

# Justificatory Liberalism, Liberal Perfectionism and Religious Toleration

Thesis: A good reason to endorse justificatory liberalism is that it can justify the great weight that liberal societies give to religious toleration and liberty of conscience. The major competitor liberal political theory, liberal perfectionism, has serious trouble accommodating ordinary intuitions about the importance of religious toleration.

The argument of this essay is that justificatory liberalism can justify the intuitive weight citizens of liberal societies place on religious toleration.<sup>1</sup> This is not to say that it is better than any other possible theory. Instead, the argument is less ambitious. I will argue merely that justificatory liberalism is decisively superior on this score to its major competitor: liberal perfectionism.

Justificatory liberalism holds that liberal rights and duties are grounded first and foremost in respect for persons and that respect for persons requires that coercion be publicly justified to those coerced. It is a theory that is grounded primarily in the right, to put it roughly. On justificatory liberalism, liberal states are not to coerce citizens in the name of promoting their good unless they have overriding reason of their own to accede to the coercion required to promote their good. Liberal perfectionism holds that liberal rights and duties are grounded in the intrinsic goods they secure for individuals. Liberal states are not to remain neutral among conceptions of the good. Rather, liberal rights are means to securing goods for citizens and the liberal state promotes a distinct conception of the good by enforcing those rights.

However, liberal perfectionism does not sit well with liberal societies' practice of religious toleration. Citizens of liberal societies routinely allow one another to freely choose religious that they regard as not only false but even a threat to their salvation. The liberal perfectionist must justify the practice of toleration by showing that toleration promotes some intrinsic good or vital interest. But attempts to converge on a particular candidate good or interest have failed.<sup>2</sup> In the literature on this topic, liberal perfectionists have proposed many candidates and shot the others

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<sup>1</sup> As in Chapter 1, I take religious toleration to obtain when citizens of one religion refrain from interfering in the practice of religions distinct from their own that promote incompatible values. In other words, societies practice religious toleration when they allow religious with distinct aims, theologies and goods to coexist unmolested.

<sup>2</sup> In this paper, I shall focus the intrinsic good of meeting the *interests* of individuals. Perfectionists can potentially focus on intrinsic goods other than meeting interests but all of the candidate goods I discuss here take the form of meeting interests, so I will focus on them.

down. I show that the candidate interests fail for the same reason: the weight we place on the rightness of religious toleration cannot be fully captured by an appeal to a particular aspect of its intrinsic or instrumental goodness. In this respect, political theories like justificatory liberalism that do not reduce the justification of the right to the good have an important advantage over those that do not.<sup>3</sup>

I will proceed in six parts. In Section I, I argue that the intuitive weight that citizens of liberal societies place on religious toleration is substantial. In Section II, I analyze how justificatory liberalism accounts for this weighting. Section III outlines how liberal perfectionists justify religious toleration. Section IV covers some standard perfectionist defenses of toleration and draws out their common problems. And in Section V, I argue that the common problems are debilitating for liberal perfectionist accounts of toleration. Section VI is my conclusion.

### Section I: The Weight of Toleration

Liberal movements have convinced hundreds of millions of people to reason from the standpoint of others over the past four hundred years. Liberals of past centuries convinced most of Western Civilization to respect the differing deliverances of individual reason with regard to religion. As a result, today the idea of mandating religious practice as the Roman Catholic, Lutheran, Reformed and Anglican Churches once did is considered unacceptable and any public establishment of religion has been rejected in the United States for centuries. In fact, the acceptability of toleration goes largely unnoticed in the liberal part of the world and serious challenges to it seem insane or archaic.

Citizens of liberal societies allow each other to choose whatever religion we like, even if we regard that religion as obviously false. In fact we let people choose whatever religions they like, even if we think that they are doing enormous harm to themselves by doing so. To push the point further: citizens of liberal societies let people choose whatever religions they like and *raise their children likewise*, even if we think that they are doing enormous harm to themselves *and their children*. A few of us are even so committed to religious toleration that we allow the parents of some religions to deny their children vital medical care based on the religious beliefs of the parents that may lead directly to their death.

Empirical evidence backs up these claims. But some caveats bear mentioning. First, there is no *one* weight<sup>4</sup> that citizens of liberal societies place on religious toleration; weights vary according to individuals. Second, the weightings relevant to

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<sup>3</sup> It seems possible for perfectionists to avoid reducing the right to the good, but the major recent perfectionist defenses of toleration do not pursue this possibility.

<sup>4</sup> I take placing *weight* on a view to mean according the view significant value, such that the view can defeat competing considerations in a disagreement.

the main argument are the weightings citizens of liberal societies place on *considered judgments*, judgments made in calm, cool and collected moments, not in unstable, overly emotional circumstances.<sup>5</sup> Finally, one can place weight on religious toleration along two distinct dimensions, a belief/practice dimension and a depth/scope dimension. The belief/practice dimension covers whether we acknowledge religious toleration in *belief* or whether we merely *practice* it or some combination of the two. I will focus on acknowledged beliefs; focusing merely on practice will not reveal what motivates the practice of toleration. Furthermore, we do not always extend toleration to all religions, instead restricting toleration to a confined set. Yet we might tolerate those within the set to a great degree, permitting them almost any action within the confines of their faith. This is the depth/scope dimension. The empirical evidence implies a great depth of toleration but does not address scope directly, although it has some implications for it. Our primary focus, though, is depth. The argument of this article then is this: the weight citizens of liberal societies *generally* place on the *depth* of religious toleration *in belief* when making *considered judgments* is better accounted for by justificatory liberalism than liberal perfectionism.

The empirical evidence focuses on American citizens. When it comes to religious beliefs, Americans are often concerned with what others see themselves as having reason to do or believe. Alan Wolfe, a professor of sociology and political science at Boston University, surveyed two hundred middle class Americans about their attitudes towards religion and politics. Those interviewed came from diverse backgrounds, with individuals interviewed in Boston, Tulsa, Atlanta, and Georgia suburbs. The surveys were all brought under the banner of what Wolfe calls The Middle-Class Morality Project.<sup>6</sup> Wolfe and his students found that Americans exhibit a broad, cross-cultural, cross-regional, cross-denominational tolerance of religious differences. In particular, he found that they are often concerned not to ‘preach’ to others. For instance, Kenneth Easterbrook, a black software consultant living in Cobb County, Georgia said that “I would say that we choose to practice our religion quietly in the sense that I don’t go to others and try ... to convince them that my religion, my approach to life, is best for them. It’s an awareness you have to reach on your own. You cannot mandate religion.” This attitude was typical, even among orthodox persons of faith. A. C. Stewart, a retired football coach in Oklahoma, quit going to church because of “the self-judgment, the ‘I’m right, you’re wrong’ attitude”.

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<sup>5</sup> See Rawls’s discussion of considered judgments and reflective equilibrium, John Rawls, *A Theory of Justice*, 20.

<sup>6</sup> Cf. Alan Wolfe (1999), *One Nation, After All*, Penguin USA Publishers, Chapter 2, “Quiet Faith”. Reprinted as “Civil Religion Revisited: Quiet Faith in Middle-Class America” in Nancy Rosenblum, Ed. *Obligations of Citizenship and Demands of Faith*. Princeton: Princeton University Press, 32-72. It is important to note that Wolfe focused primarily on *middle-class* Americans. He did not provide data on poor or rich Americans. He suggests that the tolerant attitudes of the American middle-class may be due to their education level.

Middle-class Americans are often hesitant to judge the faiths of others, to suggest that what is good for one person is good for another. Most Middle-class Americans are religious, but when it comes to religion, they affirm liberal toleration.

Many of those Wolfe interviewed partly fit the stereotype of an intolerant person of faith. But he notes that social scientists often misinterpreted those who believe that the United States needs a more religious public sphere. Over the course of his study, Wolfe found that liberals “misunderstand the points made by deeply religious believers ... for the latter seem themselves as most definitely not trying to impose their Christian beliefs on an increasingly diverse society.”<sup>7</sup> Even those conservative persons of faith reviled by academic liberals want to avoid the appearance of imposing their faith on others without reason. Leaders of the American Religious Right speak in terms of *defending* traditional institutions against attack. And while their political program may not resemble a ‘defense’ to many, they nonetheless feel compelled to paint their program in defensive terms.

