5 LIBERALISM

The overarching aim of the present part (Part II) is to argue for the negative observation: that there are commonplace claims in our theoretical and everyday thought and talk about politics that are not explained, severally or jointly, by claims to improvement or claims against invasion. The last three chapters addressed one such commonplace claim: a claim against some relation of rule that the state involves, a claim which calls for us to "justify" the state or establish its "legitimacy," by identifying some legitimating condition or limit of legitimacy. We turn now to a second, albeit related, commonplace claim: the claim that underlies the demand for a "liberal" society—or at least a "liberal" government.

5.1 Illiberal interventions

The "liberals" that I have in mind believe that a person, Prudie, has a complaint against a state that "intervenes" in Prudie's "protected" choices.[29] Prudie should not face a fine or jail-time, for example, for her religion or pastime. This is so even when such interventions improve the choice situations of Prudie and others, by making them less likely to make choices that are worthless or bad bargains.[30] This prohibition on "illiberal interventions" is sometimes itself viewed as a limit of legitimacy: a constraint on what the state does that the state must respect in order to avoid the complaint against state. This is one way of viewing Mill's Harm Principle: the state may not coercion except to prevent harm to others.

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.

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[29] 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.

[30] I assume that the strongest case in favor of such illiberal interventions, and so the case to be addressed, is that those interventions would improve choice situations, and not, say, that they would reduce the incidence of actions that are somehow independently immoral.

Why is this? Why prohibit illiberal interventions? Of course, one might have pragmatic misgivings about illiberal interventions. 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 suitability for Prudie depends on her specific tastes, talents, temperament, endorsements, or values. However, many seem to think that even if the state overcame these limitations, Prudie would still have a complaint against its intervention in her protected choices. What might this complaint be?

Before pursuing this question, it would be reasonable to ask for more guidance about what it means for the state to "intervene," in "protected" choices. Which choices are "protected"? Which "interventions" matter? Unfortunately, I doubt that any pat answers can be given. 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.

However, I doubt that there is some clear, succinct *intermediate* formula that, by defining "protected" and "intervention," encapsulates these judgments and shows how they follow from the grounding values. To the question of how to define the terms "protected" and "intervention," the only general answer may be: as the balance of grounding values implies.

One such an intermediate formula would be Rawls's (1971, 1993) "list of liberties" or his even more abstract specification of "the two moral powers of citizens." But neither takes us very far beyond our particular judgments. While Rawls identifies, and to some extent prioritizes, certain abstractly conceived valuable activities that illiberal interventions might impair, he doesn't provide much guidance beyond that on the question of which choices are "protected" from which sorts of "interventions."

Another model for such an intermediate formula would be Mill's (1859) Harm Principle, perhaps interpreted or

amended in some way (Hart 1963, Feinberg 1984, Raz 1986, Leiter 2013). 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." However, I don't think that the Harm Principle is a helpful starting point, even as a basis for interpretation or amendment.

First, the Harm Principle doesn't draw a very clear line between prohibited "interventions" and other ways of affecting someone's choices. The literature often casually treats the items on the list of prohibited interventions—threat, coercion, force, imprisonment, punishment, criminalization—as, on the one hand, interchangeable with one another and, on the other, clearly distinct from other ways of affecting choice. Yet the items on the list of prohibited interventions differ significantly, in morally relevant ways, from one another, and they can be hard to distinguish, in morally relevant ways, from items left off the list.

Second, it's notoriously unclear what counts as "harm to others," and so which choices are, because they don't harm others, protected. On the one hand, if one counts as harming others simply by helping to make a bad choice available to them, then the Harm Principle does not protect very much.[31] On the other hand, if one counts as harming others only when one violates natural 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 have argued at various points, it's a mistake to think that intervening in Prudie's choice is permitted only when Prudie would otherwise fail in a duty.

A third problem with the lines that the Harm Principle draws is that some interventions to prevent "harm to self"

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[31] 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."

seem permissible. "End interventions," designed to steer people from bad choices of final, organizing ends, such as religion, career, or relationship, are indeed illiberal. But many otherwise liberal states engage in "means interventions," designed to steer people from bad choices of all-purpose materials for 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 reply 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 can seem strained.

