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RELIGION, CIVIC VALUES, AND EQUAL CITIZENSHIP IN THE LIBERAL DEMOCRATIC POLITY

Abstract

Whether religious and other voluntary associations should reflect public values is a subject of controversy. Corey Brettschneider argues that the state should assert its own values of free and equal citizenship, deliberately attempting to transform the beliefs of illiberal groups through court decisions and through selective withdrawal of tax exemptions. I argue, however, that as long as individuals and groups comply with the law, it is not the business of the state to change their beliefs. Moreover, public authority itself does not always exemplify his preferred values. Second, although I oppose direct funding for organizations that oppose public values, determining which organizations espouse the “right” values accords too much power to public authority. Moreover, many associations evolve over time. Finally, the true threat lies in practices that voluntary associations may seek to impose on the larger community.

Key Words: religious belief, transformation, civic values, equal citizenship, free expression, free association.

1. Introduction

A liberal democratic polity that is also diverse faces a recurring question. How much agreement on the core values of free and equal citizenship is necessary to preserve a balance between the encouragement of a flourishing pluralism, on the one hand, and the maintenance of these core values, on the other? A

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plurality of voluntary associations has historically been viewed both as a check on government and the tyranny of majoritarian values and also as a manifestation of personal liberty. Today, however, the moral function of associations has eclipsed these other values. "Civil society is seen as a school of virtue where men and women develop the dispositions essential to liberal democracy."² According to what Nancy Rosenblum terms the logic of congruence, this premise "rests on the assumption that dispositions and practices shaped in one association spill over to other contexts."³ Many advocates of congruence would enforce by law the norms and practices of public institutions on the internal life of voluntary associations.

For Rosenblum, on the other hand, voluntary associations serve the constructive and moral function of compensating for the failings of liberal democracy. Membership in voluntary associations is a source of self-respect, both through individuals' active contributions to associational life and through support by others for conceptions of the good life that may not be affirmed by the larger society. Individuals' motivations for joining particular associations, moreover, are not necessarily congruent with the effects of joining. Some religious associations may be hostile to choice and personal liberty, suggests Rosenblum, yet may "provide a powerful experience of social experiment and elective affinity."⁴ We do not always know what dispositions associational membership may promote. Although legal limitations must exist on exploitative or violent behavior, "deviance is as much a part of social life as the reproduction of norms. . . . Surely it is important that groups provide relatively benign outlets for ineradicable viciousness, intolerance, or narrow self-interest, and that antidemocratic dispositions are contained even if they cannot be corrected."⁵

These contrasting views of the proper function of voluntary associations in liberal democracy have been a focus of debate about citizenship in recent years. While some believe that these groups should develop the values and virtues necessary for good democratic citizenship, others hold that these associations are vital outlets for the development and expression of individual liberty, whether or not they promote public values. Theorist and constitutional scholar Corey Brettschneider, however, argues that it is the shared values of free and equal citizenship themselves that ground values such as the right to religious and associative freedom in the first place. Therefore, defenders of religious freedom should support deliberate state efforts to change or transform beliefs, both religious and nonreligious, that would undermine these core values. When the Supreme

2 Rosenblum, Nancy L., *Membership and Morals: The Personal Uses of Pluralism in America* (Princeton, NJ: Princeton University Press, 1998), 26.

3 *Ibid.*, 38; see 36-41.

4 *Ibid.*, 104; see also 47-50, 61-65, 103-105.

5 *Ibid.*, 48.

Court, for example, struck down the Florida city of Hialeah's ordinance against animal sacrifice in 1997, Brett Schneider argues that it was not only protecting the free exercise of Santeria, but was also sending a message that the councilmen's views that it was their Christian moral duty to ban such sacrifices, which "have no place in a free society's deliberations about coercion."⁶ These beliefs themselves deserve both a rebuke and a transformation by the state, although Brett Schneider would rely on persuasion rather than coercion and would limit his efforts to beliefs that are inconsistent with the values of equal citizenship. Following John Rawls, he argues that religious arguments must translate into freestanding ones that address individuals solely as free and equal citizens, not as holders of comprehensive views. Although at some times religious arguments will reinforce our commitment to free and equal citizenship, at other times they will undermine this commitment. "In such cases, existing religious beliefs are rightly targeted by the state for transformation."⁷

In addition to the dissemination of court decisions as a means of transformation, Brett Schneider also supports the selective withdrawal of tax exemptions, upheld by the Supreme Court in 1983 when the Internal Revenue Service began withholding this status from groups that engaged in racial discrimination. Bob Jones University formerly prohibited not only interracial dating, an arguably internal matter at a private institution, but also public support for interracial marriage and membership in the NAACP. Although the IRS's revocation of tax-free, nonprofit status was "quasi-coercive" as well as persuasive, the University still had the right to resist or ignore this transformative pressure. When the University changed its policy against interracial dating seventeen years later despite its earlier rhetoric about the religious grounding of its policies, on Brett Schneider's view it is not therefore a less religious institution than before. Despite the widespread idea that religion is supposed to be insulated from the surrounding culture, "The static nature of such an insular account of religion ignores the reality that religions have survived for centuries precisely because they are able to evolve—not only to fit various cultural contexts but also to incorporate fundamental values" such as those of free and equal citizenship.⁸

Brett Schneider's contribution to the ongoing debate about the proper role of voluntary associations in liberal democracy merits consideration for two reasons. First, it makes no distinction between religious beliefs and nonreligious ethical convictions in its efforts to transform illiberal values. Second, it goes fur-

6 Brett Schneider, Corey, A Transformative Theory of Religious Freedom: Promoting the Reasons for Rights, *Political Theory* 38 (2010): 190; see also 194-195, referencing *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1998), and Corey Brett Schneider, *When the State Speaks, What Should It Say? How Democracies Can Protect Expression and Promote Equality*. Princeton, NJ: Princeton University Press, 2012.