Wolfe consistently found that middle-class Americans were resistant to judge the beliefs of others. This was true even of those especially orthodox persons of faith who believe that salvation hangs on differences of belief. Fred Jones, a man from Tulsa who “believes in God, family and country, in that order” has strong religious beliefs, claiming “I think the reason we are in the shape we’re in today is that we have excluded God instead of including God in our lifestyles.” Yet when discussing two of his friends who do not go to church, he says, “I think they’re both good, spiritual, moral people, but they do not honor God by coming to his House. I respect them. I like them.”<sup>8</sup> Most middle-class Americans are reluctant to judge people of other faiths or condemn them as ‘godless sinners’.

These findings may pose difficulties for the main argument of this piece because it appears that Americans often do not judge whether their fellow citizens of different faiths are going on to eternal damnation. They simply suspend judgment out of respect. Often citizens will mention that different religions promote the same values, which would lend support to the perfectionist position – that people tolerate because they believe that other religions bring about net good over bad. Yet a common attitude seems to follow straightforwardly from a sense of reciprocity. Stephen Jackman of Sand Springs notes: “My wife has a fit because they can’t hold Christmas programs up here in school. ... Well, what if they demanded that they observe Rosh Hashanah? How are you going to feel then?” Wolfe argues that “religions tolerance in American bears a distinct resemblance to laissez-faire economics: you can do what you want so long as you let me do what I want.”<sup>9</sup> Thus, while some emphasize the ways in which different religions promote the same goods,

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<sup>7</sup> Rosenblaum, 53.

<sup>8</sup> Ibid, 43.

<sup>9</sup> Ibid, 50.

middle-class Americans appear to have some strong intuitions about reciprocity, even when they believe that a lot is at stake in the afterlife. This conclusion is complicated by the fact that many Americans suspend judgment about the beliefs of others; nonetheless, they believe their faith is right while tolerating others, despite entertaining the possibility that the religions of others may lead them to suffer in the afterlife. Let us tentatively conclude, then, that most Americans place substantial weight on the depth of religious toleration will refrain from judging or not tolerating others based on religious differences.

On the face of it, some strong degree of toleration seems right. But consider the matter from the perspective of a Medieval Catholic Pope.<sup>10</sup> The Medieval Catholic Pope holds that there is no salvation outside of the Roman Catholic Church. Submission to the Roman Pontiff is an absolute requirement for salvation.<sup>11</sup> Consider what the Medieval Catholic Pope's reaction to modern liberal societies might be. He would probably hold that modern Roman Catholics had grown corrupt because they tolerate alternative religious practices that can undermine the eternal salvation of all. Free discussion and open challenge to religious authority may result in the eternal damnation of millions. There are few worse consequences. A person that believes this may justifiably feel an obvious imperative that to protect the human good responsible citizens must structure institutions such that the transcendent interest of salvation is secured for the maximum number of people. To someone outside of the liberal universe, *our* practices are the ones that appear insane. They can be seen to express a heartless indifference to the eternal fulfillment of the human person. Yet even religious "fundamentalists" in the United States, the old bug-a-bears of traditional liberalism, believe in a huge degree of religious toleration that far exceeds that of our Medieval Catholic Pope. Citizens of liberal societies think the perspective of the Medieval Catholic Pope not only wrong but rather morally blind to a central moral truth of modern life.

What could justify the weight that we place on religious toleration? What moral norm could possibly have so much weight as to cause us to allow others to die for beliefs that we consider false and pernicious? Modern liberal political theories have two classes of answers: they either justify the weight of toleration by an appeal to the right or to the good. By an appeal to the right, I mean that religious toleration is justified by an appeal to rightness irreducible to goodness. And by an appeal to the good, I mean the opposite: religious toleration is justified by an appeal to rightness reducible or derivable from goodness. Describing these relations is notoriously hard.

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<sup>10</sup> I grant here that many Catholic theologians in the medieval period acknowledged *pragmatic* reasons for toleration.

<sup>11</sup> For instance, in 1302, Pope Boniface VIII proclaimed: "Furthermore, we declare, we proclaim, we define that it is absolutely necessary for salvation that every human creature be subject to the Roman Pontiff." Boniface VIII, *Unam Sanctam*, 1302.

Deontological liberals, for instance, can place the right “within” the good – they can use reasons deriving from considerations about the good to motivate the right. But they cannot *reduce* the right to the good. Liberal perfectionists will generally aim reduce the right to the good in that they understand right actions as promoting the good necessarily. So the right is explained or understood in terms of the good. I will say more about these distinctions in the following two sections by means of the political theories that best represent them.

## Section II: How Justificatory Liberalism Weights Toleration

A concern with respect for persons lies at the heart of justificatory liberalism.<sup>12</sup> Respect for persons, on this view, requires that citizens take serious account of the reasons of others, or that they reason from the standpoint of others. In other words, respect for persons requires the *public justification of coercion*. A public justification is a justification for a coercive law of policy that the individual coerced has conclusive reason to accept. Rawls famously claims:

Our exercise of political power is proper only when we sincerely believe that the reasons we offer for our political action may reasonably be accepted by other citizens as a justification of those actions.<sup>13</sup>

Justificatory liberalism is that family of political theory that follows Rawls on this score. Justificatory liberalism can be generally stated as rooted in two principles. First, justificatory liberalism contains a presumption against interference or coercion because respect for persons requires that individuals be able to follow the dictates of their own reason in the absence of sufficient reason to the contrary. Joel Feinberg claims that on this view, “Liberty should be the norm ... coercion always needs some special justification.”<sup>14</sup> What I call the Liberty Principle holds that:

*The Liberty Principle:* Coercion always needs some special justification. Unjustified coercion is pro tanto wrong.

Gerald Gaus and I have argued elsewhere that this ‘presumption in favor of liberty’ is a deep feature of the liberal tradition as a whole.<sup>15</sup> The second principle specifies what

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<sup>12</sup> As Christopher Eberle claims, “Respect for others required public justification of coercion: that is the clarion call of justificatory liberalism.” Christopher Eberle, *Religious Conviction in Liberal Politics*, 54.

<sup>13</sup> John Rawls, *Political Liberalism*, Introduction, xlvi.

<sup>14</sup> Feinberg, *Harm to Others*, 9.

<sup>15</sup> See Gerald Gaus and Kevin Vallier, “The Roles of Religious Conviction in a Publicly Justified Polity: The Implications of Convergence, Asymmetry and Political Institutions,” *Philosophy and Social Criticism*, 2009, 35, 51-76, esp ft 6. We point out that a presumption in favor of liberty can be found in

a ‘special justification’ for coercion consists in; this is known as the Public Justification Principle:

*The Public Justification Principle:* A coercive action C is justified if only if each and every member of the public P, deliberating under conditions D, has (a) conclusive reason(s) R to endorse C.<sup>16</sup>

I take coercive actions to be those embodied in actions of one individual against another, actions in accordance with social rules such as laws or regulations, or even those coercive acts that comprise the public embodiment of a constitution. The Public Justification Principle specifies membership in a public P, which must involve some level of idealization. Individuals’ unidealized reasons are not those definitive for politics given that they are often based on false information and poor reasoning.<sup>17</sup> Specifications of P vary amongst justificatory liberalism, but variations need not detain us here.<sup>18</sup> Deliberative conditions D vary amongst justificatory liberals as well; Rawls’s Veil of Ignorance is perhaps the most famous specification of D followed closely by Habermas’s Ideal Discourse Situation.<sup>19</sup> As with specifications of the public, deliberative conditions are beyond the scope of this essay. Reasons R specify the reasons relevant to the proposed coercive action at hand.<sup>20</sup>

Public justifications must be conclusive. In other words, the reasons underlying a coercive proposal have to be good enough to undermine or defeat citizens’ other reasons. Conclusiveness is absolutely central, for without a conclusive

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many liberals, not limited to John Stuart Mill, John Rawls, and Stanley Benn. See John Stuart Mill, *Principles of Political Economy*, in *The Collected Works of John Stuart Mill*, vol. 3, 938; John Rawls, *Justice as Fairness: A Restatement*, 44, 112; Stanley Benn, *A Theory of Freedom*, 87.