A final worry is that the Harm Principle, even on the broadest definition of "harm to others," doesn't protect enough. Consider, again, advice: simply informing someone of reasons that independently obtain. According to the standard contrast, advice is the one thing that, unlike, say, coercion, is supposed to be unproblematically permissible. But not even this is clear. Although it may permissible for *individuals* to advise one another to avoid a particular religious choice, it is permissible for the *state* to do so?

5.2 Cost Effects

We turn now to ways in which a liberal might support the prohibition on interventions in protected choices. Again, we rely, for lack of something better, on our particular judgments, rather than any intermediate formula such as the Harm Principle, to guide us about what counts as an "intervention" and "protected choice."

To begin with, it might be argued that illiberal interventions in Prudie's choice simply worsen Prudie's choice situation. Again, Prudie will be our recurring character, whose bad choice of Brainechanics, or smoking, or what have you is the target of an illiberal intervention. Her complaint against illiberal interventions is simply an improvement complaint. The state could have improved her choice situation, by not so intervening.[32]

Again, let us use "steering" Prudie to mean: 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* of her making it and then *to inform her* that the cost has been raised. Threats of forcible imprisonment certainly do this. But so too do threats of other penalties or fines, as well as fees and taxes.[33]

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[32] I believe that this is more or less the approach that Rawls (1971, 1993) takes. He views the basic liberties as means to the pursuit of certain abstractly conceived activities, such as the pursuit of a determinate conception of the good. The reason why the parties in the original position seek to secure the basic liberties for those they represent is to better position them to live fulfilling lives or to develop and exercise their moral powers.

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 a worthwhile, but only a worthwhile, conception of the good. The argument for liberalism is largely off the page.

[33] 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)

Does raising the cost, and informing Prudie of this, make her choice situation worse? On the one hand, there is the *cost imposed* on Prudie if she makes the choice and the threat is carried out. Still, imposing this cost on Prudie might fairly improve the choice situation of others, by upholding the credibility of the threat, which steers others in beneficial ways. Why then should it wrong Prudie to impose the cost? If we reply that it "invades" Prudie, by breaching some deontological constraint against force (or some such), then our objection is no longer necessarily to the *cost* imposed, but instead to the *invasion* that imposes it. We will consider this later.

On the other hand, there is *threatening* Prudie with a cost if she makes a bad choice. Even if Prudie avoids the threatened cost, it might be said, the threat itself wrongs her. We have argued that the usual way a threat would wrong Prudie is by violating Choice: by leaving her choice situation worse than she is entitled to from the threatener. Again, how good a choice situation she is entitled to from a given agent depends on balancing the burdens she bears in being deprived of a better choice situation against the burdens that others would have to bear for the agent to provide her with a better choice situation. Now, threatening to attach a cost to an option, to be sure, tends to make Prudie's choice situation worse by making that option more costly. The question is why this negative, "cost" effect on Prudie's choice situation isn't outweighed by the positive, "influence" effect on Prudie's choice of making her more likely to choose what is better for her, which tends to improve her choice situation. Indeed, we might expect the cost effect to be small in this case. For, as we noted in *Choice*, the cost effect tends to be smaller when the threat attaches a cost to a choice (such as leaving the Ethel Merman blaring) that is less valuable to the threatened person. In Prudie's case, the illiberal threat attaches a cost to a bad choice, which is not valuable to her.

In any event, the cost itself might not be severe: a night in jail (Kleiman 2009) or, if we imagine away technological limitations, a whine that persists until Prudie abandons the bad choice.

Moreover, steerings, even some steerings might seem objectionably illiberal, needn't threaten costs at all. They

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do not increase with repetition (Cooter 1984, Cooter and Siegel 2012).

might instead *increase the benefit or lower the cost* of Prudie's avoiding the bad choice. This is what offers and subsidies, in contrast to threats and taxes, are said to do. Steerings 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. Or, finally, steerings 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. 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.