7 Brett Schneider, Corey, A Transformative Theory of Religious Freedom . . . p. 199.

8 *Ibid.*, 205, referencing *Bob Jones University v. United States*, 461 U.S. 574 (1983). See also pp. 197-203 and Brett Schneider, *When the State Speaks*, pp. 161-185.

ther down the road toward quasi-coercion, as Brettschneider terms it, than do other recent views that still advocate some alignment of voluntary associations with public values. Although I support the values of free and equal citizenship, or of freedom and equality, in this article I raise questions about Brettschneider's means of promoting these values and explain why these questions are important.

First, I explore the context, arguing that while some commentators may not require enough of citizens in promoting the values of equal citizenship, others go too far. The larger culture's influence on voluntary associations over time effects some congruence between their beliefs and public values. As long as individuals and groups comply with laws even when they disagree with them, why should it matter whether they change their views of what their religious or otherwise conscientious principles require? Moreover, we cannot always count on public authority itself, or at least some of its manifestations, to support the values of free and equal citizenship. Second, although I unequivocally oppose direct funding to organizations that discriminate in ways counter to public values, determining which organizations espouse values that comprehensively oppose free and equal citizenship for purposes of withholding tax exemptions itself accords too much power to public authority. Many voluntary associations are not monolithic in their values, moreover, and many evolve over time. Finally, the true threat to free and equal citizenship lies not in voluntary associations, both religious and nonreligious, the *beliefs* of which we fail to transform, but in *practices* they may seek to impose not only on individuals but also sometimes on the larger community. Overall, I oppose Brettschneider's heavy-handed advocacy of state authority as an agent of transformation.

2. Congruence and Transformation

Assessing the degree of congruence that may exist at the outset between public and private values is not a simple matter. Although many liberal theorists hold that even a liberal polity does not espouse neutrality among rival conceptions of the good, they can differ substantially on the implications of this stance. William Galston, for example, maintains that "every polity . . . embodies a more than minimal conception of the good that establishes at least a partial rank-order among individual ways of life and competing principles of right conduct."⁹ On the other hand, he believes that "Liberal freedom entails the right to live unexamined as well as examined lives."¹⁰ At the heart of liberal tolerance is not critical

9 Galston, William A., *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State* (New York: Cambridge University Press, 1991), pp. 96-97. See also pp. 93, 82-97, 116, 180.

10 Galston, William A., *Civic Education in the Liberal State*, in *Liberalism and the Moral Life*, edited by Nancy L. Rosenblum (Cambridge, MA: Harvard University Press, 1989), p. 100. See also pp. 129-130, 143-149, 153, 259, 277.

reflection on or sympathy with various ways of life but “the refusal to use state power to impose one’s way of life on others. Such refusal need not be incompatible with an unreflective commitment to one’s way of life.”¹¹ Like Rosenblum, then, Galston rejects the logic of congruence, arguing that a government that tries to align the beliefs of dissenting individuals and groups with the dominant consensus does not promote diversity but undermines it.

For Amy Gutmann, by contrast, mutual respect requires not only tolerance, but also “requires a favorable attitude toward, and constructive interaction with, the persons with whom one disagrees.” More specifically, mutual respect characterizes “individuals who are morally committed, self-reflective about their commitments, discerning of the differences between respectable and merely tolerable differences of opinion, and open to the possibility of changing their minds or modifying their positions at some time in the future if they confront unanswerable objections to their present point of view.”¹² For Eamonn Callan, similarly, the use of public reasons that are independent of citizens’ privately held comprehensive doctrines will promote imaginative engagement with other viewpoints and will “profoundly affect” their comprehensive views or conceptions of the good. “To understand the reasonableness of beliefs that initially seem wrong or even repellant I must imaginatively entertain the ethical perspective the beliefs furnish, and from that perspective my own way of life will look worse, or at least no better, than what that perspective affirms.”¹³ This quality of imaginative engagement and sympathy requires a high level of self-reflection and openness as we examine and try to understand the values of diverse ways of life. For Callan, this process cannot help but smuggle the values of personal autonomy “through the back door of political liberalism . . . [which then] is really a kind of closet ethical liberalism,¹⁴ although Callan does not necessarily view this collapse as undesirable.

Finally, Stephen Macedo is unapologetic about the fact that communities or families with totalistic belief systems may be undermined by public policy that advances critical thinking and public argument as appropriate means of political justification.¹⁵ Advocating a “transformative constitutionalism,” he holds that “successful constitutional institutions must do more than help order the freedom of individuals . . . they must shape the way that people use their freedom and

11 Galston, William A., Two Concepts of Liberalism, *Ethics* 105 (1995): 524. See also 523-524; Galston, *Liberal Purposes*, 129, 256, 329 n. 12, 175-176, 242-243, 282-283; Galston, *Civic Education in the Liberal State* . . . pp. 90, 96, 99.

12 Gutmann, Amy and Thompson, Dennis, Moral Conflict and Political Consensus, *Ethics* 101 (1990): 76. See pp. 76-81 and Gutmann, Amy, *Civic Education and Social Diversity*, *Ethics* 105 (1995): 560-565.

13 Callan, Eamonn, Political Liberalism and Political Education, *Review of Politics* 58 (1996): 17; see pp. 11-18. See also Callan, Eamonn, Tradition and Integrity in Moral Education, *American Journal of Education* 101 (1992): 22; see pp. 16-24.