<sup>16</sup> My formulation of the Public Justification Principle differs from the formulation given in Gaus and Vallier. There we formulate the Public Justification Principle as: L is a justified coercive law only if each and every member of the public P has conclusive reason(s) R to accept L as a requirement. Gaus gives distinct formulations of the Public Justification Principle elsewhere. For one recent formulation, see Gaus, “The Place of Religious Belief in Liberal Politics,” 5. The principle is formulated as follows: A coercive law L is wrong unless each and every member of the public P deliberating under conditions C would, given their reason(s) R, endorse L.

<sup>17</sup> Gerald Gaus addresses these matters in detail. See his *Justificatory Liberalism*, 130-158, especially 130-136.

<sup>18</sup> Rawls requires that members of the public be reasonable and rational, whereas Kant requires that members of the public be members of the realm of rational beings.

<sup>19</sup> See John Rawls, *Political Liberalism*, 104 and *A Theory of Justice*, 118. Also see Jurgen Habermas, *Moral Consciousness and Communicative Action*, 198.

<sup>20</sup> Even here justificatory liberals differ. Some defend a ‘consensus’ conception of reasons, others a ‘convergence’ conception. For more on this distinction, see Fred D’Agostino, *Free Public Reason: Making it Up as We Go*, 30. Also see Thomas Nagel, “Moral Conflict and Political Legitimacy,” *Philosophy and Public Affairs*, 16, 218. I discuss the distinction with Gerald Gaus and Gaus and Vallier, “The Roles of Religious Conviction in a Publicly Justified Polity,” ....

justification for coercion those coercing cannot claim to be respecting the coerced because the balance of coerced citizens' reasons does not weigh in favor of the coercion.<sup>21</sup> Another core commitment of justificatory liberals is to what Rawls termed "the fact of reasonable pluralism."<sup>22</sup> Gerald Gaus and I explicate the claim as follows: "Members of the public, looking at the same evidence and considering the same arguments, will typically come to different conclusions about even the most basic questions of good and value."<sup>23</sup> Reasonable disagreement about the ends of life and even conceptions of justice is a lasting circumstance of liberal democratic practice and it is key to successful public justification. Without appreciating the extent to which citizens' reasons differ, those seeking public justification for their preferred policy may impose coercion unjustifiably.

Justificatory liberals can make a strong case for endorsing religious toleration. It is hard, *prima facie*, to see how citizens' could have conclusive reasons for their own to allow themselves to be forcibly prevented from practicing their religion according to conscience. Citizens of liberal societies appear to have no conclusive reason to accept restrictions on religious practice. I take this to be – at a general level – completely uncontroversial. Freedom of conscience is the *original liberal liberty*. It is the first liberty that liberal movements secured for Western societies. I believe it can be successfully argued that a broad range of religious toleration has been *victoriously justified*, to use Gerald Gaus's term.<sup>24</sup> In short, a victorious public justification is one that has defeated all potential defeaters. But to be more specific, a victorious public justification must meet two conditions. First, it must meet what Gaus calls the 'Publicity Condition'. As he puts it, "Betty cannot have reasonable confidence that her proposed public justification is victorious unless and until challengers have had ample opportunity to try to defeat it."<sup>25</sup> Second, it must justify 'Epistemic Authority and the Standard of Proof'; even if some members of liberal societies deny that the public justification of religious toleration has been victoriously justified, victorious justification is still possible. Suppose Arthur and Benedict dispute over whether Arthur can practice Protestantism while Benedict, a Roman Catholic, denies this and wants to impose Catholicism on Arthur. Arthur believes he has no conclusive reason to accept Benedict's imposition whereas Benedict believes that indeed Arthur does have such a reason; he believes that Arthur's eternal salvation hangs on his religious choice. If Benedict is committed to public justification, then he must claim that he knows Arthur's reasons better than Arthur does. But Gaus argues

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<sup>21</sup> Not all justificatory liberals accept this requirement. See George Klosko, "Reasonable Rejection and Neutrality of Justification" in Steven Wall and George Klosko, eds., *Perfectionism and Neutrality: Essays in Liberal Theory*, 167-189 at 178.

<sup>22</sup> See John Rawls, *Political Liberalism*, 36.

<sup>23</sup> See Gaus and Vallier, ...

<sup>24</sup> See Gerald Gaus, *Justificatory Liberalism*, 147-151.

<sup>25</sup> Gaus, *ibid.*

that “in cases of reasonable doubt, [Arthur’s] epistemic authority over his own beliefs is decisive.”<sup>26</sup> If Benedict is to respect Arthur, then in cases of dispute, he cannot assert his authority to interpret Arthur’s reasons despite Arthur’s protestations to the contrary. If he does so, then Benedict clearly does not respect Arthur as a free and equal member of the public. Given these two conditions – publicity and epistemic authority – it is a simple matter to show that a broad range of religious toleration is defensible given justificatory liberalism. If religious toleration has not been victoriously justified, then it is fair to say that *nothing has*.

But that said, a relevant counterargument to justificatory liberalism is sometimes raised. Joseph Raz has argued that the Liberty Principle (or in his terms, the presumption in favor of liberty) ends up weighting all freedoms in the same way and that justificatory liberalism, since it is based on this presumption cannot explain why some freedoms are more important than others.<sup>27</sup> But I shall argue that this is a mistake. Justificatory liberalism can weight various freedoms by considering the force and centrality of the reasons individuals have that defeat particular proposals for interference.

Let’s compare a trivial liberty with one of obviously great weight, like religious toleration. Take the liberty of being able to extend a structure one thousand feet above one’s house. One can imagine an individual intent on building his own little Tower of Babel, but in general these kinds of structures are blocked so that they do not interfere with air travel. This is not because any *one* such structure would interfere with air travel but that the liberty to do so would, in practice, reduce the liberty of everyone to fly freely across the country. It is hard to imagine good reasons in support of tower-building liberty that cannot be overridden by considerations concerning the need for clear skies. Few people have projects or interests bound up with building such a structure. Thus, the reasons to object to a regulation banning these structures are of far less weight than the reason to permit the regulation.<sup>28</sup>

Contrast this with religious toleration. Individual’s religious beliefs are often their most important beliefs. What’s more, they often play a crucial and central role in defining an individual’s identity. It is hard to imagine a reason of sufficient weight an individual has overriding reason to acknowledge that would justify restricting her

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<sup>26</sup> Gaus, *ibid*, 150-1.

<sup>27</sup> Joseph Raz, *The Morality of Freedom*, 8.

<sup>28</sup> Scanlon uses the terms ‘objections to permission’ and ‘objections to prohibition’. See Scanlon, *What We Owe To Each Other*, 195. One might argue that some possible religion could *require* building the Tower of Babel in a particular place. There are religions that have required structures to be built in certain locations. These cases are unusual, so I will not deal with them here in detail. But if the religious demand were strong enough, then it may turn out that the members of the religion in question may not have sufficient reason to reason from the standpoint of others on this issue. However, I still think it is an open question which only further inquiry into the religion itself could address adequately.

freedom to pursue a religion of her choosing. In other words, no reasons are strong enough to override the presumption against coercion<sup>29</sup> in this domain. Justificatory liberalism weights freedoms by the reasons individuals have to permit or reject proposed coercion. They attend to the reasons people have to accept a restriction on their action on behalf of the reasons of someone else. If the reasons to reject interference are weighty, then the freedom is weighty. Justificatory liberals do not understand the weight of a liberty in terms of the importance of the freedom to the good or well-being, as a perfectionist like Raz does. Instead, justificatory liberals understand the weight of liberties in terms of the reasons that individuals recognize as weighing in favor of a particular liberty.

The norm of religious toleration, then, is assigned substantial weight by justificatory liberalism, as reasoning from the standpoint of others requires respecting those reasons stemming from the core of their reasons. Religious convictions are central to the lives of hundreds of millions of members of liberal democratic societies. They often fix an individual's understanding of her earthly purpose and shape and organize her entire network of reasons. Religious toleration is a crucial liberty because respecting it is tantamount to respecting an individual's autonomy and identity. Religious convictions are often so powerful and central to an individual's understanding of herself that they may be *constitutive* of an individual's identity. Justificatory liberalism does not understand political rightness in terms of goodness. The theory begins and ends with *respect* rather than well-being or goodness. And if to respect a fellow human involves taking account of her reasons then this means taking account of her most sincere and central convictions.<sup>30</sup> There is a reason that Rawls said of the justificatory liberal program, that it "applies the principle of toleration to philosophy itself" or to all of an individual's reasons.<sup>31,32</sup> It is because religious toleration is not only the foremost liberty defended by justificatory liberalism but is the liberty the fight for which gave birth to the justificatory liberal tradition in the first place.<sup>33</sup>

### Section III: The Structure of Perfectionist Toleration

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<sup>29</sup> I shall use the terms 'Liberty Principle', 'presumption in favor of liberty' and 'presumption against coercion' interchangeably in this article.