5.3 Value-of-Compliance Effects

Even if an illiberal steering's influence effect outweighs its cost effect, however, it still might not improve the choice situation overall. This is because the illiberal steering might have negative, value-of-compliance effects. Precisely because her choice was influenced by intervention, Prudie's choice of the "good" option over the bad may lack the value that it would otherwise have.

One might first propose that fear of a penalty, or promise of a reward, might corrupt one's motivations. Even if Prudie makes (what would otherwise have been) a good choice, she might do so for the wrong reasons, depriving the choice of its value (Dworkin 2000 217, 218, 269).

However, not all interventions need to involve penalties or rewards that would displace more "intrinsic" motivations. Moreover, this suggestion fails to explain why liberals are specially exercised about *steering*: measures *intended* to get one to make certain choices. After all, the relative costs of options are in constant flux even without 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. And yet few clamor to halt or reverse these processes, to ensure that motives aren't corrupted.

Next one might propose that some options have value, or at least a certain kind of value, only if they are "selected" from an adequate range of acceptable alternatives. (This is one component of Raz's 1986 definition of "autonomy.") If threats attach sufficiently grave costs to alternatives, for example, then they may no longer count as acceptable. And if threats do this to a sufficient number of alternatives, then there may no longer be an adequate range. These threats will then have an adverse value-of-compliance effect. The chosen option will not count as "selected."[34] However, a more limited regime of threats might still leave enough

[34] Although Raz 1986 suggests than an "adequate range" need not require any bad options, some might resist this. But even so, why would the interest in an adequate range supply any argument against attaching costs to bad options? Is the argument that attaching a cost makes those bad options unacceptable, thereby depriving people of an adequate range? But weren't the options, qua bad, already unacceptable, before the cost was attached?

acceptable options (Hurka 1993). And, again, why is steering special? The range of options can narrow because of changes of fashion or market forces.

This leads us to a third suggestion. Steering, in particular, has an effect that other changes in cost and availability do not. It can make the good choice no longer "independent."

There are two views about why steering deprives a choice of independence when it does. On the "subjugation" view, suggested by Raz's discussion, steering deprives Prudie's choice of independence by making Prudie the steerer's "tool," by making her do his will.

By contrast, on the "achievement" view, suggested by Dworkin's discussion, the problem is not so much an evil, as the absence of a good: that making the "good" choice does not count as Prudie's "own" achievement. The underlying thought is that Prudie faces a kind a problem or challenge, which is defined relative to a benchmark of how things stand prior to any steering. By analogy, imagine a competition to make a collage from found objects on a beach, or a dinner from whatever happens to be in the cupboard. Contrast cases in which the objects were cast about by the tides, or the ingredients left there by the natural ebb and flow of kitchen inventory, with cases in which the same objects or ingredients were deliberately selected and placed in that order so as to suggest a certain arrangement or dish. In the former case, one's creation counts as one's achievement, one's own solution to the problem. In the latter case, it seems more the achievement of the intelligence selecting and placing the objects. One might not feel that one had been reduced to a mere instrument of another's will, as the "subjugation" view would have it. But one might still take less pride in what one had thought was one's own achievement.

To be sure, not all steering undermines independence, in either of these ways: by subjugation or denial of achievement. Meryl Streep's career as an actor is presumably independent, even though studios steer her to perform by offering her pay. So what kind of steering undermines independence?

Raz suggests that it is "coercion" that undermines independence: not only steering someone to do something, but also steering her so compellingly that Prudie has "no other choice" and accordingly is justified or at least excused

in complying. Independence is compromised only by, as we might put it, *compelling* steering—what we earlier landed on as the best interpretation of "coercion," strictly speaking. The terms of Streep's employment, attractive though they may be, don't compel her to perform. This is why her acting, even when induced by payment, still counts as independent. Drawing the line at compelling steering suits the subjugation view. 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.

Dworkin draws a different line between the steerings that undermine independence and the steerings that don't. What matters is not whether the steerings compel (2011 212; see also 2000 273), but instead whether they are motivated by a judgment that a certain way of life is good or bad (2000 282; 2011 369). It is only such "end steerings" that undermine independence. Presumably, a studio's efforts to get Streep to take the part are motivated by its bottom line or artistic ambitions, not by her quality of life. Drawing the line at end steerings suits the achievement view, where the challenge involves, in part, coming to one's own conclusions about what one values. If the state intervenes on the basis of a judgment that certain way of life is good or bad for Prudie, then the state has done the work for Prudie, as it were, and it is not her "own" achievement.