14 Callan, Eamonn, *Political Liberalism and Political Education* . . . p. 22.

15 Macedo, Stephen, Multiculturalism for the Religious Right? Defending Liberal Civic Education, *Journal of Philosophy of Education* 29 (1995): 226; see pp. 224-229

shape *people* to help ensure that freedom is what they want."¹⁶ Accomplishing these goals "requires liberalism with a spine"¹⁷ and a recognition of "the supreme importance of constituting diversity for liberal ends."¹⁸ Macedo does not, however, advocate education promoting sympathetic and imaginative engagement with other people's comprehensive religious, philosophical, and moral beliefs. "Explicitly or not, liberal regimes endorse and promote autonomy. But we still respect the non-autonomous: people have the right to lead lazy, narrow-minded lives, and so we minimize and soften interference with their choices."¹⁹

Macedo's understanding of liberalism's core values resembles Brettschneider's conviction that although citizens cannot be forced to change their attitudes, beliefs contravening free and equal citizenship deserve both a rebuke and a transformation by the state. Defenders of those who feel marginalized because they will not compartmentalize their political and religious beliefs should realize that the true difficulty is these believers' hypersensitivity. And their defenders' "real problem is in thinking there is something necessarily wrong with practices that in effect marginalize those who reject liberalism."²⁰ Marginalized groups whose beliefs are under threat from the wider liberal culture and whose practices are imperiled by the public policies of the liberal state may need to make adjustments themselves rather than to petition for exemptions from these policies.²¹

This range of views on the requirements of free and equal citizenship demonstrates that the larger liberal culture already exerts an influence on religious and cultural groups whose ways of life conflict with its ethos. Even in the absence of coercion, asks John Tomasi, "Is political liberalism really as successful as it hopes in avoiding the imposition of a single ethical doctrine on all of society? If liberals cannot prevent the spillover of potentially homogenizing effects of liberal doctrine and practice from public to nonpublic spheres, how accommodating of ethical diversity can a political liberal regime actually be?"²² The law may change individuals' practices, and the culture may also influence their beliefs. But must the state deliberately attempt to change individuals' beliefs, as Brettschneider argues, as well? Although I agree with Gutmann and Callan

16 Macedo, Stephen, Transformative Constitutionalism and the Case of Religion: Defending the Moderate Hegemony of Liberalism, *Political Theory* 26 (1998): 58

17 Macedo, Stephen, Liberal Civic Education and Its Limits, *Canadian Journal of Education* 20 (1995): 304; see also pp. 308-309.

18 Macedo, Stephen, Transformative Constitutionalism . . . p. 73.

19 Macedo, Stephen, *Liberal Virtues: Citizenship, Virtue, and Community in Liberal Constitutionalism* (Oxford: Clarendon Press, 1990), p. 253.

20 Macedo, Stephen, Transformative Constitutionalism . . . p. 79, n. 53.

21 Macedo, Stephen, Liberal Civic Education and Religious Fundamentalism: The Case of God v. John Rawls, *Ethics* 105 (1995): 469-470. See also Macedo, *Liberal Virtues*, 54.

22 Tomasi, John, *Liberalism Beyond Justice: Citizens, Society, and the Boundaries of Political Theory* (Princeton, NJ: Princeton University Press, 2001), p. 16; see pp. 10-16.

that sympathetic and imaginative engagement with ways of life different from one's own is an ideal manner of approaching the diversity of a liberal polity, we need like Tomasi to recognize that some ways of life may be diminished in the process. Those on both sides of any dispute should ideally on my view display self-reflection and openness to unfamiliar arguments. This is why some believe, unlike Galston, that all citizens of the liberal polity should develop the capacity to engage in rational deliberation and critical reflection. Whether they do or not, however, liberalism makes demands on all its citizens, not only on those who liberals think are illiberal.

Turning to Brettschneider, I agree with him that allowing the imposition of some people's religious views on the religious freedom of others contradicts the justification itself for religious freedom, which is the idea that individuals should be accorded the freedom of belief and, absent harm to others, of practice. It is one thing, however, for the state to prevent the imposition, whether through law or social pressure, of some people's religious beliefs on others, and another matter entirely to want the state to transform their beliefs to prevent this imposition. The larger culture already exerts a strong influence on religious and cultural groups whose ways of life conflict with its ethos. Even Macedo seems to want a balance between neutrality and perfectionism, despite his assertion that people with illiberal views need to mend them. The state cannot force individuals to change their beliefs. Even when it tries to persuade them to change, however, this attempt seems to tell them what they should think about their beliefs.

Brettschneider is attempting a balancing act between neutralists who would protect all forms of expression regardless of their implications for freedom and equality, on the one hand, and those who would limit expression such as hate speech despite these core values' requirement that citizens be free to express their own political views, on the other. "If the doctrine of viewpoint neutrality is grounded in the non-neutral values of freedom and equality, then the legitimate state should express and explain those values and attempt to persuade citizens to adopt them, using its expressive, as opposed to its coercive, capabilities. Furthermore, the state should criticize illiberal and inegalitarian views at the same time that it protects the right to express those views." The state engages in what he terms "democratic persuasion" not only by protecting citizens' entitlements to free expression, but also by using its own expressive powers in explaining and persuading citizens "of the value of the entitlements that underlie them," or of the principles of free and equal citizenship.²³ Whatever their viewpoints, citizens must be able to develop and express their political and moral ideas without the threat of coercion. Otherwise, both freedom and equality are denied to

23 Brettschneider, Corey, *When the State Speaks, What Should It Say? The Dilemmas of Free Expression and Democratic Persuasion*, *Perspectives on Politics* 8 (2010): 1006. See also pp. 1010-1011 and Brettschneider, *A Transformative Theory of Religious Freedom* . . . pp. 189-193.

those whose expression is prohibited.²⁴ When the state protects expression that counteracts these values, however, “it is essential that it also use *its* expressive capacities to clarify that it is not expressing support for the viewpoints themselves, but instead is guaranteeing an entitlement that stems from the need to respect all citizens as free and equal.”²⁵ By simultaneously protecting free expression and criticizing the use of this right, the state is explaining the reasons for this right, or its grounding in the core values of free and equal citizenship.

