

## Opposing Laws with Religious Reasons

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According to public reason liberals, laws, policies, and political institutions need to be justifiable to those who are subject to them. This entails that the reasons given in favor of a political arrangement are normatively relevant for all sufficiently idealized citizens. These reasons are *public reasons*. Since political deliberation is intimately connected with the resulting law or policy, the view often also incorporates a moral duty for citizens not to rely on nonpublic reasoning in the public political forum. According to virtually all proponents of such deliberative public reason requirements, these demands are symmetrical.<sup>1</sup> If there is a moral duty to give public reasons in favor of a law or a policy, those who are opposed to the proposal will always have a corresponding duty to provide public reasons against it.

This position has yet to be put to critical scrutiny. In this paper, I reject it. I argue that there is a class of cases where the public-reason-giving requirement should be relaxed for some participants in the public political forum—cases where the public-reason-giving requirements should be *asymmetric*. A person opposing an “invasive law” is under no obligation to give public reasons. A proponent of the law is. It is morally acceptable to provide only nonpublic reasons against invasive laws, but not in favor of them.

To explicate the benefits of this asymmetric view of public reason, I apply it to the public debates around European so-called “burqa bans.” Empirical research suggests that some niqab wearers believe that they have a religious obligation to cover their faces. Assuming some degree of noncompliance to the norms of public reason under nonideal circumstances, a subset of these women will not be prepared to give public reasons against the bans. On the symmetric view of public reason, they would be excluded from the public political forum. Those niqab wearers who are willing to give public reasons are susceptible to another cost. If they believe that the religious reasons against banning the niqab are what truly motivates their opposition, they have to “split themselves.” They are unable to debate as their full selves when defending their comprehensive practice.

I do not intend to offer a comprehensive account of burqa bans or the question of religious clothing. Instead, the niqab case merely serves as a way of making the advantages of the asymmetric view explicit. Further, this article will only briefly address the question of whether public reason liberalism is preferable to perfectionist liberalisms, or non-liberal ways of justifying state power. However, the view presented here incorporates some worries from public-reason sceptics,

and so it may appear superior to the standard view also for someone who does not share some of the fundamental commitments.

I will begin by outlining how the public-reason-giving requirements are traditionally understood (1), after which I present the main features of the asymmetric view (2). I then show how the view functions by discussing it against the debate around burqa bans (3), concluding that the view is less costly than symmetric views of public reason (4). Finally, I defend the view against a series of objections, concluding that it is a distinct and plausible implication of commitments that public reason liberals typically already hold (5).

### 1. Symmetric Views of Public Reason

Public reason liberalism is a multifaceted theory. A central idea is that an individual citizen should not be coerced with reasons that she does not appreciate the normative relevance of. Public reason can, therefore, serve as a *common currency of disagreement*.<sup>2</sup> It is possible to narrowly construct public reason as a way of determining whether a law is legitimate or not. If the law could be justified with public reasons, it is legitimate—even if those reasons were not presented in the debate leading up to the law. I leave aside the question of public reason as a criterion for legitimacy. Here, I use public reason in a slightly different sense—focusing on the public deliberation before the law. This is a key feature, at least of the standard accounts of public reason liberalism. The idea is that when we deliberate in public—as citizens—on which political action to take, we should not appeal only to controversial metaphysical doctrines or our own conceptions of the good. Instead, we should appeal to a set of reasons that all (sufficiently idealised) citizens could be expected to endorse or share.<sup>3</sup> One way of understanding this type of requirement is that citizens should have a common way of constructing arguments, derived from their shared understanding of the public life of a liberal democracy.<sup>4</sup>

Citizens do not have to appeal to public reason around the dinner table, in the church, or in other private associations. However, when the deliberation is undertaken in the “public political forum,” citizens should be willing to show that the laws that they “advocate and vote for can be supported by the political values of public reason.”<sup>5</sup> In these cases, there is a moral “public-reason-giving requirement.”<sup>6</sup> I will not offer an account of where the line between “public” and “non-public” reasons should be drawn. For my purposes, it suffices to assume that regardless of whether public reasons should be understood as *accessible*, or *shareable*, religious reasons drawing solely on divine sources are not public.<sup>7</sup> I will also accept John Rawls’s “wide view,” the idea that citizens are allowed to give nonpublic reasons, provided that we also provide public reasons “in due course.”<sup>8</sup>

An important debate among public reason liberals concerns the appropriate scope of public reason. On the widely accepted *narrow view*,<sup>9</sup> held by theorists such as Rawls, Barry,<sup>10</sup> and Scanlon,<sup>11</sup> we need to give public reasons only

when we discuss questions concerning the “basic structure of society.”<sup>12</sup> The *broad* view, on the other hand, demands public reasons for debates over all (or most) political questions. Jonathan Quong defends the broad view by arguing that relaxing the duty to give public reason outside the basic structure makes public reason liberalism objectionable, since some political questions then can be “decided by appeal to perfectionist considerations.”<sup>13</sup> Thus, Quong presses, if we are worried about perfectionism, why should we allow it on some levels and not on others? Quong concludes that we have no reasons for accepting the narrow view. The idea is that *it would be desirable to have public reasons for all laws*.

I will not take a position on whether the narrow or broad view of public reason is correct. But there are cases where the two views converge. When a question is a part of the basic structure of society, all public reason liberals agree that we should be prepared to give public reasons. However, narrow view theorists have previously failed to incorporate an essential distinction in their theories. *If* it is true that we should give public reasons for a certain set of laws, it does not entail that it would not be more worrying to justify *some* laws within this set non-publicly than others. It does not follow from the claim

- 1 it would be desirable to have public reasons for a set of laws; that:
- 2 it would be equally troubling for all of these laws not to be publicly justified.<sup>14</sup>

Further, it does not follow that:

- 3 it would be equally troubling to oppose laws for perfectionist reasons as it would be to implement them.

Thus, it is possible to accept (1) without accepting (2) and (3). To my knowledge, all consensus public reason views accept (3), regardless if we are for or against a law, we should give public reasons.<sup>15</sup> For instance, Quong argues that citizens should offer “one another” arguments that meet the public reason standard, in other words that citizens on both sides of a political dispute need to give public reasons.<sup>16</sup> Call this the *symmetric view* of public reason.

In this article, I will reject (2) and (3). On (2), I will argue that there are cases that are uncontroversially nontrivial—henceforth *paradigmatic cases*. Interfering legislation in these cases is *ceteris paribus* more worrying than legislation in other areas. From this, I derive my rejection of (3).<sup>17</sup> The successful opposition to an interfering paradigmatic-case law would serve to avoid interference in paradigmatic cases. When reasoning about these laws, it would not be as troubling to oppose them for perfectionist or comprehensive reasons as it would be to advocate them for those reasons. Indeed, as I shall argue, it might even be desirable to allow non-public reasoning when opposing such laws.