<sup>30</sup> Of course, some citizen's religious convictions are not central to their lives. But we are focused on those citizens of faith whose religious convictions *are* central to their lives.

<sup>31</sup> Rawls, *Political Liberalism*, 10.

<sup>32</sup> Some will notice that justificatory liberalism is not the only deontological theory of justice that can accommodate religious toleration. There are side constraint liberalisms, like libertarianism or theistic natural rights liberalism, which place an absolute prohibition on interference. I do not discuss these options here.

<sup>33</sup> For an argument to this effect, see Gerald Gaus, *The Order of Public Reason*, Chapter 1.

Justificatory liberalism has a natural home for religious toleration within its conceptual structure. But what about liberal perfectionism? How does it fit with religious toleration? To answer the question, the conceptual structure of liberal perfectionism must be explained.

A liberal perfectionist politics is, of course, a perfectionist politics. Political perfection justifies Liberal perfectionism justifies political principles by an appeal to *well-being* or some notion of *human flourishing*.<sup>34</sup> Steven Wall defines perfection as the view that “political authorities should take an active role in creating and maintaining social conditions that best enable their subjects to lead valuable and worthwhile lives.”<sup>35</sup> Wall takes perfectionist political morality to involve four commitments:

- (1) That some ideals of human flourishing are sound and can be known to be sound;
- (2) That the state is presumptively justified in favoring these ideals;
- (3) That a sound account of political morality will be informed by sound ideals of human flourishing;
- (4) That there is no general moral principle that forbids the state from favoring sound ideals of human flourishing, as well as enforcing conceptions of political morality informed by them, when these ideals are controversial and subject to reasonable disagreement.<sup>36</sup>

Much of this view is left open, but the definition of political perfectionism shows that political perfectionism already strikingly contrasts with justificatory liberalism. On justificatory liberalism there is a presumption in favor of liberty irrespective of whether that liberty promotes the good. This is not the same as a general moral principle that forbids the state from promoting the good, but because justificatory liberalism recognizes reasonable pluralism as evidence that disagreement about the good is pervasive, it holds that individuals will probably not all have conclusive reason to endorse some conception of the good. For this reason, justificatory liberalism is thought to directly contradict any perfectionist politics.<sup>37</sup>

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<sup>34</sup> On this view, Aristotelean-Thomistic natural law theory counts as a perfectionism. I don't think this is controversial, but it bears noting.

<sup>35</sup> See Steven Wall, *Liberalism, Perfectionism and Restraint*, 8. Wall notes that this account is extremely general because it does not specify a conception of a valuable and worthwhile life.

<sup>36</sup> *Ibid.*

<sup>37</sup> See Rawls, *A Theory of Justice*, 287, 288. Rawls says of perfectionist politics would be resisted by the parties to the original position because they “are assumed to be committed to different conceptions of the good” and that as a result they will fail to “have an agreed criterion of perfection that can be used as a principle for choosing between institutions.” Since perfectionism requires basing political institution

Wall argues that a political value or ideal of human flourishing is sound when (a) there is reason to believe that the ideal or value is sound and (b) the ideal or value possesses some property or set of properties which make it sound.<sup>38</sup> It must also be pointed out that perfectionism is not necessarily monistic about which ideals or values best promote human flourishing. Wall argues that perfectionism can be pluralistic. As Wall notes, perfectionists, “consistent with their core commitments ... can hold a variety of positions about the meaning and significance of [claims about the truth or falsity of pluralism]. The only position clearly ruled out ... is the value nihilist position ....”<sup>39</sup> Finally, Wall persuasively argues that perfectionism does not straightforwardly generate recommendations for particular, real-world political institutions. He emphasizes that political morality and institutional design should be run together.<sup>40</sup> Wall argues that perfectionists judge political institutions by how well they promote perfectionist values, but the effectiveness of particular institutional structures in this regard is an empirical matter.<sup>41</sup> Thus, I admit at the outset that perfectionists may find that when it comes to institutional practice perfectionists may be able to recommend religious toleration. Yet while this is in principle possible, it is at the very least empirically inconclusive. As a result, I will argue that perfectionists are committed to restricting religious toleration even if restricting toleration proves difficult in practice.

The foregoing explanation of perfectionism should suffice for our purposes. What then makes a conception of perfectionism *liberal*? Liberal perfectionists hold that freedom is a “distinct value”.<sup>42</sup> Freedom must have pride of place for a liberal perfectionist to be liberal. Furthermore, a liberal perfectionist must defend liberal principles by arguing that the traditional liberal freedoms are either intrinsically valuable, instrumentally valuable to protecting other intrinsic values, or both. Intrinsic values are understood as constitutive components of an individual’s flourishing or well-being. Any case for religious toleration requires situating it within one of these categories of well-being. Therefore, either religious toleration is an intrinsic part of well-being, or it is instrumentally valuable to protecting some other value or both. The only justification for religious toleration is that it promotes some sound value or ideal, either because religious toleration promotes some sound ideal or value or because it is a sound value or ideal itself (or both).

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on one or a handful of conceptions of the good, it is incompatible with a commitment to public justification. For more on this, see Gaus, forthcoming.

<sup>38</sup> Wall, 9.

<sup>39</sup> Wall, 18.

<sup>40</sup> Wall, 22.

<sup>41</sup> The issue is more complicated than I allude to here. Certain political institutions may have intrinsic value. See Wall, 22-25.

<sup>42</sup> Raz, *The Morality of Freedom*, 19.

Contemporary liberal perfectionists have tended towards the second strategy; they have attempted to justify religious toleration by arguing that it protects some crucial component of well-being, or some central intrinsic good. It is not clear why perfectionists have not pursued the first strategy, however. It would involve arguing that to *count* as flourishing one would have to be free to follow the religion of one's choosing and one would have to respect that same right in others. Perhaps perfectionists have not chosen this strategy because it seems hard to defend the claim that religious toleration is – at least very generally – a necessary condition for flourishing.

Given that liberal perfectionists have not pursued this strategy, they must justify the liberal commitment to religious by showing that religious toleration promotes the achievement of human flourishing and certain intrinsic goods. The general argumentative strategy for the liberal perfectionist involves two steps: First, liberal perfectionists must select a candidate good that religious toleration promotes. Second, they must argue that religious toleration more effectively promotes that good than sets of policies that restrict religious toleration. In the next section, I will examine each of the proposed candidates, and will argue that none of these putative intrinsic goods are clearly better promoted by religious toleration than by alternative, less tolerant arrangements. Therefore, I argue, liberal perfectionism cannot justify the weight citizens of liberal societies assign to religious toleration.

#### Section IV: Some Perfectionist Accounts and Their Problems

##### (IV.1) Non-Starters

I will not address some of the standard defenses of religious toleration. Locke famously argued that religious persecution is self-defeating, that it *won't work*, in other words.<sup>43</sup> He also argued that some religious truths couldn't be *known* and so claims about these truths couldn't be rightly legislated upon. Mill famously argued that intolerance violates the harm principle.<sup>44</sup> All three of these reasons are familiar – religious intolerance backfires, religious claims are highly fallible and so cannot justify persecution, and an individual's religious choices do not involve harm to others.

But the liberal perfectionist cannot base her case for toleration on these principles. First, while some methods of restricting religious practices may fail, others might succeed. Jonas Proast famously argued against Locke that while direct, forcible conversion may backfire, indirect attempts at conversion, say by the state setting up

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<sup>43</sup> Locke, *A Letter Concerning Toleration*, 10, 25.

<sup>44</sup> J. S. Mill, *On Liberty*, 29-33.

institutions to promote some religions over others, may not.<sup>45</sup> The fallibilism point is also strained. Many religious believers claim that they have infallible knowledge of religious truths or that they have religious beliefs with significant epistemic credentials. Simply asserting that religious believers cannot have the certainty they claim for their beliefs undermines some religious believers' claim to be legitimate religious believers at all.<sup>46</sup> For some religious believers claim that to have faith is to trust that certain claims are true and others false to a great degree. To base policy around an assertion that these claims are simply false is to fail to respect persons of faith on almost any understanding of respect.