I agree with Brettschneider’s point that citizens need to understand not only their rights, but also the reasons for these rights. Where I part company with him is in his conviction that the government should deliberately attempt to transform people’s beliefs. Brettschneider imposes two limitations on the state’s efforts at transformation.²⁶ The means-based limit stipulates that the state use its expressive and persuasive rather than its coercive capacities in this effort. It cannot “pursue the transformation of citizens’ views through any method that violates fundamental rights such as freedom of expression, conscience, or association,” even if a group such as the Ku Klux Klan rejects the reasons for these rights. The substance-based limit distinguishes beliefs and actions that threaten free and equal citizenship from those that do not. Only those that pose true threats should be subject to transformation. Although persuasion is not coercive, I disagree that the state should deliberately attempt to transform belief as well as behavior. Brettschneider is correct in stating, “The right to hold and express a belief at odds with the ideal of equal citizenship does not entail a right to hold it unchallenged.”²⁷ When I challenge someone’s belief, however, my purpose is to demonstrate that given different assumptions, a reasoned argument exists for a different way of viewing the matter. If I persuade the other party to change his mind, I am gratified. However, I do not set out to transform his views but only to make a clear case for my own.

As mentioned at the outset, the 1997 *Santeria* case involved a Hialeah, Florida, ordinance prohibiting the animal sacrifices occasionally performed by adherents of the Santeria religion. It prohibited no other animal killings, and the City Council did not attempt to justify the ordinance as preventing cruelty to animals. Rather, the councilmen discussed what the Bible and Christianity did or did not permit, seeming to rely on religious grounds for their decision. To the Supreme Court, the ordinance denied the free exercise of religion to followers of Santeria. The case might also be regarded as an establishment case, as the

24 Brettschneider, Corey, *When the State Speaks*. . . p. 1007.

25 *Ibid.*, p. 1010, italics added. See also pp. 1009-1010.

26 *Ibid.*, pp. 1010-1011; see also Brettschneider, A Transformative Theory of Religious Freedom. . . pp. 194-195; Brettschneider, *When the State Speaks*, pp. 87-91

27 Brettschneider, A Transformative Theory of Religious Freedom. . . p. 194; see pp. 192-196 and Brettschneider, *When the State Speaks*. . . p. 152.

Christian beliefs of the councilmen were the touchstone for judging the acceptability of the religious practices of a minority religion. On Brettschneider's interpretation, the Court decision not only preserved religious freedom for Santerians, but also condemned the illiberal beliefs behind the Hialeah ordinance. Although these beliefs were expressed as religious ones, on his view they still merited transformation. I agree with Brettschneider that the religious beliefs of some citizens should not be allowed to curtail the religious liberty of others. The Hialeah councilmen might respond that *their* religious liberty was curtailed when they were not permitted to legislate as their own Christian beliefs seemed to dictate; this issue will be addressed below. Meanwhile, I am far less interested in whether this decision caused the councilmen to regret their previous action than in the end result, the preservation of the free exercise of religion for Santerians.

Similarly, the 1996 Supreme Court case of *Romer v. Evans* could be seen not only as striking down Colorado's Amendment 2, which prohibited political subdivisions from passing antidiscrimination laws protecting sexual orientation, but also as condemning the illiberal intentions of the people of Colorado. According to Justice Anthony Kennedy, the Amendment imposed a broad disability on one particular group for reasons that seem "inexplicable by anything but animus toward the class it affects," therefore failing to meet even the test of a rational relationship to legitimate state interests, and constituting "a denial of equal protection of the laws in the most literal sense."²⁸ Despite Colorado's argument that without Amendment 2, the freedom of association of employers or landlords with objections to homosexuality was threatened, in reality "Amendment 2 classifies homosexuals not to further a proper legislative end but to make them unequal to everyone else. This Colorado cannot do. A State cannot so deem a class of persons a stranger to its laws."²⁹ This forthright condemnation might or might not effect a transformation in the views of Coloradans about the conflict between Amendment 2 and the values of free and equal citizenship. It did, however, prevent them from enforcing an unjust constitutional amendment that threatened the core values of free and equal citizenship, and that is what matters.

Like Brettschneider, I strongly support citizens' collective commitment to public purposes and the values they represent, and I agree that through laws and their enforcement, the government can be an appropriate spokesperson for these purposes. The state itself, however, sometimes speaks in ways that do not support the core values of free and equal citizenship. I believe that in these cases, we as citizens need to speak and to vote in ways that may transform *the state's* viewpoint. In 1991 in *Rust v. Sullivan*, for example, the Supreme Court upheld public funding for a family planning program that was contingent on private social service providers' silence about abortion as an option, ruling that "the gov-

28 *Romer v. Evans*, 517 U.S. 620 (1996), at pp. 632, 633.

29 *Ibid*, at pp. 634-635.

ernment can, without violating the Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program which seeks to deal with the problem in another way."³⁰ Although I disagree vehemently with what is sometimes called "the gag rule," or the prohibition against discussing abortion in this program, the point stands. Public authority may with democratic input determine the scope of our public purposes and may render public funding contingent upon recipients' conducting their programs in accord with these purposes. Because the state used its own money to support birth control clinics, it was entitled to express its own values and viewpoint.

Brettschneider also agrees with the legitimacy of the state's expressive interest in *Rust*, but argues that with respect to the gag rule, "the state expressed itself in a way inconsistent with the most basic values of a legitimate society, violating the substance-based limit. The authors of the rule sought to deny information to citizens, not only about their medical options but also about their legal rights." Withholding this information denies the core values of free and equal citizenship, implying that citizens cannot or should not make their own decisions about how to use their rights. The state should promote values in its expressive capacity, but here, Brettschneider argues, it promoted the wrong values. "The substance-based limit on democratic persuasion establishes that the content of the state's expression—the reason it gives for rights—should focus on the promotion of the ideal of free and equal citizenship. . . . *Rust* serves as an example of state expression that is illegitimate."³¹

I agree with Brettschneider that in its expressive capacity, the state *should* focus on promoting the core values of free and equal citizenship. It will not always do so, however, as the Hialeah City Council, Colorado's Amendment 2, and *Rust* illustrate at the local, state, and national levels respectively. Congress may pass and the Supreme Court may uphold laws that in the eyes of some violate rather than uphold the values of free and equal citizenship. Do we want these laws and opinions to transform the views of those at subsidiary levels of society and government? Therefore, we should be more cautious than Brettschneider seems to be in our desires that the state, at whatever level, seek to change people's beliefs. The value of dissent lies in its potential to influence and to perhaps to change the beliefs of the dominant culture. Additionally, it may be more difficult than Brettschneider indicates to determine which illiberal beliefs are hostile to the values of free and equal citizenship. It is to this issue that I now turn.

