeinschaft*. On the basis of these concerns and these fears, she identifies moral views of this individualistic sort as those between which legislative neutrality is required.³⁰

After all, the very idea of compossibility emerged in modern (Kantian) thought around a specific conception of individualistic autonomy and fulfilment, and aggressive liberals may want to insist that the solicitude of compossibility be confined to individual lives that are governed by that conception. Underlying the commitment to compossibility, it is this conception of the self that is cherished. Apart from that conception, the Kantian kingdom of ends, or the formal idea of compossibility, is not worth pursuing as an ideal.

But I now think this aggressive liberalism is unsatisfactory as a solution to the problem we are addressing. The main difficulty is that by restricting the field of aims among which compossibility is sought, this approach artificially restricts the range of real problems to which compossibility can provide the basis for a solution. Compossibility turns out to be a recipe not for live-and-let-live in the real world, but for mutual admiration among liberal individualists in an artificial world, exclusively populated by them and their imitators. Opponents of liberalism would be entitled to say that if the rules of the game have changed in that way, then they should be able to make idealistic assumptions as well, and assume whatever is necessary to present communitarian conceptions in a rosy light.

It has always been one of the advantages of the liberal approach to political theory that it prides itself on dealing with the real world of men and women as they actually are.³¹ Its claims about pluralism and the need for toleration have been based on the actual dissent about value that can be expected to emerge when men and women engage in thought about their lives and their relations with others under less than perfect conditions. What Rawls has called in his recent writings ‘the burdens of reason’ are important here. They are the real-life circumstances that make it more or less inevitable that, with the best will in the world, people will come up with different religious, philosophical and moral convictions.³² But exactly this realism precludes any aggressive assumption that we are addressing a society in which only protestant aims need to be considered or taken seriously.

The aggressive liberal might protest – and this is the last response I will consider – that at least some communal or sensitive conceptions may be accommodated in the order he envisages, provided they are represented in a suitably individualistic form. The aggressive liberal might, for example, treat each communitarian as though his vision of society were a private hobby-horse, and each militant follower of Islam as though his aspiration

to *Sharia* were just another innocuous protestant sect. But he would withhold support and respect for those visions to the extent that their proponents went beyond these individualist ‘caricatures’.

Again, in the end that is a travesty of a solution. If the Rushdie affair has taught us anything, it has shown that people will not put up with having their ideas ‘respected’ in this truncated sense. Such an approach, tidying up recalcitrant conceptions so that they fit neatly into the Kantian kingdom of ends, may satisfy a theorist’s urge for order, but will do nothing to address the real problem of social order that, as we saw at the beginning, evoked the idea of compossibility in the first place. It seems more honest to admit defeat in the long search for a solution to the algebra of compossibility, than to adopt the artificial expedient of treating the proponents of communal or militantly sensitive religions as though they were liberals.

Impasse

I have argued myself to a standstill on this. I have no rabbit to pull out of the hat. It seems to me that, in a world where many people’s ethics and religions are sensitive to the activities and attitudes of others, there is no determinate solution to the problem of compossibility.

This conclusion is bleak and uncomfortable. It means that we can no longer confront issues like the case of Salman Rushdie with the conviction that there is a perfectly good solution of live-and-let-live, if only people would restrain themselves sufficiently to adopt it. There is no such accommodating solution. It means that we can no longer organize liberal aspirations around the formula of the kingdom of ends. The algebra intimated in Rawls’s principle of an adequate liberty for each, compatible with a similar liberty for all, is insoluble. Other conceptions, other formulations for liberalism must be found.

It is worth noting, finally, that although the difficulty is primarily one for liberal political philosophy, there is precious little comfort for the opponents of liberalism in the conclusions we have reached. For when they are finished saying ‘I told you so’, they too must confront a world in which there is no solution like ‘live-and-let-live’, no principles for accommodating the reality of the adherents of different kinds of values living side-by-side. That reality is likely to be troubling even to those who advocate the social institution of some particular conception of the good (on either communitarian or perfectionist grounds).