Let us consider first the subjugation view. Might one argue that illiberal interventions wrong Prudie because they compellingly steer her, which deprives even her good choices of independence, which, in turn, worsens her choice situation?

One problem is that few illiberal interventions, even when backed by threats of long-term imprisonment, are compelling. If the state's threats were compelling, as we noted in *Coercion, Strictly Speaking*, prisons would be (closer to) empty.

Another problem is that even if illiberal interventions were compelling, it is implausible that they would deprive Prudie's good choices of independence. Set aside illiberal interventions for the moment, and consider the ordinary, liberal criminal law. Suppose, further, that the ordinary, liberal criminal law is compelling. Thus, the ordinary liberal criminal law compellingly steers us away from the bad choice of a "life of crime." Now, perhaps it's plausible to say that this makes us non-independent, mere tools of the state,

insofar as we make the *general, negative* choice of "not a life of crime." But the ordinary liberal criminal law surely does not make us non-independent, or mere tools of the state, insofar as we choose some *specific, positive* choice that is compatible with not leading a life of crime: insofar as we choose some particular non-criminal relationship, career, or faith. If the ordinary, liberal criminal law deprives *those* choices of independence, then it is not clear how *any* choices could be independent.

If, then, Prudie's specific good choices can be independent even though the ordinary, liberal criminal law compellingly steers her away from a life of crime, why shouldn't Prudie's specific good choices also be independent even though some illiberal intervention compellingly steers her away from some particular bad option, Bad? Perhaps the compelling steering means that Prudie cannot independently choose the negative option of "not-Bad." But why can't Prudie independently choose one from among many of the specific good options compatible with not choosing Bad? By analogy, if compelling steering removes the option of badminton, then perhaps one cannot independently choose the general, negative option of "not-badminton." Still, one might independently choose the specific, positive option of tennis or the specific, positive option of ping-pong (Miller 2010).

This possibility is obscured by stylized cases with only two alternatives, Bad and Good. Since they present Good and Bad as the *only* alternatives, we equate the negative option of not-Bad with the positive option of Good. Since Prudie can't independently choose not-Bad, we conclude that she can't independently choose Good. But if there are many alternatives to Bad—Good1, Good2, Good3, etc.—then it no longer seems plausible that, if Prudie can't independently choose not-Bad, she can't independently choose, say, Good2.

So let us move on to the achievement model. Let us grant that illiberal interventions are end steerings. Still, it is implausible that end steerings should deprive Prudie's choices of independence. After all, there are all manner of *private* efforts to end-steer people to appreciate the arts or adopt 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. If they did, then again it is hard to see how any choices could be independent.

So the thought must be that while private end-steerings don't undermine independence, public end-steerings do. But why should this be? In either case, the contribution is coming from some *other* agency, *apart from oneself*. Isn't that what matters to whether it counts as *one's own* achievement? So if *private* agents' end-steerings don't objectionably diminish one's achievement, then why should the *state's* end-steerings diminish one's achievement?

5.4 The Responsibility Principle

So let us grant that illiberal interventions might improve people's choice situations, thereby fairly meeting their claims to improvement. Still, it might be said, illiberal interventions are impermissible, because they violate their rights, provoking a complaint against invasion.

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. Unfortunately, Feinberg's descriptions of what the right protects are 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). But which actions violate his right "to decide what is to be done with his life"? Not all actions that somehow *affect* 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 invasion of 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.

The prohibition on illiberal interventions that use force would just be, on this view, a special case of the Force Constraint: primarily following through on threats to use force, but also forcible steerings, such as physically restraining someone without prior threat. 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." Self-ownership, as noted earlier, may involve more than simply the Force Constraint: it 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.[35] But all we need here is the less controversial Force Constraint.