30 *Rust v. Sullivan*, 500 U.S. 173 (1991), at p. 193.

31 Brettschneider, *When the State Speaks*. . . p. 1016; see pp. 1015-1016 and Brettschneider, *When the State Speaks*. . . pp. 122-124.

3. Public Funding, Tax Exemptions, and Public Power

Regarding Brettschneider's means-based limit on the state's efforts to transform illiberal beliefs, I have argued that even in its expressive capacity, the state goes too far if it moves beyond expression to deliberate efforts at transformation. Brettschneider's second limitation, the substance-based limit, stipulates that the state should not challenge all inegalitarian beliefs, but "only those that challenge the ideal of free and equal citizenship." This ideal is a political one, and it does not require the logic of congruence, or equality in all spheres of life. It does require, however, efforts at transformation of "those views which are openly hostile to the ideal of equal citizenship, or implausibly compatible with it."³² Again, he includes here religious views "that would seek to impose by law religious beliefs at odds with this ideal,"³³ which is well exemplified by the Hialeah case. Not all cases, however, are so clear cut.

As mentioned above, Brettschneider also supports the selective withdrawal of tax exemptions as a means of transformation, arguing that the change or transformation of religious identity need not mean the complete replacement of one kind of identity with another. Although unlike the city of Hialeah, Bob Jones University is a private institution, its former policy was tantamount to public advocacy of beliefs and practices at odds with free and equal citizenship. Its prohibition not only against interracial dating, but also against membership in organizations supporting interracial marriage and in the NAACP, violated both freedom of expression and of association. The resulting denial of nonprofit status was justifiable, argues Brettschneider, despite its quasi-coercive character. Although nonprofit institutions need not actively promote public values, "nonprofit status is a tax advantage that should be linked at minimum to an institution's willingness not to undermine the ideal of free and equal citizenship."³⁴

Before 1970, the Internal Revenue Code offered tax exemptions to all charitable, religious, and public interest organizations and their donors, whatever their values and viewpoints. After the school desegregation decisions of the 1950's and 1960's, however, the IRS ruled in 1971 that exemptions were only available to organizations whose purposes were neither illegal nor contrary to public policy. Although most abhorred the University's stance, for Jonathan Turley a larger principle is involved. "Once neutrality was abandoned, the government was free to determine whether some forms of preferential treatment or exclusion are good or bad forms of discrimination."³⁵

32 Ibid, p. 1011.

33 Brettschneider, *A Transformative Theory* . . . p. 195. See pp. 195-196 and Brettschneider, *When the State Speaks* . . . pp. 143-151.

34 Brettschneider, *A Transformative Theory* . . . p. 203; see pp. 201-205.

35 Turley, Jonathan, *An Unholy Union: Same-Sex Marriage and the Use of Governmental Programs to Penalize Religious Groups with Unpopular Practices*, in *Same-Sex Marriage and Religious Liberty: Emerging Conflicts*, edited by Douglas Laycock, Anthony R.

At the root of the new regulation, Turley continues, is the mistaken conviction that a tax exemption is equivalent to a direct subsidy and that facilitating the expression of views is a justification for regulating them. The Supreme Court has held, however, that unlike the positive action of granting revenue to an organization, a tax exemption means *refraining* from action. Although discriminatory views and policies are detrimental to society, “there is no way to foster the pluralistic ideals of our society if we cross the constitutional rubicon of content-based discrimination on the part of the government.”³⁶ The law may still bar the direct funding of discriminatory organizations. Moreover, although it is legitimate to penalize discrimination by public accommodations, a tax exemption is not a tool to force . . . [private] organizations to conform to majoritarian views.³⁷ Douglas Kmiec agrees that tax exemptions, which should be viewpoint-neutral, cannot be equated with subsidies, where “it should not be surprising that the government gets to decide how to spend its own resources”³⁸ and may therefore stipulate conditions for their receipt.

For Brettschneider, however, discrimination concerning tax exemptions is still noncoercive. Organizations may legitimately resist transformation. In 2006, for example, Catholic Charities of Boston chose to shut down its adoption services in order to avoid a state law prohibiting adoption agencies from discriminating against families headed by gays or lesbians. To Brettschneider, the state law was not coercive because Catholic Charities could continue to operate under its chosen policies; it simply would not receive its customary state funding,³⁹ just as Bob Jones University continued to operate for seventeen years without its tax exemption. Although Brettschneider recognizes the point that tax exemptions are not subsidies, he maintains that even tax exemptions may and should be denied to organizations opposed to free and equal citizenship. We must address, then, the specific issue of which illiberal beliefs are hostile to this ideal.

The result of Brettschneider’s test, suggests Jeff Spinner-Halev, is the possibility that the tax exemptions of many organizations could be withdrawn, including those of the Roman Catholic Church, Southern Baptists, and many Orthodox Jewish and Islamic organizations that treat women differently than men. Like Rosenblum and Kmiec, he believes that nonprofit status “can encourage and support a rich associational life, and one that can shift with people’s views and

Picarello, Jr., and Robin Fretwell Wilson (Lanham, MD: The Becket Fund for Religious Liberty and Rowman & Littlefield, 2008), p. 64; see pp. 62-65.