## 2. The Asymmetric View

I propose that it is *morally unacceptable* not to provide public reasons in favor of laws that interfere in paradigmatic cases, while it is only *desirable* to give public reasons against these laws. This is an asymmetric public-reason-giving requirement that entails that someone opposing a law that would interfere with her life plan can defend it with whatever arguments she sees fit. On the symmetric view, she would have to be restrained in the public political forum.<sup>18</sup>

There have been previous asymmetric views outside of the standard consensus paradigm of public reason liberalism (the view that holds that citizens must appeal to reasons that all reasonable citizens share in public deliberation). Convergence theorists argue that a law can be justified to different citizens for different reasons.<sup>19</sup> According to the convergence view, any reason can be used as a “defeater,” because all citizens need to agree to the all-things-considered justifiability of a law.<sup>20</sup> This seems to imply that citizens can veto laws with whatever reasons they see fit.<sup>21</sup>

The idea I am defending here is weaker. I argue that all reasons can be *used* against a law in public deliberation, not that doing so automatically renders that law publicly unjustified. However, the insight of the convergence theorists about the difference between imposing laws and opposing laws should be important also for the consensus view. In fact—even if no one has made this argument before it seems perfectly consistent with the fundamental ideas underpinning public reason, especially for those views that are concerned with avoiding unjustified coercion.

Consensus theorists have thus far overlooked the fact that it seems morally objectionable to only be prepared to accept a certain kind of justification or response when forcing someone else to perform or not perform an act  $\Phi$ . The asymmetric view incorporates a presumption in favor of noninterference in paradigmatic cases. Interference, here, is merely the absence of being forced to  $\Phi$  or not to  $\Phi$ . This is broadly consistent with the standard, Berlinian, negative concept of liberty, the idea that “I am normally said to be free to the degree to which no man or body of men interferes with my activity.”<sup>22</sup> To work out the details of the asymmetric view, it is, therefore, useful to consider Berlin’s view in some more detail.

To Berlin, interference could be more abstract than someone being physically prevented from  $\Phi$ -ing. A human-made act restricting options that a person has no desire to pursue also counts as interference. Noninterference is not about the realization of particular desires, but about the “actual doors that are open.” Not being interfered with is having “a range of objectively open possibilities, whether these are desired or not.”<sup>23</sup>

A standard objection to this view is that not all instances of interference are equally troubling. Indeed, perhaps some types of interference have nothing to do with freedom at all. As Charles Taylor puts this challenge: by installing an extra traffic light on a street, the instances of interference would increase since cars would be stopped more often. However, according to Taylor, this does not mean

that people are less free after the traffic light is installed. The question should not be understood as a “trade-off” between freedom and child protection or road safety. Instead, “we are reluctant to speak here of a loss of liberty at all.”<sup>24</sup>

The worry that some interferences have nothing to do with freedom can be easily avoided in the present context since my argument does not in any way presuppose a view about the true nature of freedom. If we focus only on noninterference—not noninterference as freedom—Taylor’s insight is consistent with the view outlined here. In fact, it may even be compatible with Berlin’s own views about freedom proper. He believes that trivial interferences are also limiting freedom, but they are not given the same weight as fundamental ones. Contrary to what is sometimes argued, Berlin allows for weighting freedoms differently:

The extent of my freedom seems to depend on (a) how many possibilities are open to me (...); (b) how easy or difficult each of these possibilities is to actualize; (c) how important in my plan of life, given my character and circumstances, these possibilities are when compared with each other; (d) how far they are closed and opened by deliberate human acts; (e) what value not merely the agent, but the general sentiment of the society in which he lives, puts on the various possibilities.<sup>25</sup>

The basic premise of the asymmetric view is in line with this claim: trivial instances of interference cannot be given the same weight as nontrivial ones. And, conversely, it is possible to identify a set of cases that are uncontroversially “non-trivial”. To remain faithful to the ideals of public reason liberalism, this set cannot be moralized or drawn from any one conception of the good. The uncontroversially nontrivial set of freedoms needs to have a definition that is reasonably acceptable from all moral points of view. Luckily, there are resources from within Berlin’s framework to draw up the boundaries for the set. Take Berlin’s (c); nontrivial freedoms are those that have special importance for people’s life plans. Everyone will want to live their lives in a certain way. In order to pursue a life plan, whatever it is, we must be free to make certain choices. Some of these choices are crucial in order to pursue a given life plan, they are *paradigmatically fundamental choices* (PFCs). The set of PFCs include things covered by things such as freedom of the person, conscience, and belief,<sup>26</sup> and it includes choices necessary for life plans in the ordinary sense of the world, such as forming a family, having fulfilling interests, and a meaningful occupation.

To reiterate, whatever life plan we have, there is a corresponding set of choices that we need to be able to make to pursue it. If the ability to make these choices is essential for the life plan, our freedom to make them needs to be unconstrained for the life plan to be available. For instance, if we want to live a Christian life, we need to be free to go to the church, if we want to have a large family, we need to be free to have many children, and so on. Given that everyone has an interest in developing and following their own life plan, we should expect a strong justification for limiting a person’s freedom to pursue their chosen way of life. There is a presumption in favor of being free to make PFCs ourselves.<sup>27</sup> Correspondingly, it seems equally plausible that the justificatory demands for the

person defending their own PFCs are less strict. A higher threshold is required for allowing Anna to interfere with Ben's PFC than for Ben stopping Anna from doing so.<sup>28</sup>

But not all life plans are equally important. It is implausible to hold that a life plan that includes the PFC to drive against the direction of the traffic or murdering people has equal value as, say, being free to make choices necessary for forming a family. The reason for this is that these life plans impose on other people's life plans. To account for this, there is no presumption in favor of being free to pursue PFCs that impose on other people's life plans. Since the central idea is that we should be free to make choices for our life plans ourselves, life plans that make other ways of life impossible, or significantly more difficult, can be disregarded.

The presumption in favor of noninterference in paradigmatic cases implies that we should be as free as possible to make PFCs ourselves. This does not mean that interferences are always wrong. The claim is weaker: an interference with non-imposing PFCs needs to be justified, and an opposition to said interference does not have the same justificatory demands.

There is a specific class of political rules that always interfere with PFCs. Suppose that under conditions of no rule it was possible to make the PFC and that the rule makes it *impossible*, or *significantly more difficult* to do so. These rules I call *invasive laws*. Examples include things like banning certain types of clothing and restricting women's access to the workforce.

Some might object that societies adhering to public reason liberalism would never implement invasive laws. Any plausible balance of public reasons, they might say, would decisively come down against such legislation, and so the question of how we should deal with these cases would never arise.