For perfectionists and communitarians, as much as their liberal opponents, must be prepared to engage with the real world. They must engage with a world in which, as a matter of fact, a number of rival conceptions of the good and the pious are at war with one another. They may lament the ethical and religious pluralism of modern society, and urge the merits of their own favoured conception, but anyone can do that. Rawls is right: for the foreseeable future, this is the world we must live with. In other

words, the problem of impossibility between conceptions of the good is at least a practical problem for everyone in modern society, not just for liberals or for those who celebrate pluralism. The opponents of liberalism – the perfectionists or the communitarians – may offer the institutionalisation of a single conception of the good as their first-best solution's to the dilemmas of modern society. But since there is no chance whatsoever of that solution's being adopted, they must tell us something about their second-best. At that level, seeking the compossibility of such conceptions as there happen to be in society seems to be the counsel not just of liberal political philosophy, but of ordinary common sense. To the extent that this is so, the conclusions of the argument I have expounded in this chapter should be taken as a disturbing and discomfiting challenge to us all, not just as a way of embarrassing liberalism.

Notes

This chapter is based on the Austin Lecture that I gave as part of the ALSP Conference on 'The Culture of Toleration' held in Exeter in April 2000.

- 1 See I. Kant, *Groundwork of the Metaphysic of Morals*, edited by H. J. Paton (London: Routledge, 1991), Chapter 2, pp. 71–106.
- 2 I adopt this term from H. Steiner, 'The structure of a set of compossible rights', *Journal of Philosophy*, 74 (1977), pp. 767–75. See also H. Steiner, *An Essay on Rights* (Oxford: Blackwell, 1984), pp. 86–101.
- 3 Kant defines a kingdom as 'a systematic union of different rational beings under common laws', and a kingdom of ends as 'a whole of all ends in systematic conjunction (a whole both of rational beings as ends in themselves and also of the personal ends which each may set before himself)', *Groundwork*, p. 95.

Initially, the kingdom of ends is presented in Kant's philosophy as an interpretation of morality. In moral life it provides a test for our individual decision-making: 'A rational being must always regard himself as making laws in a kingdom of ends. [. . .] Thus morality consists in the relation of all action to the making of laws whereby alone a kingdom of ends is possible' (*Groundwork*, p. 96). However, as Kant moves from moral to political philosophy, the idea of a kingdom of ends remains important. The legislator should keep the kingdom of ends in mind, not merely as an ideal of personal morality, but as a model for the legal and constitutional system he is establishing. So, it is not really the case that the idea of a kingdom of ends is drawn from Kant's moral philosophy and adapted for us in his political philosophy. It really works the other way round: the model of an ideal political order serves as a concept whose deployment in intentionality is the mark of a morally good will. Thus, its use as a model for a legal system does not presuppose any requirement that citizens' actions be motivated in any particular way (e.g. by the kingdom of ends as an idea). We begin with the idea of a set of constraints reconciling the external freedom of each person with the external freedom of everyone else (under conditions of plurality of ends); that is the basis for normative thought about politics and law. It is only when we take that idea and consider its use as a possible touchstone for individual motivation that we move into the realm of morality.

- 4 I do think though that the difference between (2a) and (2b) is very interesting, though I cannot say that I have entirely settled my thoughts on this subject, or that I have even been able to state them entirely clearly.
- 5 See R. Dworkin, 'What is equality? I Equality of welfare', *Philosophy and Public Affairs*, 10:3 (1981) 185–246.
- 6 I. Kant, *Critique of Pure Reason*, trans. J. M. D. Meiklejohn (London: Dent & Sons, 1934), Transcendental Logic II, Dialectic, I, i: 'Of Ideas in General', p. 220.
- 7 J. Rawls, *Theory of Justice* (Oxford: Oxford University Press, 1971), p. 60, emphasis added.
- 8 *Ibid.*, emphasis added.
- 9 J. Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 5, emphasis added. In *Justice as Fairness: A Restatement* (Cambridge, MA: Belknap Press of Harvard University Press, 2001), p. 111, Rawls indicates that compossibility is a matter of mutual adjustment among the liberties of different persons: 'these liberties are bound to conflict with one another; hence the institutional rules specifying them must be adjusted so that each liberty fits into a coherent scheme of liberties. . . . Nor is it required that in the finally adjusted scheme, each basic liberty is equally provided for (whatever that would mean.) Rather, however these liberties are adjusted, that final scheme is to be secured equally for all citizens.'
- 10 The consequences of rejecting this interpretation of equality are interesting. In a simple two-person case, the rights claimed by P, as necessary for the pursuit of his aims, may be different from the rights claimed by Q, as necessary for the pursuit of hers. Of course, the rights claimed by P will be correlative to duties imposed on Q and vice versa. But although P's rights are correlative to Q's duties, and P's duties correlative to Q's rights, P cannot simply take the set of rights he has and the set of duties he has and, replacing proper names with variables, regard them as correlative. He is therefore no longer able to work out what duties he has simply by considering what would be correlative to the rights that he claims. He must really pay attention to the situation and the needs of the other person, Q, because these may differ significantly from anything he can extrapolate from his own case, or any understanding of what he would demand if we were standing in their shoes.