36 Ibid, p. 68.

37 Ibid, p. 75; see pp. 74-75.

38 Kmiec, Douglas W., *Same-Sex Marriage and the Coming Antidiscrimination Campaigns Against Religion*, in *Same-Sex Marriage and Religious Liberty: Emerging Conflicts*, edited by Douglas Laycock, Anthony R. Picarello, Jr., and Robin Fretwell Wilson (Lanham, MD: The Becket Fund for Religious Liberty and Rowman & Littlefield, 2008), p. 111; see pp. 109-113.

39 Brettschneider, *A Transformative Theory* . . . pp. 206-207. See also Brettschneider, *When the State Speaks* . . . pp. 166-167.

preferences." For Spinner-Halev, the key difference between tax exemptions and subsidies is that the government awards subsidies to accomplish specific ends, such as encouraging scientific research or facilitating adoptions. "When this occurs, the agency is acting for the government. It is doing the government's bidding and performing a specific public service. In these cases, it is usually appropriate that strings come with the government's funding," unlike exemptions for voluntary organizations that do not perform a direct service.⁴⁰ Unless we want to limit tax-exempt status to just a few organizations, he suggests, the use of non-profit status should be scrutinized mainly for fraud or abuse. Spinner-Halev offers several reasons for skepticism about Brettschneider's proposal.

First, even when they violate the tenets of equal citizenship, religious organizations may contribute in valuable ways to the public good, such as providing low-cost education to poor children or offering various social services. Second, it can be difficult to distinguish between discrimination and the legitimate recognition of difference, and some of these distinctions are matters of discussion within religious organizations themselves. "Debate and discussion are virtues of citizenship that should not be blithely dismissed because these groups do not already embrace the liberal ideal of equality."⁴¹ Third, instead of undermining equal citizenship, religious organizations themselves may be influenced by the egalitarian ideals of the larger society to rethink some of their own policies. In fact, some organizations that are reluctant to do so, such as the Boy Scouts with reference to their exclusion of gays, gradually become more particularistic and marginalized.⁴² Fourth, the transformation that Brettschneider desires may be better accomplished by indirect methods. Children whose religious parents remove them from uncooperative public schools will receive less exposure than otherwise to the values of equal citizenship if they are sent to religious schools or home-schooled. Finally, gender inequality within religious organizations is not always paralleled by gender inequality in the home. Spinner-Halev recommends that organizations only forfeit tax-exempt status if they practice *invidious discrimination*, or "systematic discrimination within a group that is part of a larger, unambiguous institutional effort to undermine the basic idea of the equality of citizens."⁴³ *Bob Jones* is covered by this standard, he explains, both because of the context of attempts to maintain de facto segregation and also because the discrimination represented a systematic institutional policy. Otherwise, he asks, "Do we want the IRS determining the meaning of equality?" This activity that would be "under the direction of a political appointee" and subject "to the vagaries of

40 Spinner-Halev, Jeff, A Restrained View of Transformation, *Political Theory* 39 (2011): 778; see pp. 777-779.

41 Ibid, p. 780; see pp. 779-781.

42 Gill, Emily R., When Free Speech Meets Free Association: The Case of the Boy Scouts, in *Freedom of Expression in a Diverse World*, edited by Deirdre Golash (Dordrecht, Netherlands: Springer, 2010), pp. 147-161.

43 Spinner-Halev, A Restrained View of Transformation . . . pp. 781-782.

democratic politics.¹⁴⁴

Brettschneider responds to Spinner-Halev's critique by arguing that a tax exemption *is* actually a form of subsidy. By not collecting taxes on donations to nonprofits, the government is indirectly subsidizing these organizations. By denying tax-exempt status to Bob Jones University, the government was basically refusing to subsidize an organization opposing free and equal citizenship. Brettschneider would address the issue of political decision-making about tax exemptions by codifying the conditions for this status in the law; organizations that oppose free and equal citizenship do not provide the public benefit that nonprofits are expected to offer. He believes that his conditions for tax exemption do not threaten the diversity of civil society, because freedom of association, expression, and religion are in no way suppressed. Religious organizations need not display a public purpose to receive tax exemptions anyway. Brettschneider argues, nevertheless, that when a church or religious organization unambiguously opposes the ideal of free and equal citizenship, it should be denied a tax exemption.⁴⁵

Brettschneider's Exhibit A is the Westboro Baptist Church of Topeka, Kansas, known for picketing military funerals with the message that dead soldiers reflect God's disapproval of a nation tolerant of homosexuality. Its website's central message is that "God hates fags," and it supports the idea that gay citizens deserve to die. Although the Supreme Court ruled that these protests at military funerals merited free speech protection, "it is equally important to express criticism of its message. By not granting tax exemption, the state would send a clear signal that its protection of the Westboro's rights to free speech and religion should not be confused with approval of the Church's hateful viewpoint."⁴⁶ Although the Court did condemn Westboro's viewpoint, the state would make even clearer that it can protect free speech and religion yet criticize this viewpoint by removing the tax exemption. The Roman Catholic Church, by contrast, bars neither women nor gays from membership, it does not suggest that women or gays are not equal citizens, and its stances on women in the priesthood and on homosexuality may be regarded as theologically based rather than as a judgment on qualifications for citizenship in the liberal democratic polity.

Despite Brettschneider's advocacy of codifying in the law lack of opposi-

44 Ibid, p. 782. In the spring of 2013, controversy surrounded the Internal Revenue Service when critics charged that it focused greater scrutiny on conservative groups applying for 501c nonprofit status than on other groups, perhaps in part because these groups tended to have names that suggested a particularly political focus. This nonprofit status is for groups whose "primary" purpose is social welfare, not politics. The vagueness of the law exemplifies the difficulty that making such judgments entails (Floyd Norris, "A Fine Line Between Social and Political," *New York Times* [May 17, 2013], B1).