In response, however, it is important to note that not all invasive laws would be unjustified or unjust, and consequently they could be implemented or defended in public reason liberal states. While there is an overlap between invasive laws and laws infringing on "rights," it is not necessary for a law to restrict a right to be invasive. Some people's preferred ways of life might require them being free to pursue PFCs such as using recreational drugs, going fox hunting, or marrying several partners. It is far from clear that these activities are typically captured by our systems of rights or that public reason liberalism necessarily would come down in favor of allowing them. Still, laws restricting these choices are on my definition invasive.

From this, it is possible to distinguish two positions within a single debate. It would be morally unacceptable not to have public reasons in favor of invasive laws, but morally permissible to give only nonpublic reasons against them. In the former instance, the requirements are strict, in the latter, they are only baseline requirements (cognitively undemanding things such as being prepared to take our opponents seriously).

In many areas of politics and public policy, rules are made that do not significantly interfere with PFCs. In these cases, public-reason-giving requirements remain symmetrical. Whether we should give public reasons in these cases only depends on if we accept the narrow or the broad view. Since there would be many

basic structure laws that would count as invasive, both narrow and broad views could, however, successfully incorporate the asymmetric view.

There is a further distinction to be made. Imagine an invasive law *L*, a law that would interfere in paradigmatic cases if it were implemented. It is possible to examine the law at two times,  $T_1$  and  $T_2$ . At  $T_1$ , *L* is not in place. At  $T_2$ , *L* is in place. Depending on whether we are at  $T_1$  or  $T_2$ , there are two possible bills in relation to the law:

$T_1$ , IMPLEMENT: It is possible to propose a bill that implements *L*.

$T_2$ , LIFT: It is possible to propose a bill that lifts *L*.

Only one outcome of LIFT and IMPLEMENT, respectively, interferes in paradigmatic cases. If LIFT was passed at  $T_2$ , peoples' options would increase. If not, they would still be restricted. Conversely, the opposite is true for IMPLEMENT at  $T_1$ . On the symmetric view of public reason, this would not matter for the distribution of public-reason-giving-requirements. They would be strict for everyone:

	$T_1$ implement invasive law	$T_2$ lift invasive law
Against	Strict	Strict
For	Strict	Strict

The main difference between symmetric public reason views and the asymmetric view I am proposing here is the rejection of this claim. Instead of assigning the requirements symmetrically, they would be distributed in the following way:

	$T_1$ implement invasive law	$T_2$ lift invasive law
Against	Baseline	Strict
For	Strict	Baseline

Those advocating the positions that oppose the paradigmatic-case interference would be under baseline duties such as taking their opponents seriously. Their opponents would be under strict requirements.

The asymmetric view is consistent with what arguably is the standard justification of public reason: we want to avoid being coerced based on reasons that we do not accept the normative relevance of.<sup>29</sup> Not implementing an invasive law would not be coercive. And lifting an invasive law would not be coercive. So, on the standard view, what reasons do we have for demanding only a certain kind of justification for not interfering with someone else? Standard versions of public reason, therefore, seem to have strong reasons internal to their theoretical framework for accepting the asymmetric view, even if they have yet to consider this possibility. It is, therefore, puzzling that asymmetric requirements among consensus theorists so far are missing from the literature.

However, it is possible to justify public reason liberalism without appealing to the specialness of coercion. I will argue that regardless of what our basis for public reason is, it would be preferable to have an asymmetric view. The reason is that it would ensure that public reason views are less costly. The view will be applied to the question of European burqa bans to illustrate this.<sup>30</sup>

### 3. Burqa Bans as Invasive Laws

To consider the asymmetric view against the burqa ban backdrop, we first need to establish that wearing the niqab is a PFC and that a ban against doing so, restricting this choice, would thus be invasive.

The choice to wear the niqab is a PFC if it is essential for one or several life plans. That is, if it is a choice that we need to be able to freely make in order to pursue the life plans. Empirical evidence suggests that this is true. Wearers describe it as an important part of their “lifestyle.” They typically see it as a fundamental part of their identity, culture, or religion.<sup>31</sup> Hence, if the choice to wear the niqab is a PFC, a law against doing so would be invasive. Under conditions of no law, it would be possible to make the PFC, when the law is introduced it is no longer possible. Someone deciding to wear the niqab despite the law will be interfered with and possibly fined. Over the French burqa ban’s first 5 years 1 623 police stops were made, with 1 546 fines given out.<sup>32</sup>

A possible worry is that the empirical research is flawed, that women are forced to wear the niqab. If so, the PFC to wear the niqab is not essential since it is not made freely. Then, a ban against the niqab, it could be argued, would increase the number of choices available to some women. While the empirical studies are so far underwhelmingly few and the sample sizes are small, the current best evidence suggests that European women are—in fact—freely and willingly choosing to wear the niqab. In her qualitative studies, Eva Brems has found that “there is no evidence, in either France or Belgium, of pressure from husbands or relatives to wear a face veil; while there is recorded pressure from husbands and relatives to not wear a face veil.”<sup>33</sup> Wearers generally do not accept the argument that the niqab represents an unequal gender structure or oppression. In interviews, a typical answer is “I totally refute the argument which claims that wearing the niqab is a submission to man.”<sup>34</sup> Studies from Denmark, England, and the Netherlands draw similar conclusions.<sup>35</sup>

Even if it were true that many women were forced to wear the niqab, it is not necessarily the case that it would change the evaluation. First, the *potential* PFC of wearing a niqab is limited, someone who finds after careful deliberation that she genuinely wants to wear the niqab cannot do so. Hence, this should at least be given some weight, and the potentially increased freedom of niqab wearers (who now freely could decide what to wear) would at least have to be balanced against the increased interference with the potential PFCs of those not currently wearing the niqab.



More importantly, since it has been argued, but not proven, that people are forced to wear the niqab, finding empirical evidence would be a sound public reason in favor of a ban. Allowing nonpublic reasoning against the ban would ensure that those who are freely choosing to wear the niqab could still use religious reasoning when opposing the ban. This seems generalizable so that if many people are forced to  $\Phi$ , there are strong public reasons for making it illegal, and we should not be as worried if a few people use nonpublic reasoning to defend  $\Phi$ .

Having established that bans against wearing niqabs are invasive, I will show how the asymmetric view would change the costliness of public reason.

#### 4. Costs of Symmetric Views of Public Reason

Let us begin with the following stylized case:

EUROPEAN NIQAB WEARERS: Aisha and Betty have both freely chosen to wear the niqab. To them, being free to make this choice is an integral part of their respective life plan. It is essential for their religious commitments and their cultural identities. The citizenry in their country debates a ban against niqabs. Aisha and Betty are both opposed to the law, but their reasons differ. Aisha believes that a ban would restrict liberal religious freedoms and that it would not respect her as a citizen. However, her main reasons against the ban are based on her reading of religious texts. Betty shares this latter reason. She believes that a ban would make the legislation of their country incompatible with religious truths, since for her, wearing the veil is a religious obligation. She is unwilling to comply with the norms of public reason. In public, the only justification she wants to use for defending her practice is nonpublic.