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[35] These further libertarian commitments, however, have further implications for liberal protections if the Duty

Suppose, for the sake of argument, that illiberal interventions do use force. Would that mean that illiberal interventions violate the Force Constraint?

In Chapter 2, I argued against the idea that state force must violate the Force Constraint. I suggested that if we accept Natural Imposition, then we should also accept State Imposition. If Flintstone's neighbors can use force on Flintstone to deter violations of natural rights, they the state may use force on Violet to deter violations of state directives. There is no morally relevant difference.

Here I consider a similar strategy of argument. If we accept Natural Imposition, should we not also accept (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*?

If we may use force on Flintstone for the purpose of deterring violations of natural rights, why may we not also use force on Prudie for the purpose of deterring bad choices like hers? What's the difference between Flintstone and Prudie?

As far as the Avoidance Principle is concerned, the two situations might seem similar. Like Flintstone, Prudie 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 choice situation as good as what Flintstone had?

Requirement is assumed: that (absent consent) the Force Constraint is lifted only where a duty is, or would be, violated. Libertarians who hold that A can, by voluntary choice, make it permissible for B to kill A in gladiatorial combat, or for B to hold A in slavery, will then hold that it is wrong to use force to prevent B from killing A in gladiatorial combat, or recovering A as a fugitive slave, because B has no duty to act otherwise.

Moreover, just as to provide Flintstone with an even better choice situation (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 choice situation (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.

The liberal might here invoke Duty Requirement. Since Prudie had no duty to act otherwise, it is not permissible to impose a deterrent on her. 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 to this, the liberal can reasonably reply, first, that even if there are duties to self, the Duty Requirement requires not just a duty, but a duty 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 is instead that, as we saw, the Duty Requirement is unmotivated. In particular, recall from *The Avoidance Principle* the two error theories for the Duty Requirement. First, it is easy to confuse the Duty Requirement, 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, as we are imagining that Prudie's choice does not (Husak 2005). But, again, it would not forbid the state from, as it were, "subtracting" from punishment the element of condemnation for wronging others. The state could still correctly 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 Requirement with the Wrongful Benefits Principle, that if the target had a duty to X, her opportunity to avoid force by X-ing was adequate. However, 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.

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 here, I think, there *is* a way for the liberal to drive a wedge between the cases. This 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.

Vic has no other way to avoid the harms except to limit Flintstone's control. By contrast, Sage—a representative person whose opportunities are improved by the illiberal threat to Prudie—clearly does have a 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 suggests a stable explanation of 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.

So there are reasons to think that when illiberal interventions use force, they may violate the Force Constraint. However, do illiberal interventions need to use force? First, even if illiberal interventions impose costs, they might not use force to impose them. Consider the Omittite Emperor's forceless imprisonment, or automatically deducted fines. Second, illiberal interventions might not even impose costs. They might provide subsidies, or structure choices, or make means unavailable, or, finally, simply issue advice. So, applying the Subtraction Test, we find that if even if we remove the force from illiberal interventions, the complaint against their illiberality remains.

5.5 Public Justification

We have not yet considered a prevalent approach to explaining the prohibition on illiberal interventions, which is often associated with the phrases "public reason," "public justification," and "reasonable acceptability." It runs roughly as follows:

(1) Prudie has a "right against what she cannot accept." That is, she has a right against being treated in certain problematic ways, which is lifted only if she could "reasonably accept" grounds that, if true, would justify that treatment.
(2) Illiberal interventions treat Prudie in these problematic ways.
(3) There is no justification of illiberal interventions that Prudie can reasonably accept.
(4) So, illiberal interventions violate Prudie's right against what she cannot accept.[36]

A now vast literature proposes rights against (or at least prohibitions of) what a person cannot reasonably accept, with Rawls's (1993) "Liberal Principle of Legitimacy" being perhaps the best-known instance (see also Nagel 1991, Thomson 1995, Larmore 2008).

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[36] Some philosophers who accept all of these claims sometimes suggest that they are related in a different way: not that (4) *follows* from (1), but instead that (1) *presupposes* (4). We start with the prohibition on illiberal interventions and explain the right against what one cannot reasonably accept on the basis of that. Views of this kind seem to assume, rather than to explain, what we are trying to explain.