The harm principle provides little hope of defense either, as the proper conception of harm is hotly contested. The religious persecutor will argue that it is a social harm to allow religious toleration.<sup>47</sup> And many persons, religious or not, will argue that allowing an individual to choose her own faith can result in the *wrong choice*. False beliefs can cause an individual to bring great harm to herself, her family and her community. So it is initially hard to see why religious toleration is supported by the harm principle. However, John Stuart Mill was a staunch defender of religious toleration in part because he believed that human lives of the highest utility could only be achieved through autonomous self-development.<sup>48</sup> In any event, we need some justified conception of harm to allow the Harm Principle to protect religious toleration. Some candidate conceptions can do the job and others cannot. Since we will review several potential candidate interests which religious toleration is supposed to protect, then a viable conception of harm may be defensible given these interests. But for now, it does not appear that the harm principle – by itself – has the power to

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<sup>45</sup> For a useful recounting of Proast's arguments see Richard Vernon, *The Career of Toleration*, Chapter 1 "The Argument from Belief". See Proast's original argument as well. J. Proust, *The Argument of the Letter Concerning Toleration, Briefly Consider'd and Answer'd*. For a current application of this argument, see Steven Wall, "Perfectionism, Public Reason, and Religious Accommodation", 283.

<sup>46</sup> For more on this see Thomas Christiano, "Does Religious Tolerance Make Any Sense?", 180-2.

<sup>47</sup> It is my understanding that this was a common argument made by many for centuries. It was, for instance, Aquinas's primary concern. See Thomas Aquinas, *Summa Theologica*, SS Q[11] A[3], where Aquinas argues: "I answer that, With regard to heretics two points must be observed: one, on their own side; the other, on the side of the Church. On their own side there is the sin, *whereby they deserve not only to be separated from the Church by excommunication, but also to be severed from the world by death. For it is a much graver matter to corrupt the faith which quickens the soul, than to forge money, which supports temporal life*. Wherefore if forgers of money and other evil-doers are forthwith condemned to death by the secular authority, much more reason is there for heretics, as soon as they are convicted of heresy, to be not only excommunicated but even put to death."

<sup>48</sup> Perhaps the most detailed defense of this view in Mill can be found in *On Liberty*. See Chapter III, "Of Individuality, as One of the Elements of Well-Being," 53-73. To see Mill's discussion of the "logic of persecutors", see *On Liberty*, 84.

give proper weight to religious toleration.<sup>49</sup> But it may turn out to be useful once a substantive notion of harm has been settled on.

These responses need more discussion. But they are not the replies the liberal perfectionist wants to appeal to anyway. She wants what the justificatory liberal wants: a justification for religious toleration that isn't based merely on pragmatic or epistemic claims and that either avoids the trappings of ambiguous concepts like harm or at least gives them content based on a robust theory of the good. The perfectionist's major difference from the justificatory liberal is her attempt to ground the case for toleration in an individual's *interests* rather than in some basic conception of respect. Let's proceed to some candidate interests.

#### (IV.2) Autonomy

A first candidate interest is *autonomy*.<sup>50</sup> All liberals are interested in autonomy, especially liberal perfectionists. But liberal perfectionists endorse autonomy as a value because they believe it is as an intrinsic part of well-being.<sup>51</sup> But when a perfectionist endorses a value, this means that she seeks to *promote* that value, or produce more of it. This is not to say that a liberal perfectionist rejects the idea that one can value autonomy by respecting it, but they will only hold that one has a reason to respect autonomy if respecting autonomy generally promotes it. Liberal perfectionists tend to converge on an understanding of the value of autonomy. Steven Wall holds that liberal perfectionists endorse six claims about autonomy:

- (1) Autonomy is instrumentally valuable. Its realization facilitates the realization of other (weighty) goods.
- (2) Autonomy is intrinsically valuable. Its realization is valuable for its own sake.
- (3) Autonomy is a central component of a fully good life.
- (4) Autonomy is unconditionally valuable.
- (5) All people have a conclusive reason to realize the ideal of autonomy.

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<sup>49</sup> No serious defender of the Harm Principle ever claimed that it would be useful without a substantive conception of harm. See Gerald Gaus, *Social Philosophy*, 136-159.

<sup>50</sup> The Razian understanding of autonomy is the appropriate one here. "Much of the writing on autonomy focuses on an agent's ability to form informed and effective judgments as a condition of autonomy. There can be no doubt of its importance. But there are additional aspects to autonomy as (part) authorship of one's life. One is relational: an autonomous person is not subjected to the will of another. Another aspect of autonomy concerns the quality of the options open to agents. Their choices must not be dictated by personal needs. One is a part author of one's world only if one is not merely serving the will of another," Raz, *The Morality of Freedom*, 155.

<sup>51</sup> For elaborations of this point and its relation to toleration, see Raz, "Autonomy, Toleration and the Harm Principle" and Wall, "The Structure of Perfectionist Toleration".

(6) If a person does not realize the ideal of autonomy, his life has no value.<sup>52</sup>

Liberal perfectionists need not endorse all six of these claims. For instance, a liberal perfectionist might find (6) particularly strong, instead holding that a person who fails to realize the ideal of autonomy lives a life of considerably less value than someone who does. Nonetheless, this list comes from a prominent perfectionist and seems appropriate to a liberal perfectionist's putative understanding between autonomy and its value.

What is the relationship between autonomy and religious toleration for the liberal perfectionist? The answer may seem obvious. If individual flourishing requires an autonomous life, then individuals must have the right to choose their own religion. One might hold that religious toleration is therefore an instrumentally good practice that promotes autonomous lives. But Wall denies that the connection is so simple, writing that "Practicing toleration on this view is not first and foremost a means for furthering the autonomy of persons, but rather a way of respecting it."<sup>53</sup> On Wall's view individuals have reason to respect autonomy because it is valuable but that they need not respect autonomy *merely* in order to maximize it. Since autonomy is value, it provides individuals with reasons to respect it. And for Wall, religious toleration is demanded by the reasons we have to respect autonomy. However, Wall's defense runs into a problem. The liberal perfectionist is committed to political institutions and laws that promote individual flourishing. Suppose that respecting religious toleration, while being an expression of respect for autonomy, turned out in fact to fail to promote individual flourishing. The liberal perfectionist would face a conflict between her reasons to respect autonomy and her reasons to promote it. But for the liberal perfectionist, reasons to promote a value must have at least a very strong degree of priority. Reasons to respect autonomy, for instance, are grounded in autonomy's value. And the liberal perfectionist state is thereby committed to its promotion. In a case where respecting autonomy and promoting autonomy clash, the liberal perfectionist must – at least in a strong majority of cases – prefer the promotion of autonomy.

Wall presumably argues that respecting autonomy is what provides reasons for religious toleration because it is obvious that a commitment to promoting autonomy will not provide many strong reasons to engage in religious toleration. For many religious choices can reduce individual autonomy. Individuals can autonomously choose to submit themselves to authoritarian masters. And in fact, citizens of liberal societies choose to do so *en masse* and *every single day*. If the liberal perfectionist wants to promote autonomy, then she may be required to support measures to limit

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<sup>52</sup> Steven Wall, *Liberalism, Perfectionism and Restraint*, 144. Wall defends these six claims in detail. See 144-161. Also see Raz, *The Morality of Freedom*, 369-399.

<sup>53</sup> Wall, *ibid*, 235.

choices that reduce autonomy and many of those choices will be religious choices. This poses a problem for religious toleration: many liberals see devotion to traditional religion as autonomy-reducing precisely because it involves faith and submission to authority.