Not exempting Aisha and Betty from public-reason-giving requirements would come with *exclusion* and *agential* costs, discussed in turn.

##### (a) *The Exclusion Cost*

In passing, Rawls—the most notable proponent of the symmetric view—discusses cases where public reason arguments defeat religious views. As an example, he argues that a Roman Catholic might oppose a pro-abortion law but still “recognize the right as belonging to legitimate law enacted in accordance with legitimate political institutions and public reason.”<sup>36</sup> The case should not worry us, Rawls claims, since Catholics “need not themselves exercise the right to abortion.” While this is true for abortion laws, it is not for any regulation going against someone’s religious ideals. Rawls fails to address the inevitable follow-up question: what about laws where citizens do need to alter their way of life to oblige with them?

At least, symmetric views of public reason would ensure that niqab wearers are not interfered with for reasons that they do not accept the normative relevance of. This is one of the main reasons why public reason liberalism would be preferable to perfectionist liberalisms. Suppose for instance that Charlotte is a liberal perfectionist who believes “[t]he full face veil must be prohibited even if it is

worn voluntarily. This is indeed an infringement of the person's dignity but also of dignity as a matter of principle, generally speaking. This is an insult to the conception of the human person and the woman.<sup>37</sup> On this version of liberal perfectionism, it would not be a problem to impose a ban on Aisha and Betty, based on a conception of human dignity that they (presumably) do not to share. They would be coerced based on a reason that they do not consider normatively relevant.

It is possible to imagine justifications for bans against covering the face that meet the demands of public reason.<sup>38</sup> The final version of the French law, after initially being explicitly targeted at Muslim niqab wearers, did not rely on comprehensive claims or references to the niqab. Instead, it merely stated that no one was allowed to "wear clothing intended to conceal their face" in public.<sup>39</sup> The justification was altered, now the ban was (among other things) said to protect peace and security, and the conditions necessary for living together.<sup>40</sup> At least security would on many views be accepted as an uncontroversial primary good and a public reason. The value of security is normatively relevant for all (sufficiently idealized) citizens.

Suppose that Betty would want to make the following argument: (i) the best interpretation of Islam says that women should cover the face, (ii) the laws of our society should be compatible with the best interpretation of Islam; therefore, (iii) we should legally permit covering the face in public.<sup>41</sup> Neither (i) nor (ii) are reasons that all sufficiently idealized citizens could be expected to endorse or share. Hence, on the symmetric view of public reason, Betty would not be morally permitted to participate in the political deliberation in the public forum, unless she was prepared to change her argument. Call this the exclusion cost.<sup>42</sup>

Why exclusion? Even if the public-reason-giving requirements are not legally enforced, they hold power over individuals' behavior. They could still be strictly enforced in the sense that violators are met with strong disapproval, leading individuals to refraining from acting as they otherwise would.<sup>43</sup> To assume otherwise would make it difficult to see the relevance of discussing moral duties at all. The exclusion that citizens face is thus about having their views not taken seriously by their fellow citizens, and being excluded from the set of people that are listened to when legislation is crafted.

Adherents of the symmetric view could bite the bullet here. They might say that since Betty is unwilling to provide public reasons for her practice, she should not be morally allowed to defend it in public. Instead, she should leave the defending of the freedom to wear the niqab to Aisha, who is willing to give public reasons against the ban. In the remote possibility where neither Aisha—nor anyone else—can give public reasons, opponents of the asymmetric view would be happy to have found a case where public reason is conclusive. The niqab should be banned. However, if so, it would be banned without taking the voices of those defending the practice into account. In other words, biting the bullet potentially comes with massive costs of exclusion. If this is an unwanted implication, we have tentative reasons for accepting an asymmetric view of public reason.

*(b) The Agential Cost*

The agential cost of public reason is the cost that individuals bear when they are involved in public reason giving. While there could be several agential costs, I will focus on the standard dualism critique of public reason. The idea is that religious citizens having to engage in public reasoning are subject to a specific harm: their identities are threatened. Citizens of faith cannot deliberate as their full selves.<sup>44</sup> The thought is that public reason theorists fail to recognize how central to one's identity religion often is. To "bracket" religious convictions, it is argued, is to "annihilate" essential "aspects of one's very self."<sup>45</sup>

The asymmetric view would ensure that this cost is eliminated in paradigmatic cases. When certain, central, practices are at stake, citizens can debate as their full selves, and their identities are thereby better protected. The asymmetric view does not, however, eliminate all agential costs of public reason. Religious citizens would still have to "split themselves" when trying to impose legislation on someone else's preferred way of life. People of other religions, or Muslims with different theological interpretations, may have to do so in the niqab debate when trying to prevent people from wearing the niqab. Perhaps Daniel sincerely believes that the main reason for banning niqabs is that it is *not* God's will to wear them—in fact, it is a disgrace to God.<sup>46</sup>

This instance of the agential cost should not be too worrying for two reasons. First, virtually all consensus accounts of public reason share this cost, and we would have to provide a significantly different account to avoid it. Second, it would most likely be costlier for Betty to have to split herself when she is defending her choice to wear the niqab than it would be for Daniel trying to stop her from continuing to do so. Betty's life plans are threatened, Daniel's are not. Of course, we may see Daniel's life plan as "living in a moral community that shares a commitment to the same substantive ideals as himself." On this reading, the choice to stop someone from wearing the niqab could be understood as a PFC. However, this PFC would not meet the test of non-imposition—the only way of achieving it would be to alter other people's ways of life. This corresponds to how Daniel, if he were to succeed in justifying a law against niqabs with non-public reasons, would create a new cost—a disrespect cost. In short, on standard versions of public reason liberalism, something like a disrespect cost is imposed on someone when she is coerced without public reasons.<sup>47</sup>

It might be argued that the asymmetric view is imposing a small degree of disrespect in cases where the symmetric understandings of public reason do not. The asymmetric view lets those who oppose an invasive law "disrespect" those who argue in favor of it, by giving them nonpublic reasons. However, such an argument would have to rely on a somewhat counterintuitive notion of disrespect. And if we would understand it as a type of disrespect, by giving it equal status as coercive disrespect, it would not track the intuition that it is worse to be disrespected in cases where we have greater substantive objections, when more is at

stake for us. For those arguing in favor of a ban, the main thing at stake is having to live in a society where others wear niqabs.

While I will not engage in the debate on the nature of coercion, I do have some tentative objections to a view where the enforcement of an invasive law would be on par (coercively) with the non-enforcement of it. Could we say that someone is coerced if they are not allowed to enforce a niqab ban on others? If not, we should have reasons for assigning a minimal weight to the value of being “respected” in this sense when imposing invasive legislation. We must balance the small value of not being disrespected when imposing or upholding restrictions of other people’s freedom to live their lives as they see fit against the greater exclusion and agential costs that getting rid of this “disrespect” would entail. In this trade-off, I hope to have made clear that the pros of the asymmetric view outweigh the potential cons. And, importantly, this seems to be perfectly compatible with the standard justification for public reason liberalism.