45 Brettschneider, Corey, Free and Equal Citizenship and Nonprofit Status: A Reply to Spinner-Halev, *Political Theory* 39 (2011): 784-788 and Brettschneider, *When the State Speaks* . . . pp. 128-132.

46 Brettschneider, *Free and Equal Citizenship* . . . p. 789; see pp. 788-791 and Brettschneider, *When the State Speaks* . . . pp. 133-137.

tion to free and equal citizenship as a criterion for tax-exempt status, I have to agree with Spinner-Halev. The difficulty of reaching a consensus on what kinds of beliefs and practices constitute a denial of the core values of free and equal citizenship is in my opinion insurmountable. First, although like most individuals, I abhor the viewpoint of Westboro Baptist Church, why might it not be argued that *its* viewpoint is a theological one? Although tax exemptions may function as indirect subsidies, the relationship is indirect and attenuated. The government could decide to eliminate tax exemptions altogether for nonprofit organizations, but short of doing this, the proposal is too difficult to implement. More generally, Brettschneider takes too narrow a view of what constitutes a public benefit, a clear condition for which is that “the organization does not seek to oppose or undermine the values of free and equal citizenship.”⁴⁷ On my view, organizations that provide public benefits may do so simply by contributing to the broad spectrum of viewpoints that make up civil society, even if aspects of each group’s viewpoint are not supportive of liberal democratic values. Individuals and groups develop and hone their convictions through exposure to ideas that may conflict with their own. Although this interchange can push some in an illiberal direction, it can also refine and strengthen liberal democratic values by inducing individuals to think about and defend them.

Second, although the state need not offer tax exemptions to any organization, the viewpoint-based withholding of exemptions could be regarded as coercive. On Brettschneider’s view coercion is involved when the state aims to prohibit an action, expression, or the holding of a belief by threatening an individual or group with a sanction or punishment.⁴⁸ If, as he argues, a tax exemption is an indirect form of subsidy, however, withholding subsidies from voluntary organizations based on their viewpoints would be a form of sanction. The implication would be that if they changed their viewpoints, they could resume their status as tax-exempt organizations. According to F.A. Hayek, “Coercion implies both the threat of inflicting harm and the intention thereby to bring about certain conduct.”⁴⁹ Many nonprofit organizations would feel threatened by the loss of their tax exemptions and harmed by a subsequent loss of contributions from donors whose incentive is a tax deduction for their donations. They could resist transformation, of course, but at the cost of the loss of their former status. Direct subsidies do not encounter this difficulty. When the recipient is in fact acting on behalf of the government, the state need not and should not award funds to agencies that will not in their actions adhere to the ideals of free and equal citizenship.

Brettschneider maintains, however, that the state’s use of its spending

47 Brettschneider, *When the State Speaks* . . . p. 129; see also pp. 134, 137-138.

48 *Ibid*, p. 88.

49 Hayek, F. A., *The Constitution of Liberty* (Chicago, IL: University of Chicago Press, 1960), p. 134.

power as a means of democratic persuasion would only be coercive if there were no other sources of funding available to support an organization's expression. "State coercion is employed in an attempt to deny the ability to make a choice. . . . By contrast, offering financial inducements, like pure persuasion, is clearly an attempt to convince citizens to make a particular choice, but it does not deny the citizen the right to reject that choice."⁵⁰ The presence of coercion, however, is not always absolute; it may be relative and tied to the perceptions of the agent. Nonprofit organizations losing their tax exemptions might feel coerced to change their views, at least for public consumption, especially given the fact that such organizations are often in competition for scarce dollars. This motivation could be operative regardless of the availability of other, private funding.

Third, a bright line does not always exist between organizations that oppose the ideals of free and equal citizenship and those that do not. In arguing that the Roman Catholic Church's exclusion of women from the priesthood is not evidence of its opposition to equality in the public realm, Brettschneider alludes to a point made by Andrew Koppelman. Although the Church regards same-sex intimacy as a sin, it does not condemn an inclination itself that it implies is unchosen. Moreover, it has condemned antigay prejudice and, as mentioned above, it does not exclude gays and lesbians from membership. Until 2013 the Boy Scouts of America, by contrast, excluded gay boys from membership; it still prohibits gay leaders. Its historic policy was upheld by the Supreme Court on grounds that forcing the Scouts to accept or retain members it does not desire infringes on its freedom of expressive association.⁵¹ For Koppelman, although the pressure of public opinion rightly induced Bob Jones to alter its policies, "the idea that interracial dating and marriage are immoral is not itself necessarily malign."⁵² Rather, the history and cultural associations regarding miscegenation are what rendered it vulnerable to social norms and enforced a measure of social conformity. On Koppelman's view, the Boy Scouts, on the other hand, did not offer any clear explanation of its identity-based discrimination. "The BSA does not appear to care much whether it is implying that gays are intrinsically inferior. This insouciance conveys its own message."⁵³ Like *Rust v. Sullivan*, *Boy Scouts of America v. Dale* would from Brettschneider's viewpoint be an example of state expression that is illegitimate. For him and for Koppelman, pressure on the Boy Scouts to transform its views of gay membership is a positive approach.

I also wanted the Boy Scouts to change its views on this matter, and I be-

50 Brettschneider, *When the State Speaks* . . . pp. 1014-1015.

51 *Boy Scouts of America v. James Dale*, 530 U.S. 640 (2000), at p. 650. Brettschneider acknowledges Koppelman in: *Free and Equal Citizenship and Nonprofit Status* . . . p. 790.

52 Koppelman, Andrew with Wolff, Tobias Barrington, *A Right to Discriminate? How the Case of Boy Scouts of America v. James Dale Warped the Law of Free Association* (New Haven and London: Yale University Press, 2009), p. 90; see pp. 90-91. For Koppelman on Roman Catholics, see pp. 97, 102.