But let us suppose that Wall is right and that the value of autonomy not only grounds reasons to promote it but also reasons to respect it. She may then have reason to respect autonomy through practicing religious toleration. She may therefore permit some autonomy-diminishing actions.<sup>54</sup> Wall argues that if the perfectionist understands autonomy as a value to be respected rather than promoted “then autonomy-derived toleration will extend even to choices by persons to destroy or ruin their lives”.<sup>55</sup> Yet it is hard to see how reasons to respect autonomy can ground the degree of religious toleration that members of liberal societies like the United States traditionally accept. We have already established that in a clash between reasons to respect autonomy and reasons to promote autonomy, the liberal perfectionist must declare reasons to promote autonomy the winner. In this case, if there is some legal code that restricted religious toleration on behalf of promoting autonomy, then the liberal perfectionist must endorse it. Suppose that a liberal perfectionist state institutes laws which require the toleration of varied, but autonomy-promoting religions yet required the restriction or abolition of religions that discouraged autonomy. The liberal perfectionist has little reason to prefer laws that require a much broader form of toleration, assuming that the more restrictive code can be effective in practice. It is therefore hard to see how liberal perfectionists can use an individual’s interest in autonomy to shield non-autonomous forms of religion from interference, restriction or perhaps even destruction by the state. If the liberal perfectionist state only tolerates religion when it judges that the forms of life religions promote are autonomous ones, then this places a significant restriction on the range of toleration the state can permit. If the liberal perfectionist must not only permit laws that restrict the practice of autonomy-reducing religions but *prefer* them to more tolerant laws, then the liberal perfectionist cannot justify the weight that liberal citizens place on religious toleration.

The liberal perfectionist case of religious toleration weakens further still if the liberal perfectionist state takes account of the *risk* of failing to achieve the ideal of autonomy. Suppose that the liberal perfectionist state judges that a particular religion, while not necessarily reducing autonomy, often devolves into forms that do reduce autonomy. For this reason, permitting the religion in question runs the risk that citizens of liberal societies will fail to reduce autonomy. Suppose that the religion has

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<sup>54</sup> This is not to say that merely promoting autonomy would bar autonomy-reducing actions. For familiar rule-consequentialist reasons, interfering with autonomy-reducing actions in every case may reduce the promotion of autonomy at a societal level for various empirical reasons.

<sup>55</sup> *Ibid*, 236.

a strong commitment to proselytizing and has shown its ability over centuries to attract vast numbers of adherents. A liberal perfectionist state must take this into account; it may find that permitting the religious is enough of a threat to the autonomy of its citizens that it can only prevent the religious from destroying individual autonomy by stamping it out whenever it appears. This commitment will not only cover religions that reduce autonomy, but religions that have a marked tendency to manifest variants of itself that reduce autonomy. This arguably includes every religion in the world. The liberal perfectionist state may go easier on religions that only have a tendency to manifest autonomy-reducing variants of itself, but it is still ‘going easy’ on a religion, something that citizens of liberal societies would no doubt regard as unacceptable. This point gains considerable force when one considers the risk to children of autonomy-reducing religion. Autonomy, then, appears to be an inadequate candidate interest.<sup>56</sup>

Raz’s position on tolerating autonomy-reducing cultures is particularly revealing. Raz argues that liberal perfectionist states must employ a “test of viability” in order to determine whether they should tolerate communities whose culture does not support autonomy.<sup>57</sup> He argues that “the perfectionist principles espoused in this book suggest that people are justified in taking action to assimilate the minority group, at the cost of letting its culture die or at least be considerably changed by absorption.”<sup>58</sup> Raz addresses some pragmatic considerations on behalf of tolerating communities that do not promote autonomy, but he still maintains that if these communities do not offer “acceptable prospects to their members” then they should not be allowed to exist. In these cases “assimilationist policies may well be the only human course, even if implemented by force of law.”<sup>59</sup> Many will agree with this statement at some margin. There are some communities sufficiently hostile to autonomy and liberty that many Americans would probably be willing to suppress. Raz does not specify the appropriate margin here, however. Instead, he hedges his “assimilationist” position by leaving open which communities are worth tolerating and which are not. Raz understandably hedges, but it isn’t clear what justifies hedging given liberal perfectionism. If smashing a community that failed to promote autonomy would promote autonomy, then on what grounds can Raz object? If the point of a political order is to promote individual flourishing, a social practice subverts flourishing must be suppressed by the liberal perfectionist state (so long as the pragmatic costs of suppression do not outweigh the benefits). It is easy to imagine communities that would be worth suppressing on this view. In fact, many certainly

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<sup>56</sup> In response, the liberal perfectionist could deny the empirical point that limited norms of toleration will promote autonomy less effectively than the more expansive norms of toleration that most members of liberal societies endorse. I will address this pragmatic maneuver below.

<sup>57</sup> Raz, 423.

<sup>58</sup> Ibid, 424.

<sup>59</sup> Ibid.

exist. The only objection Raz can have to suppressing, for instance, indigenous tribal communities is pragmatic. And once considerations of risks to autonomy are brought to bear, it is hard to see how even pragmatic considerations can ground a case for expansive toleration. Raz's commitment to forced assimilation seems strictly incompatible with the weight that citizens of liberal societies seem to place on religious toleration. Autonomy again appears to be an inadequate interest.

### (IV.3) Religion

Let's next consider a candidate interest in *religion*. This interest is defended by Robert George. Robert George is not a liberal, but a conservative Aristotelian-Thomistic natural law theorist. Yet he too is a perfectionist, arguing that the proper role of the state is fixed by its ability to promote human flourishing.<sup>60</sup> He also believes in religious toleration, as liberals do, and wants to provide a justification for religious toleration within an Aristotelian-Thomistic framework. Because George is not a liberal, he denies a crucial liberal perfectionist claim: that autonomy is among the basic, intrinsic goods constitutive of well-being. George has argued that the conception of autonomy which claims that "a person's life is autonomous if it is to a considerable extent his own creation" is not a conception of autonomy that can be basic.<sup>61</sup> Therefore, he tries to ground religious toleration in a good other than autonomy, the good of religion. George:

I maintain that the right to religious freedom is grounded precisely in the value of religion, considered as an ultimate intelligible reason for action, a basic human good. Like other intrinsic values, religion can constitute a reason for political action; government need not, and should not, be indifferent to the value of religion.<sup>62</sup>

But this does not yet explain what the good of religion is. For George, regardless of whether "unaided reason can conclude" that God exists, "even if it turns out that God does not exist", he argues that religion is still a basic human good. George:

Religion is a basic good if it provides an ultimate intelligible reason for action. But agnostics and even atheists can easily grasp the intelligible point of considering whether there is some ultimate, more-than-human-source of meaning and value, of enquiring as best one can into the truth of the matter, and of ordering one's life on the basis of one's best judgment. Doing that is

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<sup>60</sup> See Robert George, *Making Men Moral*.

<sup>61</sup> George, Chapter 6.

<sup>62</sup> George, 220.

participating in the good of religion. Just as one has reason, without appeal to ulterior reasons ... to pursue knowledge, enter into friendships and other forms of community, strive for personal integrity, develop one's skills and realize one's talents, one also has reason, without appeal to ulterior reasons, to ascertain the truth about ultimate or divine reality and, if possible, to establish harmony and enter into communion with the ultimate source(s) of meaning and value.<sup>63</sup>

Terence Cuneo argues that enjoying the good of religion has two parts: "First, it involves inquiring into whether there is an ultimate source of meaning and value; and second, it involves ordering one's life on the basis of one's best judgment about whether there is such an ultimate source."<sup>64</sup>

George does not lay out an explicit argument for religious toleration rooted in the value of religion. But the moves, Cuneo argues, involve acknowledging that religion is a basic good and then arguing that every person and institution has good reason not to prevent individuals from choosing to pursue the good of religion as they understand it. Cuneo marshals two arguments against George: (1) he argues that the basic good of religion cannot justify an adequately extensive right to religious toleration, and (2) he argues that religion is not a basic good at all.<sup>65</sup> We do not need to argue that religion isn't a basic good to move our argument forward, however. For our purposes it is enough to show that the good of religion cannot justify the weight of religious toleration.

The argument is similar to the one I gave in (IV.2). Can the basic good of religion justify religious toleration over and against a policy of mild state restriction of religious practices regarded as pernicious? The answer seems to be no. Citizens of liberal societies have little reason to hold that, in Cuneo's words, "the badness of a particular ordering [of one's life] is sufficient to defeat the intrinsic goodness of having ordered one's life according to one's best judgment concerning the nature and existence of God."<sup>66</sup> We can easily imagine religions that many would regard as depriving its adherents of many basic goods. A particularly ascetic religion may fit the bill. In this case, it is far from obvious that allowing participation in the basic good of religion outweighs the badness of participating in this particular religion. Much like the good of autonomy, the good of religion cannot rule out state interference in cases where the state regards participation in a particular religion as having great disvalue for the persons involved. Admittedly, many citizens might accept a code of behavior

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<sup>63</sup> Ibid, 221.