### 5. Some Further Considerations

It might be objected that in all cases where the asymmetric view applies, there will always be public reasons available to the opponent of the invasive law. If a law burdens an individual by making her unable to exercise a freedom essential for her conception of the good, her wanting to avoid this burden would be a plausible public reason. Thus, she might say (a) this law prevents me from  $\Phi$ -ing (and  $\Phi$ -ing is required by my nonpublic commitments), and (b) this means that the law restricts my liberal right R or freedom F. If we incorporate the asymmetric view, it is permissible to appeal only to (a), but a critic might argue that the cost involved in making the statement compatible with the standard view by adding (b) is not necessarily that great. Hence, the objection goes, if there are always public reasons available, and the cost of appealing to them is not substantial, it is not clear what the advantage of the asymmetric view would be.

There are several problems with this line of argument. The first is that the possible costs of not using the asymmetric view do not do the main justificatory work for the view. Instead, it is the presumption of noninterference in paradigmatic cases. Hence, the justification of the view stems from the implausibility of demanding a certain kind of reason in response from someone who is coerced into changing the way she lives. Following Stanley Benn, the burden of proof is on the person interfering, not on the person being interfered with. Demanding a justification “presume at least prima facie fault,” it is a charge that must be countered.<sup>48</sup> Similarly, we can take quite literally John Stuart Mill’s idea that “the burden of proof is supposed to be with those who are against liberty; who contend for any restriction or prohibition.” A generous understanding of this would not only accept that the burden of proof is with the interferer, but also hold that it is (in principle) possible to prove that an interference is justified, also for other reasons than those provided by Mill.<sup>49</sup> Hence, even if it could be shown that it rarely is costly for someone to translate their argument into a public reason, there are

grounds for not putting the same justificatory requirements on a person defending her (non-imposing) practice as a person trying to stop her from pursuing it. From this, it is difficult to see why we would be in a normative position where we can accept only justifications of a certain quality when trying to stop someone from following their life plan.

In the same spirit, as Andrew Mason highlights, when legislation threatens one's way of life it may be worthwhile to allow people to appeal to whatever reasons they see fit. As he puts it in relation to bans on headscarves in schools: "consider two ways in which citizens might try to defend this right. First, they might give a religious reason, by arguing that not wearing a headscarf in class would offend Allah. Second, they might give a public reason argument ... Why should we regard the giving of reasons of the first kind as a display of unreasonableness?"<sup>50</sup> Moreover, there are perfectionist arguments that are not as easily accommodated in the public reason framework. Assuming that it is easy to change nonpublic arguments to public ones presupposes that the original argument is already closely mapped on public reason. But for argument such as Betty's—"the laws of our society should be compatible with the best interpretation of Islam"—this is not the case.

Another objection is that the asymmetric view might look less plausible if we think of other kinds of cases, where citizens are interfered with to secure the rights and liberties of other citizens. When the legality of the French ban on face veil was upheld in the European Court of Human Rights, the Court accepted the government's argument that banning covering the face was necessary to secure the rights of other citizens.<sup>51</sup> I think it is fair to say that this is implausible in the niqab case, but it is clearly possible to imagine invasive-looking laws that undoubtedly protect the rights and freedoms of others. Should the requirements really be asymmetric in *those* cases?

In response, it is important to note that behaviors that are direct threats to the rights of other citizens are covered by the nonimposing requirement. In one sense, a law against murder is "invasive" because it prevents those who would want to pursue a murderous lifestyle from doing so. But since that way of life imposes on other people's ways of life, the murderer, defending her lifestyle in public, would need to try to find public reasons to make her case.

However, some PFCs are not as straightforward, those where there is reasonable disagreement over whether they are imposing or not. For instance, a case typically invoked in debates over religious exemptions is Sikhs being exempted from bans against carrying knives.<sup>52</sup> The Sikh is not directly imposing on someone else's way of life simply by wearing the kirpan, but perhaps it could be argued that it gives him the opportunity to do so. While I cannot give a full picture of how to deal with borderline cases here, I ultimately believe that whether they should be seen as imposing or not is an empirical matter, and distributing the requirements is something that would need to be done through a deliberative process. That is, if we can determine that the best evidence shows that allowing Sikhs to wear ceremonial knives would plausibly lead to rights-violations of other citizens, then there is a case to be made that Sikhs defending the practice would need

to supplement their non-public reasons with public ones.<sup>53</sup> If the best evidence does not show this, they do not have to give public reasons when defending the practice.

We might also worry that the asymmetric view is too concerned with noninterference. For most people, the argument could go, what is important is not being free from interference, but having access to some good(s) or having the capacity (or capability) to pursue some (set of) desire(s). Suppose for instance that

BUS LINE: Emma lives in a society committed to the broad view of public reason that has incorporated the asymmetric view. She lives in a desolate part of the country, does not own a car, and most of the facilities necessary for her PFCs (the church, the sports center) are in a city far from where she lives. The only way for her to get to the city is with a publicly funded bus line. Now, there is a proposal that the line is too costly and should be removed.

A broad view of public reason with the asymmetric view incorporated would not relieve Emma from the public-reason-giving requirements when she is opposing the cuts. However, if the cuts were implemented, she would not be able to pursue her PFCs. The objection, then, is that the asymmetric view arbitrarily privileges a certain baseline, one without interference. Thus, the critique would mirror traditional points from the debate on the nature of freedom.

The objection misses the mark. First, I do not suggest that those arguing in favor of cutting funding for the bus line would be exempted from the public-reason-giving requirements either. The asymmetric view does not extend beyond invasive laws, and the funding of the bus line does not directly interfere with specific life plans. Further, I do not claim that non-interference is the only thing of value for people—having access to the bus line clearly is valuable to Emma. I also do not argue that it would be unjustified to continue operating the bus line. What the asymmetric view entails is only that Emma must give public reasons, just like everyone else, when arguing in favor of keeping the bus line. If a law is not invasive, the requirements are symmetrical, just as on the traditional, symmetric, view. She either succeeds, and the line continues, or she does not. This should not be too puzzling. Public funds have been drawn from individual citizens. They must then be allocated to the bus line rather than any other public project. There is a clear opportunity cost to spending the money on Emma's bus line. In short, the money could be used to fund another bus line going past Geri's house. It is not clear why we should privilege Emma over Geri.

Even if we believe that there are reasons for privileging the status quo, it does not ground sufficient reasons for extending the asymmetric requirements to Bus Line. Suppose that the government needs to balance its budget and that this requires removing funding from one project  $P$  among many  $[P_1, P_2, P_3, \dots P_n]$ . One  $P$  is, say, Melanie's bus line. Other  $P$ 's are just as important for the life plans of others. If the government decides not to cut the funding for the bus line, it has to cut the funding for something else. Invasive laws do not have the same structure. Laws making ballet or football illegal would effectively remove these (possible) PFCs without creating other opportunities. This, I believe, makes enough of a

moral difference to justify an asymmetry for invasive laws but not in Bus Line-type cases.