Notice how this provides a sensible way through many of the difficulties associated with the idea of difference. Consider, for example, the provision that must be made in the workplace and employment law for pregnancy. It may be a mistake to try and bring this provision under some general rubric that is applicable equally to men as well as women, some rubric about special provision for illness, for example, or disability. It may be more sensible to say simply that the situation of all or some women is different from the situation of all men in this crucial respect – that women may become and/or may want to become pregnant, and that therefore what women need in order to pursue a plan of life may simply differ from what men need. Since our commitment is just to the universal proposition that everyone is to have whatever is necessary for the pursuit of his or her own good, it will not be surprising if the rights of women turn out to differ in detail from the rights of men. Accordingly, it will not be possible for a man to work out in detail what he owes a woman in the way of respect, assistance or forbearance, simply by extrapolating from the respect, assistance, and forbearance that he takes himself to be entitled to.

- 11 The popular idea that the toleration of Catholicism is rejected in John Locke's *A Letter Concerning Toleration* (ed. J. H. Tully, London: Hackett, 1983) is of course quite wrong. Cf. J. Waldron, *Locke, God and Equality: Christian Foundations of Locke's Political Thought* (Cambridge: Cambridge University Press, 2002).
- 12 For Thomas Hobbes, the technical term was 'compleasance'. Though Hobbes was not a conventional liberal, he believed – as much as any conventional liberal – that there are limits on the individual ends that can be accommodated in a peaceful society. He suggested (in what he called the Fifth Law of Nature) that everyone has a duty to adapt his ends to make accommodation possible: 'A fifth Law of Nature, is COMPLEASANCE; that is to say, That every man strive to accommodate himself to the rest. For the understanding whereof, we may consider, that there is in mens aptnesse to Society, a diversity of Nature, rising from their diversity of Affections; not unlike to that we see in stones brought together for building of an Edifice. . . . [T]hat stone which by the asperity, and irregularity of Figure, takes more room from others, than it selfe fills; and for the hardness cannot be easily made plain, and thereby hindereth the building, is by the builders cast away as unprofitable, and troublesome.'

'So also', Hobbes continued, 'a man that by asperity of Nature, will strive to retain those things which to himself are superfluous, and to others necessary; and for the stubbornness of his Passions, cannot be corrected, is to be left, or cast out of Society, as cumbersome thereunto' (*Leviathan*, ed. R. Tuck, Cambridge: Cambridge University Press, 1996, p. 106). That's all very well – a fine image, and dandy terminology – but how does it work in our tough case? Is it the Muslim who, by the asperity of his nature, strives to establish an environment that he doesn't really need, at the expense of a freedom that is necessary for the pornographer? Or is it the pornographer who is the stumbling-block, insisting on a freedom that spoils the wall for others? Even the building-block image doesn't really help. If I have three stones with which to finish the wall, and it is the case, first, that A and B will fit in, so long as the rather more angular C is excluded, and, secondly, that B and C will fit in, so long as a spheroid A is excluded, which is to be thrown away: A or C? Whose irregularity, asperity, and stubbornness is the problem here?