<sup>64</sup> Terence Cuneo, "Can a Natural Law Theorist Justify Religious Civil Liberties?" in Cuneo, Ed. *Religion in the Liberty Polity*, 114.

<sup>65</sup> Cuneo, 115-116.

<sup>66</sup> Cuneo, 115.

that refused to tolerate religious practices that they regarded as promoting disvalue over value. But this seems incompatible with what we observed in Wolfe's study above. Citizens largely did not concern themselves with whether the religious practices of other citizens were good for them. They sometimes expressed that those that differed from them could still be moral, but by and large they resisted passing judgment. One interpretation of this refusal is that they did not pass judgment out of respect for the autonomy of others without direct regard for whether their religions promoted some general good.

Generally speaking, the problems that plagued autonomy as a grounding value for religious toleration apply to religion as well. The two interests are structurally similar even if they differ in content. In both cases, perfectionists select a value or interest that is worthy or respect and promotion, say autonomy or religion, and then argue that an expansive regime of religious toleration is grounded in this value or interest. However, for either good, a set of laws that restricted religious toleration seems preferable to one that permitted the extent of religious toleration that members of liberal societies generally endorse. Religion also appears to be an inadequate candidate interest.

#### (IV.4) Effective Identity

The next candidate good is *effective identity*, Terence Cuneo's preferred interest.<sup>67</sup> An effective identity "allows a person to discern particularly salient features of situations, formulate sufficiently clear priorities among her ends, implement action plans that have a reasonable chance of realizing her ends in a wide variety of circumstances, and so forth."<sup>68</sup> Cuneo argues that an individual with an effective identity "must have a sufficient degree of congruence among her desires, goals, normative beliefs ... together with sufficient congruence between her desires, beliefs, goals and behavior".<sup>69</sup>

The good of effective identity is absolutely crucial in order for flourishing, Cuneo argues: "Without having the kinds of traits that comprise an effective identity, a person will be unable to participate adequately in a sufficiently wide array of basic goods."<sup>70</sup> Cuneo claims that free exercise of religion allows religions to provide frameworks for developing effective identities. Cuneo does not argue that only *religions* can provide frameworks within which individuals can develop effective

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<sup>67</sup> It must be said that Cuneo's article only suggests effective identity as a good that a Aristotelian-Thomistic natural law theorist might appeal to in order to defend religious civil liberties. It is not clear whether Cuneo holds this position or not. The article only argues that effective identity is a better candidate interest than religion.

<sup>68</sup> Cuneo, 124-5.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

identities. Rather, that for some, participation in religion is “an important and, perhaps, indispensable way by which these identities are formed.”<sup>71</sup> One will wonder how effective identity can ground religious toleration in a way that autonomy or religion cannot. The good of developing an effective identity seems often outweighed by the badness of the religion in question, either with respect to promoting effective identity or promoting some other good. Cuneo suggests that his argument be supplemented by pragmatic considerations. The liberal perfectionist (or Cuneo, who does not clearly fit into the liberal perfectionist or the natural law tradition) can respond by arguing that the state is incompetent to discern which religions produce disvalue. Or she should argue that by interfering, the state may promote social unrest.

These pragmatic arguments face two problems. First, they are inconclusive. Whether a particular policy or law produces social unrest is determined by a wide range of factors. Suppose that a minority religion exists that fails to promote effective identity, call it The Hive. The liberal perfectionist state knows that The Hive thwarts the development of effective identity but it also knows that the public widely misperceives The Hive’s doctrines. Suppose that the public widely but falsely believes that The Hive tortures their children. In this case, if the liberal perfectionist state were to persecute The Hive on the ground that it hinders effective identity, it would not produce social unrest. The public would not mind because it was misinformed. In this case, social unrest was not produced because the public did not have the proper information. Consider another example, this time a real-world case. Sometimes liberal publics affirm toleration in the abstract but fail to apply their commitment consistently when it comes to one particular faith or another. Arguably such a case applies to many Muslim immigrants in Western European countries such as France. Recently French President Nicholas Sarkozy has claimed that the Islamic Burqa has no place in public. In other words, he would support a law banning its public use. And in fact the French have implemented such restrictions. The restrictions on other religions are far less intrusive. Many Western liberals have argued that extreme variants of Islam fail to promote effective identity but liberal societies would not be willing to impose the same restrictions on Jewish and Christian sects that failed to promote effective identity. This is because the public perception of fundamentalist Islam is very negative, which allows the French state, for instance, to restrict Islamic religious practice without causing substantial social unrest. Thus, in both cases, pragmatic considerations do not seem to bar the liberal state from restricting religious practice due to social unrest.

However, a deep problem confronts merely pragmatic defenses of religious toleration. Suppose that Arthur is the member of an unpopular minority religion. His religion fails to promote effective identity and in many cases thwarts its formation. The liberal perfectionist state knows this and Arthur knows that they know it. The

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<sup>71</sup> Ibid.

liberal perfectionist state would prefer to restrict and even eliminate Arthur's religion but for various pragmatic reasons it cannot. Arthur's religion counts among its members several famous actors and pundits and as a result, public opinion could be turned against the liberal perfectionist state. Persecuting the religion would thereby produce social unrest. For this reason, the liberal perfectionist state declines to persecute Arthur's religion. What is Arthur to think in this case? The only reason that his religion is not persecuted is because the liberal state judges that the costs aren't worth the benefits. His religion is not protected out of respect for his liberty of conscience, their right to free assembly, or anything else save contingent, pragmatic circumstances. Should those circumstances change, Arthur is not shielded from state persecution. Were public opinion to turn against his religion or if his religion lost its prominent spokespeople, the state might just that the benefits of persecuting Arthur's religion outweigh the costs. The state's reason to tolerate seems to be the *wrong kind of reason* to tolerate. The right sort of reason to tolerate Arthur's religion is a reason of *respect*.

Such reasons, we have seen, are easily grounded in justificatory liberalism. But recall that Wall's defense of toleration also grounded reasons to respect Arthur's religion through toleration. Despite Wall's problematic grounding of reasons to respect autonomy in reasons to promote autonomy, Wall nonetheless holds that there are reasons to respect unpopular, autonomy-reducing religions as a result. And these reasons of respect are not merely reasons to not interfere with. But they are reasons to be motivated to tolerate others by treating them respectfully. There is good reason for a liberal perfectionist account of toleration to appeal to reasons of respect – because they are highly intuitive and compelling reasons to tolerate. We see them offered by numerous participants in Wolfe's study covered in Section I. Participants in the study did not endorse toleration on the grounds that other religions promoted what they believed was moral. They endorsed them on grounds of reciprocity, fairness, and so on. A merely pragmatic defense of religious cannot appeal to these reasons. The liberal perfectionist state does not treat Arthur with respect despite having reason to do so when it only tolerates until it can get away with persecution. It is cold comfort to Arthur that the only reason why he is allowed to practice his religion is that his religion is beyond the state's ability to alter or eliminate without significant cost. Arthur will naturally worry that were his religion to become socially disfavored that he would be subject to persecution. Surely no member of a liberal society should have to fear religious persecution when the state happens to judge that his religion should be eliminated or controlled. I take it that at least very many middle-class Americans would agree. It seems to be a considered judgment of a broad range of liberal citizens that the price of toleration is worth paying because it is fair and just or because it expresses some norm of reciprocity. Tolerating some religious practices merely

because we cannot yet use the state to eliminate or re-engineer them does not express respect or a commitment to reciprocity vis-à-vis these religions.<sup>72</sup>

#### (IV.5) Membership

Our next candidate fares little better. Stephen Wall argues that we can justify perfectionist toleration by an appeal to the good of *membership*. A citizen has membership or standing in political society “if and only if given his *social identity*, he can *rationally identify* with its *governing institutions*.”<sup>73</sup> For Wall, governing institutions are the “main legal and political institutions of the state”. Rational identification involves being able to rationally see one’s institutions “as serving one’s interests and as treating one as no less important than other citizens.”<sup>74</sup> The notion of a social identity is complex. Aspects of social identity help individuals to *define* themselves; “a person’s ethnicity, political identification, and sex, as well as his religion, are prime examples of facts that typically have this kind of salience.”<sup>75</sup>

How does religion toleration promote the good of membership? Wall argues that “When the state promotes religion, either coercively or non-coercively, it risks making it impossible for some citizens to rationally identify with the governing institutions of their society.”<sup>76</sup> Wall goes on to argue that membership is a perfectionist good, but we need not establish that for our purposes. Instead, we need simply ask whether religious toleration promotes the perfectionist good of membership as effectively as more restrictive arrangements. Wall admits that the good of membership can be overridden and he even admits that in some cases the state can be justified in promoting some religions (or lack of religion) over others, although he thinks these cases, for pragmatic reasons, are rare.