It might be objected, further, that not all PFCs are uncontroversial. Many people seem to find the niqab degrading or offensive, and the same is true for the choices necessary for many other life plans. Why, then, should someone engaging in an objectionable way of life not be required to defend it with public reasons? Take, for instance, someone who believes that a valuable life is one where she can go fox hunting. The practice is widely believed by opponents to be both cruel and immoral. However, the fox hunters themselves see it as a fundamental part of their way of life. Proponents of fox hunting describe how it is “a vital thread in the fabric of rural society,”<sup>54</sup> and how it makes a “social contribution to the lives of rural communities.” Many retired people see it as their “chief leisure activity.”<sup>55</sup>

Assuming that fox hunting is non-imposing,<sup>56</sup> we have reason to believe that the practice is a PFC. And if it is a PFC, a law making it illegal would be invasive. Proponents of fox hunting seem to view it so, Roger Scruton argues that, for people in rural communities, a ban would be “an assault on their way of life.”<sup>57</sup> Indeed, he (perhaps overstatedly) says that to “criminalise [fox hunting] would be to introduce legislation as illiberal as the laws which once deprived Jews and Catholics of political rights, or the laws which outlawed homosexuality.”<sup>58</sup>

With the asymmetric view, fox hunters would be allowed to use nonpublic arguments when defending their practice. For instance, they might say that it is vital to engage in fox hunting to live a flourishing life, and so it should be permissible. Is this plausible? Why should we assign any value to a way of life that many people find repulsive?

One way of answering this objection is by noting that the asymmetric view does not come with any judgements of the value of the PFCs it covers. It does not imply that we, “you and me,” need to endorse or appreciate fox hunting. Further, it remains silent on the question of whether fox hunting should be legal or not. On the contrary, if there are sound public reasons for making it illegal, and a ban is implemented using proper democratic procedures, nothing is stopping us from making it illegal. The asymmetric view, as opposed to Scruton, does not rely on the argument that we have a fundamental right to engage in fox hunting. The only assumption is that the freedom to hunt foxes is valuable for those who do so, and those who want to stop them from engaging in the practice have higher justificatory demands. In the deliberation around this practice, introducing asymmetric requirements does not give a veto to the fox hunters; it merely allows them to use non-public reasons.

Further, it would not be in line with broader public reason liberal commitments to allow judgements on the value of different ways of life into the theory. While as private persons we may find some ways of life undesirable, these objections should not be bootstrapped into our theory of public reason. Doing so would open the door for an objectionable form of perfectionism.

Should the consequence that fox hunters are allowed to reason nonpublicly lead us to give up the asymmetric view? I believe that it should not. Rather, we

should acknowledge that this practice is a central part of what gives their lives value, and if we believe that we have sound public reasons for stopping them from pursuing it, we should allow them to oppose us with whatever reasons they see fit.

Finally, it would be possible to make the argument that it is wrong to impose unequal justificatory burdens on two parties in a single debate, that the asymmetry is unfair because it allows nonpublic reasoning from some but not from others. If this is true, it would be worrying for the asymmetric view. This cost would then have to be balanced against the benefits of the view. However, I believe that the asymmetry is not an injustice since it is not arbitrary. It is a result and a reflection of the asymmetric relationship that already exists between a person interfering and the person she interferes with. If the interference is successful, the person who is exempted from the public-reason-giving requirements will have to bear a significant burden. If the interference fails, the person interfering does not have to bear any (or a minimal) burden. The asymmetric distribution of duties is thus not unfair; it reflects what is at stake for the two parties. Further, since everyone has an interest in protecting their PFCs, regardless of what they are, they can recognize that when (if) their PFC is at stake they, too, will be exempted.

It is more difficult to avoid the weaker conclusion that the asymmetric view violates some criterion of reciprocity, the idea that somebody who wants to engage in liberal democratic politics ought to accept the ground rules of which that politics is based: “if you do not want non-public reasons used against you, you should exercise self-restraint yourself.” However, since most political rules are not invasive, most public deliberation will be reciprocal. The argument from reciprocity only succeeds if we believe that citizens will expect reciprocity also when proposing invasive laws. Provided that they are aware that their public reason regime is asymmetric, they can predict that they should not expect public reasons from their opponents in these limited instances. If we are reciprocal outside the realm of invasive laws, and if we can reasonably predict when we should not expect reciprocity, this cost can be avoided.

## 6. Conclusion

I have argued that consensus public reason liberalism traditionally understood lacks the theoretical resources for separating a person trying to change someone else’s life plans from the person whose life plan is changed. This is objectionable since there should be a presumption in favor of noninterference in paradigmatic cases. To mitigate this, I have defended an asymmetric view of public reason. By discussing it in relation to European burqa bans, I have shown that it avoids significant costs, while remaining faithful to the ideals of public reason liberalism.