- 13 J. Rawls, 'Kantian constructivism', *Journal of Philosophy*, 77:9 (1980) 515–72, at p. 543, and pp. 521–2.
- 14 Rawls, *Theory of Justice*, p. 31. See also *Political Liberalism*, p. 174.
- 15 Rawls, *Political Liberalism*, p. 56.
- 16 *Ibid.*, p. 58 'Different conceptions of the world can reasonably be elaborated from different standpoints and diversity arises in part from our distinct perspectives. It is unrealistic . . . to suppose that all our differences are rooted solely in ignorance and perversity, or else in the rivalries for power, status, or economic gain'.
- 17 *Ibid.*
- 18 Rawls, *Political Liberalism*, p. xvii.
- 19 See J. Waldron, 'Justice revisited' (A Review of Rawls, *Political Liberalism*), *The Times Literary Supplement*, 18 June 1993, pp. 5–6.
- 20 This response is suggested by Rawls's remarks about Aquinas on heresy in Rawls, *Theory of Justice*, pp. 215–16.
- 21 Rawls, *Theory of Justice*, pp. 206–7.
- 22 Locke, *A Letter Concerning Toleration*, pp. 42–3.

- 23 Something like this has been used by Ronald Dworkin to argue against the counting of 'external preferences' (such as the Nazi preference that no weight be given to the preferences of non-Aryans) in a utilitarian calculus: 'Utilitarianism must claim . . . truth for itself, and therefore must claim the falsity of any theory that contradicts it. It must itself occupy, that is, all the logical space that its content requires. . . . A neutral utilitarian cannot say that there is no reason in political morality for rejecting or dishonouring [the Nazi's] preference, for not dismissing it as simply wrong, for not striving to fulfill it with all the dedication that officials devote to fulfilling any other sort of preference. For utilitarianism itself supplies such a reason: its most fundamental tenet is that people's preferences should be weighed on an equal basis in the same scales, that the Nazi theory of justice is profoundly wrong. . . . Political preferences, like the Nazi's preference, are on the same level, purport to occupy the same space as the utilitarian theory itself. Therefore, though the utilitarian theory must be neutral between personal preferences like the preferences for push-pin and poetry, as a matter of the theory of justice, it cannot be neutral between itself and Nazism', R. Dworkin, 'Rights as Trumps', in J. Waldron (ed.), *Theories of Rights* (Oxford: Oxford University Press, 1984), pp. 153–67, at pp. 155–7. If we substitute 'liberal compossibility' for 'utilitarianism' and 'communal conception, Z' for 'Nazism' in this passage, we can see it as a version of the present line of argument.
- 24 Dr Mughram Ali Al-Ghamdi, Chairman of the UK Committee on Islamic Affairs, has asserted: 'No individual with the slightest grain of self-respect can accept being insulted and it is a more serious matter when a whole world community is subject to outrageous abuse of its inviolable sanctities', as cited in L. Appignanesi and S. Maitland (eds), *The Rushdie File* (London: Fourth Estate, 1989), p. 113.
- 25 Cited in P. Jones, 'Respecting beliefs and rebuking Rushdie', *British Journal of Political Science*, 20 (1990) 415–37, at p. 419. I am obliged to Professor Peter Jones for the references in footnotes 49–52.
- 26 S. Akhtar, in *The Guardian*, 27 February 1989, quoted in Jones, 'Respecting beliefs', p. 417.
- 27 Jones, 'Respecting beliefs'.
- 28 I have in mind here the request by Abdul Hussain Choudhury that the English law of blasphemy be extended to cover instances of this kind: see *R v Chief Metropolitan Stipendiary Magistrate, ex parte Choudhury* (1991) 1 All ER 306.
- 29 S. Akhtar, *Be Careful with Mohammed!* (London: Bellew, 1989), p. 103.
- 30 J. Waldron, 'Legislation and moral neutrality', in R. Goodin and A. Reeve (eds), *Liberal Neutrality* (London: Routledge, 1989), pp. 61–83, at p. 80.
- 31 See also the discussion in J. Waldron, 'Theoretical foundations of liberalism', *Philosophical Quarterly*, 37 (1987) 127–50.
- 32 Rawls, *Justice as Fairness*, pp. 35–7.