For example, Freeman (2007 218–9) suggests that problematic treatment without reasonable acceptance is wrong *because* it "borders on a violation of liberty of conscience" (compare Tadros 2016: 137).

Similarly, Quong (2011 291) suggests that one counts as "reasonable" only if one is committed to certain liberal ideas, which include, or at least independently justify, the sort of liberal protections mentioned in (4) (183). But then to motivate the right in (1), it seems, we must independently motivate these liberal ideas. For why insist that the problematic treatment must accepted by "reasonable" people, understood as people who accept those liberal ideas, unless there is some prior case to be made for those liberal ideas?

Two comments before we assess whether the argument is sound. First, "reasonably accept" can be understood in two ways. On a stronger reading of "reasonably accept," the grounds in question must be compatible with Prudie's actual, particular religious, moral, philosophical, "comprehensive," etc. commitments (Cohen 2009, Estlund 2008, Gaus 2011, Quong 2011 168, Tadros 2016, Ch. 8), unless these commitments are "unreasonable." On a weaker reading, the grounds in question may instead be relevantly "generic"—based on ideas from the "public political culture" or "common human reason"—even if they aren't compatible with Prudie's actual, particular commitments (Rawls 1993, Freeman 2007 236–7).

Second, one might wonder why (1) takes the form that it does. Why does the right require only that Prudie could (i) *reasonably* accept (ii) the *grounds*, even if Prudie does not (i) *actually* accept (ii) the *justification*? Perhaps the idea is that Prudie has a stronger complaint against the problematic treatment to the extent that Prudie is "further" from actual acceptance of its justification, but that this complaint has to be balanced against the burdens that others would have to bear when the problematic treatment is forgone. Hence the fact that Prudie could reasonably accept the grounds may be "close enough," in light of the burdens that others would have to bear either to bring Prudie closer or to forgo what would be gained only by the problematic treatment of her. Second, it may be fair to ask others to do their part in bringing it about that Prudie is not subject to problematic treatment whose justification Prudie does not accept. But they can do their part either by refraining from the treatment or by helping Prudie accept it. If others have ensured that Prudie could reasonably accept the grounds, they have given adequate help. It's not *their* responsibility if Prudie refuses to actually accept the justification. This is especially so, if Prudie's refusal is epistemically unreasonable (e.g., intellectually lazy) or morally unreasonable (e.g., unwilling to take others' interests into account).[37] If this reconstruction is correct, however, then the right against what Prudie cannot reasonably accept would seem to require not only

[37] As mentioned in an earlier footnote, Quong 2011 understands "unreasonable" in a third way, as simply not accepting specific liberal ideas. A utilitarian might be "unreasonable" in this sense, without being epistemically or morally unreasonable (185). It is not clear, though, why being "unreasonable" in this third sense should similarly limit what one can ask of others.

that there *be* grounds that Prudie could reasonably accept, but also that *others give Prudie sufficient help* to actually accept the justification (e.g., by trying to convince Prudie of it). It is worth noting that this further requirement seems largely overlooked in the literature.

With these two comments out of the way, on to the central question: Is the argument is sound? The first questions are: What is the "problematic treatment"? And why, as (1) claims, is reasonable acceptability required to solve the "problem"? After all, if the problematic treatment is force, then why isn't a sufficient solution, as the Avoidability Principle holds, that Prudie has adequate opportunity to avoid the force? Or if the problematic treatment is instead a kind of threat, then why isn't a sufficient solution, as Choice holds, that Prudie's choice situation is left no worse than she is entitled to? Why insist on reasonable acceptability as a further requirement?