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### Notes

- <sup>1</sup>I am concerned with, in Aurélie Bardon's words, the question: "Do citizens have the moral right to refer to [only] religious reasons to support or oppose particular political decisions?" Aurélie Bardon, "Two Misunderstandings About Public Justification and Religious Reasons," *Law and Philosophy* 37, no. 6 (2018): 639–69, p. 646. Public reason liberalism that do not include a requirement for individual citizens to give public reasons are beyond the scope of this article. The argument does not apply to those who believe that only "public officials", such as legislators and judges, are bound by the requirement to give public reasons. However, since it is "widely thought" that public reason liberalism *does* entail that ordinary citizens need to give public reasons, the subset of views that I focus on is rather significant. On this, see Kevin Vallier, "Public justification Versus Public Deliberation: The Case for Divorce," *Canadian Journal of Philosophy* 45, no. 2 (2015): 139–58, 139; see also Micah Schwartzman, "The Sincerity of Public Reason," *The Journal of Political Philosophy* 19, no. 4 (2011): 375–98.
- <sup>2</sup>Jonathan Quong, *Liberalism Without Perfection* (Oxford: Oxford University Press, 2011), 212.
- <sup>3</sup>John Rawls, *Political Liberalism* (New York, NY: Columbia University Press, 1993), 226.
- <sup>4</sup>*Ibid.*, 766, 769.
- <sup>5</sup>*Ibid.*, 217.
- <sup>6</sup>With Rawls, I assume that this an "intrinsically moral duty", not a legal standard, John Rawls, "The Idea of Public Reason Revisited," *The University of Chicago Law Review* 64, no. 3 (1997), 765–807, 769. Rawls calls this the duty of civility. I take the more general term, "public-reason-giving requirement", from Marc Stears and Mathew Humphrey. "Public Reason and Political Action: Justifying Citizen Behaviour in Actually-Existing Democracies," *The Review of Politics* 74, no. 2 (2012): 285–306, 287.
- <sup>7</sup>For a discussion of these different conceptions, see Cécile Laborde, *Liberalism's Religion* (Cambridge, MA: Harvard University Press, 2017), 120. For a recent defence of the accessibility requirement, see Gabriele Badano and Matteo Bonotti, "Rescuing Public Reason Liberalism's Accessibility Requirement," *Law and Philosophy* 39 (2019): 35–65.
- <sup>8</sup>Rawls, "The Idea of public reason revisited," 784.
- <sup>9</sup>Quong, *Liberalism Without Perfection*, 274.
- <sup>10</sup>Brian Barry, *Justice as Impartiality* (Oxford: Oxford University Press, 1995), 143–5.
- <sup>11</sup>T. M. Scanlon, "Rawls on Justification," in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003), 162–3.
- <sup>12</sup>The basic structure of society encompasses constitutional essentials, such as principles for the structure of the government and political processes, and the set of basic rights and liberties with constitutional protection, and matters of basic justice. Rawls, *Political Liberalism*, 227; see also Quong, *Liberalism Without Perfection*, 51.
- <sup>13</sup>Quong, *Liberalism Without Perfection*, 274; 286; see also Quong, "The Scope of Public Reason," *Political Studies* 52 (2004): 233–50.
- <sup>14</sup>To illustrate this distinction, suppose that ideally, passengers on the underground should give up their seat to senior citizens. It may still be true that it would be particularly troubling if a person from a certain subset of seniors (for instance, those with physical disabilities) were not given a seat.
- <sup>15</sup>Christopher Eberle, a notable critic of public reason, summarises it so in Eberle, *Religious Conviction in Liberal Politics* (New York: Cambridge University Press, 2002), 14.
- <sup>16</sup>Quong, *Liberalism Without Perfection*, 209.

- <sup>17</sup>Interestingly, to my knowledge no one has thus far shed light on the distinction between imposing and opposing laws within the consensus tradition. The symmetric view is implied without being explicitly defended. I believe that all consensus theorists have reason to adopt the asymmetric view in paradigmatic cases, since it is consistent with the basic premises of public reason liberalism.
- <sup>18</sup>It also entails that if Anna wants to defend Ben's way of life, she is free to do so with whatever arguments that *she* sees fit, perhaps something like comprehensive and far-reaching libertarianism. In what follows, I mainly focus on someone defending her own way of life.
- <sup>19</sup>Paul Billingham, "Convergence Justifications within Political Liberalism: A Defence," *Res Publica* 22 (2016), 135–53.
- <sup>20</sup>Gerald Gaus and Kevin Vallier, "The Roles of Religious Conviction in a Publicly Justified Polity: The Implications of Convergence, Asymmetry, and Political Institutions," *Philosophy & Social Criticism* 35, no. 1 (2009): 51–76, 61. Kevin Vallier, "In Defense of the Asymmetric Convergence Model of Public Justification: A Reply to Boettcher," *Ethical Theory and Moral Practice* 19 (2016): 255–66.
- <sup>21</sup>I note that the exact interpretation of the idea of defeater reasons is ambiguous. Because Gerald Gaus neither thinks that democratic decisions need to be unanimous, nor that institutional veto mechanisms should be in place. Gerald Gaus, *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World* (Cambridge: Cambridge University Press, 2011), 458–9, 462–8, 495.
- <sup>22</sup>Isaiah Berlin, "Two Concepts of Liberty," reprinted in Robert Goodin and Philip Pettit, eds. *Contemporary Political Philosophy: An Anthology* (Oxford: Blackwell Publishing, 2006), 393; see also Berlin, "Freedom and Determinism," in *The Proper Study of Mankind* (London: Vintage books, 1997); Berlin, "Introduction," in *Liberty*, ed. Henry Hardy (Oxford: Oxford University Press, 2008). I do not suggest that this is the only, or "proper", way of understanding freedom.
- <sup>23</sup>Berlin, "Freedom and Determinism," 112–3.
- <sup>24</sup>Charles Taylor, "What's Wrong With Negative Freedom?" in *Freedom: A Philosophical Anthology*, eds. Ian Carter, Mathew Kramer, and Hillel Steiner (Oxford: Blackwell Publishing, 2006), 155.
- <sup>25</sup>Berlin, *Four Essays on Liberty* (Oxford: Oxford University Press, 1968), 130.
- <sup>26</sup>See for instance Jürgen Habermas, "Reconciliation Through the Public Use of Reason: Remarks on John Rawls's Political Liberalism," *The Journal of Philosophy* 92, no. 3 (1995), 109–31, 127.
- <sup>27</sup>While I do not explore the possibility here, this could potentially mean that when we evaluate the legitimacy of such laws, the burden of proof is higher. That is, that the balance of reasons must weigh more heavily in favour of implementing the law than in other cases. I am grateful to an anonymous reviewer for raising this point.
- <sup>28</sup>Gerald Gaus, "Justificatory Liberalism: An Essay on Epistemology and Political Theory." New York: Oxford University, pp. 162–6.
- <sup>29</sup>For an overview, and an argument in favour of a particular interpretation of the coercion model, see Baldwin Wong, "Public Reason and Structural Coercion: In Defense of the Coercion Account as the Ground of Public Reason." *Social Theory and Practice* 46, no. 1, (2020): 231–55.
- <sup>30</sup>Burqa ban is a misnomer since most Muslim women in the West who cover their faces wear the niqab. Nevertheless, this is what the bans are typically called. Margit Warburg, Birgitte Schepelern Johansen and Kate Østergaard, "Counting niqabs and burqas in Denmark: Methodological Aspects of Quantifying Rare and Elusive Religious Sub-cultures," *Journal of Contemporary Religion* 28, 1 (2013), 33–48.
- <sup>31</sup>Kate Østergaard, Margit Warburg, and Birgitte Johansen, "Niqabis in Denmark: When Politicians Ask for a Qualitative and Quantitative Profile of a Very Small and Elusive Subculture," in *The Experience of Face Veil Wearers in Europe and the Law*, ed. Eva Brems (Cambridge: Cambridge University Press, 2014); see also Faegheh Shirazi and Smeeta Mishra, "Young Muslim Women on the Face Veil (Niqab): A Tool of Resistance in Europe But Rejected in the United States," *International Journal of Cultural Studies* 13, no. 1 (2010): 43–62.
- <sup>32</sup>Ben McPartland, "Burqa Ban Five Years on – 'We Created a Monster'." *The Local France*. 12 Oct (2015). Retrieved May 05, 2020, from <http://www.thelocal.fr>.