The problem with Wall’s response should by now be obvious: he has justified the weight that we place on religious toleration and he has not explained the *kind* of moral force that claims for religious toleration have. First, suppose the state promotes institutions that effectively discourage participation in a particular religion it regards as pernicious. Suppose that the state then effectively promotes an alternative religion for the children of the members of the eliminated religion. In this alternative religion,

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<sup>72</sup> Cuneo also objects that a perfectionist position can defend toleration on the grounds that the state is “incompetent to discern whether the valuable aspects of participation in certain religious traditions are defeated by the bad aspects of such participation.” See Cuneo, 126. But the same concern applies here: Arthur is only afforded protection by the state because it is not (or not yet) smart enough to separate the good aspects of his religious practice from the bad aspects. To have the authority to persecute Arthur only requires a smarter state.

<sup>73</sup> Wall, “Perfectionism, Public Reason, Religious Accommodation”, 294.

<sup>74</sup> Wall, 295.

<sup>75</sup> Ibid, 296.

<sup>76</sup> Ibid, 297.

these children grow to rationally identify with their governing institutions given their social identities. This is not hard to imagine; it has in fact happened in history many times. In effect, the state would discourage a religion it regarded as having disvalue yet overall still promote the good of membership. This is even easier to imagine with a religion that discourages active political participation. If the state effectively eliminated the religion, it might actually promote the good of membership among its members. Again, Wall's proposed good fares no better than the other options.

#### (IV.6) Tolerating Disvalue

Wall has another article on a similar topic, where he defends religious toleration by arguing that respect for religious toleration generally requires that the state tolerate disvalue in order to promote the value of religious participation. He suggests that this is because the disvalue and value of religious participation are inextricably intertwined.<sup>77</sup> Value and disvalue can be intertwined in two ways – either they're tied necessarily or they are tied contingently to a strong degree. Therefore, to defend toleration, Wall must argue that the religions to be tolerated either are those whose members reap a great value or whose members reap a great value inextricably intertwined with a significant disvalue. Wall notes that his argument only:

... establishes the reasonableness of toleration at the cost of significantly restricting its scope. The only objects that warrant toleration turn out to be objects that are inseparably intertwined with valuable objects. This implies that people have no reason to tolerate practices and ways of life that either possess no valuable properties or possess disvaluable properties that dominate over their valuable ones.<sup>78</sup>

To adequately respond to this worry, Wall argues that we can broaden the group of tolerated religions “by explaining the reasonableness of indirectly respecting the good by complying with a societal ethic that, if generally observed by others, would result in maximal respect for the good in one's society.”<sup>79</sup> Wall proceeds to argue that we must have an “optimal societal ethic” which we instill because it promotes perfectionist values. This optimal societal ethic will involve toleration in specific cases where it doesn't promote value because the disposition to tolerate will generally promote perfectionist values effectively.

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<sup>77</sup> Wall, “The Structure of Perfectionist Toleration”, 238.

<sup>78</sup> *Ibid*, 240.

<sup>79</sup> *Ibid*, 242.

Wall's strategy, in short, is to save perfectionism by appealing to rule consequentialism.<sup>80</sup> He saves toleration by arguing that the best way to promote perfectionist values is to inculcate the code of toleration that optimally promotes perfectionist values. If the code is inculcated, citizens under a liberal perfectionist state will develop a disposition to respect minority religions. Some will object to Wall's strategy on the grounds that he assigns merely instrumental value to the disposition to tolerate disvaluable religions. Wall responds by claiming that by internalizing the disposition, citizens will not tolerate for merely instrumental reasons.<sup>81</sup> That said, rule consequentialist moves cannot save Wall's case for toleration. Again, the strategy faces the same two problems as the other accounts: (a) it cannot clearly justify a code of broad toleration characteristic of liberal societies and (b) it is heteronomous, tolerating for the wrong reasons. It is a simple matter to imagine internalizing a disposition to tolerate many religions but not tolerating religions with obvious disvalue. This more restrictive disposition may promote perfectionist values more effectively than the broadly tolerant societal ethic that Wall defends. There is scarce reason to think that a truly liberal commitment to religious will be part of the optimal societal ethic. What's more, the only reason we should tolerate religions with disvalue is for *pragmatic* reasons. For Wall, the reason to tolerate disvaluable religions is that the consequences of persecution may include social unrest and the persecution of valuable religions. Wall's strategy fails to capture the moral force of norms of toleration present in liberal societies, ones that I presume we have reason to endorse.

This section reviewed six general strategies for defending religious toleration within a liberal perfectionist political theory: appeals to the goods of autonomy, religion, effective identity, membership, and attempting to extend the case for toleration to disvaluable religions with pragmatic and rule consequentialist maneuvering. They each have significant weaknesses. Let's draw some general lessons about these failures in the next section.

## Section V: Why Liberal Perfectionist Accounts of Toleration Fail

Moving from an account of a basic interest or intrinsic good to a justification of religious toleration is difficult. Why might this be? Thomas Christiano has argued that one reason for the failure of many tolerationist arguments is that they do not take account of the fact that religious persons hold that individuals have *transcendent*

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<sup>80</sup> Or Wall could be appealing to act-consequentialism plus a certain institutional arrangement designed to promote act consequentialist calculations that avoid some of the standard problems for act-consequentialism. But this is an unusual case, so we can leave it aside for now.

<sup>81</sup> Ibid, 246. His strategy is surprisingly similar to Brad Hooker's strategy in *Ideal Code, Real World*, where Hooker focuses on evaluating the value of inculcating a code with norms of respect that promote well being. See Hooker, *Ideal Code, Real World*, 32.

*interests*.<sup>82</sup> Transcendent interests might include the value of salvation or communion with God. To accept any of these interests means that one believes in interests beyond this earthly life. And it is therefore hard to see how any of these interests could be traded off by earthly concerns. My point has been related but different. I have argued that liberal perfectionists have no reason to accord proper respect to some individuals' pursuit of their perceived transcendent interests. Liberal perfectionist citizens have at most pragmatic reasons to extend religious toleration as broadly as most liberal citizens think morally appropriate. And they do not have a solid justification for according all religions respect for the right reasons. For if we derive the duties of the liberal citizens and their rights from a robust conception of the good, then citizens possess rights only because they promote some good or other. The interests recognized by the liberal perfectionist state ultimately trump other moral considerations in political life because on liberal perfectionism these moral considerations have a robust theory of the good as their justificatory foundation. Religious toleration exposes a core weakness of liberal perfectionism: it allows weighty reasons of respect to be too easily overridden by reasons that are rooted in a robust conception of the good or human flourishing. Citizens of liberal societies accord religious toleration a weighting that largely overrides the trumps and restrictions to which liberal perfectionists are committed.

#### Section VI: Conclusion

The point of this chapter is to provide an argument in favor of justificatory liberalism over its main rival – liberal perfectionism. I began the chapter by describing the normative weight citizens of liberal societies give the practice of religious toleration and argued that any adequate political theory must make sense of this weighting. I showed how justificatory liberalism can defend this weighting. Then I argued that liberal perfectionism cannot. To defend religious toleration, liberal perfectionists only have recourse to inconclusive and unsatisfying pragmatic considerations. And even given these considerations, it is not clear that liberal perfectionists can ground the degree to which citizens of liberal societies endorse religious toleration.

This puts liberal perfectionism at a significant disadvantage. A defense of religious toleration is surely a requirement for a liberal theory of justice worth its salt; the fight for religious toleration, after all, is the progenitor of the liberal tradition. If liberal perfectionism cannot adequately justify religious toleration – the original liberal liberty – then how liberal can it really be?

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<sup>82</sup> Christiano, 173.