It's hard to find any explicit answers in the literature. One exception is Gaus 2011, who views the problematic treatment not as force or threat, but instead as holding attitudes, such as resentment, toward Prudie that presuppose that she has, or had, a duty to act otherwise. Holding such attitudes toward Prudie is appropriate, he then suggests, only insofar as Prudie could reasonably accept that she has that duty. This is something *close* to (1): the problematic treatment is inappropriate unless Prudie can reasonably accept it. Why think this? Gaus suggests that it offers the best explanation of why it is inappropriate to resent children or the mentally impaired for what would otherwise count as a violation of duty. It is appropriate because they could reasonably accept that they had that duty. Now, it is not clear why the fact that such attitudes are *inappropriate* should imply that those attitudes, or actions suitably related to those attitudes, are *impermissible*. We would need that step to have something of the form of (1). But let us grant this step, at least for the sake of argument.[38]

[38] Gaus seems to take this to imply that "coercing" Prudie is impermissible unless it is "publicly justified" (2003, 2009 89, 2011 17.3) (though he acknowledges at times a "blameless liberty" to coerce even without public justification (2011 22.3.b, 2014)). It's obscure why this is, since one can "coerce" Prudie without presupposing that she has a duty to do otherwise.

Even if, for whatever reason, we grant (1)—that Prudie has such a right against problematic treatment that she cannot reasonably accept—why should (4) follow: that illiberal interventions on Prudie are prohibited? We still need to show (2): that illiberal interventions treat Prudie in the problematic ways. But, as we have seen, illiberal intervention need not involve force or threat. So, this argument would present no barrier to illiberal interventions in the Omittite Empire or our Trusting Future—no more of a barrier than this argument presents to the sermons of private citizens. And, turning to Gaus's view—that the problematic treatment is the presupposition of a duty—illiberal interventions, as we saw when we rejected the Duty Requirement, need not presuppose that Prudie has a duty.

Moreover, the argument also needs to show (3): that there is no justification of illiberal interventions that Prudie can reasonably accept. But some illiberal interventions might be justified on grounds, such as domestic peace, that are either generic or compatible with a wide range of particular views (Arneson 2014; however see Cohen 2009 238). And even illiberal interventions that can be justified on grounds that are compatible only with a narrow range of particular views might nevertheless take place in a society whose members agree on those particular views.[39]

[39] See Quong's puritans, below. It seems implausibly constraining to require grounds compatible with any commitments that someone *might* hold (so long as they are reasonable) (Cohen 2009 234).

5.6 Paternalism, Strictly Speaking

One last try. Perhaps the complaint about illiberal interventions is a complaint against *paternalism*, *strictly speaking*. The argument would run as follows:

(1) Prudie has a right against paternalism, strictly speaking: that is, people aiming to benefit her by means other than advice, when she in advance refused, or now refuses, to consent to being so benefitted.
(2) The illiberal interventions against which Prudie has a complaint treat her paternalistically, strictly speaking.

However, against (2), not all illiberal interventions, even interventions that make Prudie less likely to choose badly, treat Prudie paternalistically, strictly speaking. First, if *aiming* to benefit Prudie is required to make the intervention paternalistic, then the same intervention might avoid the charge of paternalism simply by aiming not to benefit Prudie, but instead to please God.

Second, not only Prudie, but also her neighbor, Prudhomme, benefits from the state's intervention. And the state cannot benefit Prudhomme without benefitting Prudie; either the state illiberally intervenes with everyone or with no one. So in illiberally intervening with everyone in order to benefit Prudhomme, the state needn't treat *Prudie* paternalistically. And it needn't treat *Prudhomme* paternalistically if he consents to it (de Marneffe 2010 81). Yet Prudhomme's consent should not make it permissible to subject Prudie to an illiberal intervention.

Finally, assuming that mere advice is not paternalistic, a right against paternalism would not rule out the state's advice against Brainechanics.

Moreover, against (1), the right against paternalism is itself mysterious. Many suggest that the problem with paternalism has to do with what it expresses: e.g., that the target's judgment (or agency) with regard to his own good (or what lies within his "legitimate agency") is inferior (Shiffrin 2000; Quong 2011; Cornell 2015; Cholbi 2017). But it's not wrong to report that someone has inferior judgment about his own good (setting aside independent moral prohibitions on misleading, causing gratuitous pain, etc.). And a person may take as much pride in his judgment about

his duties to others or impersonal values as in his judgment about his own good. Why then isn't it as objectionable for others to express that his judgment is inferior in those other domains?