- <sup>33</sup>Eva Brems, "Face Veil Bans in the European Court of Human Rights: The Importance of Empirical Finding," *Journal of Law and Policy*, 22, no. 2 (2014): 517–51, 545.
- <sup>34</sup>Naima Bouteldja, "France vs England," in *The Experience of Face Veil Wearers in Europe and the Law* (2014).
- <sup>35</sup>A considerable proportion of the women are born in "Western" families and have converted to Islam as adults. The studies indicate that women critically reflect on their choice to wear niqabs. In one study, "all interviewees describe their decision as a well-considered and free decision" Eva Brems, Yaiza Janssens, Kim Lecoyer, Saïla Ouaid Chaïb, Victoria Vandersteen, and Jogchum Vrielink. 2014. "The Belgian 'Burqa Ban' and Insider Realities," in *The Experience of Face Veil Wearers in Europe and the Law*, 81, and in another "none of [the women] use explanations such as 'we are used to it' or 'it is tradition'." Rather, "the women pointed out that it was only after careful consideration ... that they chose to veil their face," Østergaard et al., "Niqabis in Denmark," 60. See also Irene Zempi. "'It's a Part of Me, I Feel Naked Without It': Choice, Agency and Identity for Muslim Women Who Wear the Niqab." *Ethnic and Racial Studies* 39, no. 10 (2016), 1738–54; Annelies Moors, "Face-Veiling in the Netherlands: Public Debates and Women's Narratives," in *The Experience of Face Veil Wearers in Europe and the Law* (2014).
- <sup>36</sup>Rawls, "The Idea of Public Reason Revisited," 798–9.
- <sup>37</sup>Taken from a debate in the Belgian parliament. Translated by and cited in Emmanuelle Bribosia and Isabelle Rorive, "Insider Perspectives and the Human Rights Debate on Face Veil Bans," in *The Experience of Face Veil Wearers in Europe and the Law* (2014), 177. For a perfectionist reading of the French ban, see Gina Gustavsson, "A Romantic Reading of the French Burqa Ban: Liberty as Self-Expression and the Symbolism of Uncovered Faces in the French Debate on Full Veils." *Confluence: Journal of World Philosophies* 2 (2015): 55–106.
- <sup>38</sup>For some examples of reasons that might plausibly be described as public, see Christian Joppke and John Torpey. *Legal Integration of Islam: A Transatlantic Comparison*. (Boston, MA: Harvard University Press, 2013), 24.
- <sup>39</sup>Assemblée Nationale, 2010: article 1. Original wording: *Nul ne peut, dans l'espace public, porter une tenue destinée à dissimuler son visage*.
- <sup>40</sup>Gerhard Van der Schyff and Adriaan Overbeeke, "Exercising Religious Freedom in the Public Space: A Comparative and European Convention Analysis of General Burqa Bans." *European Constitutional Law Review* 7, no. 3 (2011): 424–52, 426.
- <sup>41</sup>For a discussion on a similarly structured argument on prohibiting same-sex marriage, see Ara Peter Astourian, *A New Defense of Public Reason*. PhD Thesis Conferred by USC Graduate School University of Southern California (2017), 1.
- <sup>42</sup>Cécile Laborde discusses similar kinds of concerns in relation to religious exemptions. The relationship between the view presented here and exemptions from general laws is an interesting area for further research. Laborde, "Intelligibility, Moral Loss and Injustice," *Journal of Applied Philosophy* 36, no.5 (2019): 727–30.
- <sup>43</sup>These kinds of concerns are common among liberals, as Kevin Vallier puts it, John Stuart Mill "is far from alone in worrying about the interference legitimized by widely recognized moral rules..." Kevin Vallier, "Public Justification Versus Public Deliberation: The Case for Divorce," 145.
- <sup>44</sup>Andrew Murphy, "Rawls and the Shrinking Liberty of Conscience," *The Review of Politics* 60, no. 2 (1998): 269–76.
- <sup>45</sup>Michael Perry, *Morality, Politics, and Law: A Bicentennial Essay* (New York: Oxford University Press, 1988), 181–2; see also Nicholas Wolterstorff, "The Role of Religion in Decision and Discussion of Political Issues," in *Religion in the Public Square: The Place of Religious Convictions in Political Debate*, eds. Robert Audi and Nicholas Wolterstorff (Rowman & Littlefield, 1997), 105.
- <sup>46</sup>Or convergence theories, an argument similar to this is outlined in Gerald Gaus, "The Place of Religious Belief in Public Reason Liberalism," in *Multiculturalism and Moral Conflict*, eds. Maria Dimova-Cookson and Peter Stirk (New York: Routledge, 2009), 31.

- <sup>47</sup>E.g. Charles Larmore, "The Moral Basis of Political Liberalism," *The Journal of Philosophy* 96, no. 12 (1999): 599–625; Martha Nussbaum, "Perfectionist Liberalism and Political Liberalism," *Philosophy and Public Affairs* 39, no. 1 (2011): 3–45, 35.
- <sup>48</sup>Stanley Benn, *A Theory of Freedom* (New York: Cambridge University Press, 1988), 87; see also Gerald Gaus, *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World* (Cambridge: Cambridge University Press), 341–2.
- <sup>49</sup>John Stuart Mill, in *On Liberty and Other Essays*, ed. John Gray (New York: Oxford University Press, 1991), 472.
- <sup>50</sup>Andrew Mason. *Living Together as Equals: The Demands of Citizenship* (Oxford: Oxford University Press, 2012), 159.
- <sup>51</sup>Sune Lægaard, "Burqa Ban, Freedom of Religion and 'Living Together'." *Human Rights Review* 16, no. 3 (2015): 203–19.
- <sup>52</sup>E.g. Peter Jones, "Religious Exemptions and Distributive Justice," in *Religion in Liberal Political Philosophy*, eds. Cécile Laborde and Aurélie Bardón (Oxford: Oxford University Press, 2017), 167.
- <sup>53</sup>I am doubtful that this would be the case. It is also important to note that the fact that the risk might be increased is by itself not sufficient to make the requirements symmetric. Liberal states allow all kinds of behaviours that impose risks on others without much cause for concern.
- <sup>54</sup>Roger Scruton, "Fox-Hunting: The Modern Case." Written submission to the Committee of Inquiry into Hunting, available from: The National Archives (2008). Retrieved May 08, 2020, from <http://webarchive.nationalarchives.gov.uk/20080818111214/>, <http://www.defra.gov.uk/rural/hunting/inquiry/evidence/scruton.htm>.
- <sup>55</sup>MFHA: *Social impact of foxhunting on rural communities*. Retrieved May 08, 2020, from [http://www.mfha.org.uk/index.php?option=com\\_content&task=view&id=62&Itemid=58](http://www.mfha.org.uk/index.php?option=com_content&task=view&id=62&Itemid=58)
- <sup>56</sup>This, of course, disregards how it imposes a burden on the fox.
- <sup>57</sup>Scruton, "Fox-Hunting: The Modern Case."
- <sup>58</sup>Ibid.