53 *Ibid.*, p. 101; see pp. 98-104.

lieve it should go further. Although I deplored the organization's historic stance and will not hesitate to express my own viewpoint to anyone who asks, I would not have wanted the *state*, however, to pressure the Scouts to change its policies either by forcing it to accept gay members or by withdrawing its tax-exempt status. I want to pose a major qualification, however. Chandran Kukathas suggests that freedom of association does not require freedom to enter the associations of one's choice, but instead "exists when individuals are free to leave the group or community or enterprise of which they are a part," a definition that protects the consciences of both those who remain and those who leave to form new associations.⁵⁴ Although I agree with Kukathas, I also believe that he deemphasizes the importance of the context within which this freedom exists. That is, it is imperative that society allows not only exit rights, but also the potential for other opportunities for association—the slack—that makes freedom to leave meaningful. Such opportunities are crucial to ensure that exclusion is not overly punitive.

If the liberal state denies freedom of association to or penalizes groups that are not internally inclusive or supportive of free and equal citizenship, diversity is compromised, as Rosenblum and Galston point out.⁵⁵ If enough voluntary organizations are internally exclusive, and exclusive in the *same way*, however, this affects the very existence of alternatives, and diversity is compromised in a different way. Participation in organizations such as the Boy Scouts provides training in skills, leadership, and character, which can translate into enhanced career opportunities for members. If the vast majority of such organizations excluded atheists, as the Scouts does, or gays who are honest about their status, as the Scouts does, the combined effect would curtail drastically the forum within which individuals may exercise their freedom. Brettschneider argues that the withdrawal of tax-exempt status would be coercive only if no other sources of funding existed. I am arguing that allowing organizations to maintain their tax exemptions even when they oppose free and equal citizenship would be harmful only if no alternative organizations with different values existed. These circumstances seem to meet Spinner-Halev's definition of invidious discrimination, or "systematic discrimination within a group that is part of a larger, unambiguous institutional effort to undermine the basic idea of the equality of citizens."⁵⁶

In the South under Jim Crow, for example, individuals of color could not simply go down the street to a different restaurant or hotel. Moreover, nearly all private institutions discriminated against people of color as they did against few others. If these circumstances characterized the vast majority of voluntary organizations, I would then be gravely concerned about maintaining the val-

54 Kukathas, Chandran, *The Liberal Archipelago: A Theory of Diversity and Freedom* (New York: Oxford University Press, 2003), p. 95; see pp. 74-118.

55 Rosenblum, *Membership and Morals* . . . p. 48; Galston, *Two Concepts of Liberalism* . . . p. 524.

56 Spinner-Halev, *A Restrained View of Transformation* . . . pp. 781-782.

ues of free and equal citizenship. I would also be concerned about what Amy Gutmann calls the public expression of civic inequality. "Discriminatory exclusion is harmful when it *publicly* expresses the civic inequality of the excluded even in the absence of any other showing that it *causes* the civic inequality in question."⁵⁷ Regardless of the practical impact of exclusion or of the rejection of the core values of free and equal citizenship, the combined effect of parallel policies by a majority of voluntary associations would amount to a public expression of inequality, even if manifested by voluntary associations constituting civil society rather than by public institutions.

Despite its longtime official stance, the Boy Scouts itself has been internally divided about the role of gays in the organization, and recent developments have elicited a variety of responses from the larger society. Both before and after *Boy Scouts v. Dale*, some Boy Scout councils adhered to a "don't ask, don't tell" policy. After the decision, some institutions, charitable donors, and municipalities withheld monetary support and/or permission to use various meeting locations. Some Scout packs had their charter renewals denied by Scout councils for challenging the officially sanctioned exclusionary policy. Some liberal religious organizations have cut their ties to the Scouts, while more conservative religious denominations, such as the Church of Jesus Christ of Latter Day Saints, or Mormons, have stepped up to sponsor more troops. Despite dissent, the Scouts' definitive stance ironically afforded it a stronger claim than before to freedom of expressive association. More specifically, "The Boy Scouts' speech and message is [before *Dale*] much clearer than formerly on the subject of its attitude towards sexual orientation. There is a price to pay, however, which the Scouts is now paying in the coin of public opinion and funding."⁵⁸ The scrum both within and around the Boy Scouts also exemplifies Spinner-Halev's point that organizations, or at least parts of them, may be influenced by the egalitarianism of the larger society to rethink some of their policies. There is no evidence that Scout policy toward gays was part of a larger institutional effort to undermine free and equal citizenship.

4. Imposing Beliefs by Law

Brettschneider himself mentions something, however, that I believe is the beginning of a clearer criterion for checking voluntary organizations that oppose

57 Gutmann, Amy, *Identity in Democracy* (Princeton, NJ: Princeton University Press, 2003), p. 97.

58 Gill, When Free Speech Meets Free Association. . . pp. 155-160. In the early months of 2013, the Boy Scouts announced it was considering a change in policy to local option, wherein organizations sponsoring troops could decide for themselves whether to admit gay Scouts. The resulting furor from both sides of the debate led it to restudy the issue, eventually coming up with a proposal to admit gay Scouts but to disallow gay leaders (Erik Eckholm, "On Even of Vote, Boy Scouts are Divided Over Accepting Gay Youths," *New York Times* [May 23, 2013], A20). The Scouts later affirmed this proposal as official policy (Erik Eckholm, "Boy Scouts End Longtime Ban on Gay Youth," *New York Times* [May 24, 2012], A1, A16).

the core values of free and equal citizenship. In introducing the substance-based limit, he suggests that only views that conflict with the ideals of free and equal citizenship need be transformed, "including those views that would seek to impose by law religious beliefs at odds with this ideal."⁵⁹ I agree that religious beliefs should not get a pass simply because they are religious. Religious beliefs and practices are not and should not be immune from criticism. The key point, however, relates to "views that would seek to impose by law . . . beliefs at odds with this ideal," whether these beliefs are religiously or secularly based. If, for example, Westboro Baptist Church were seeking to punish same-sex intimacy, whether by trying to revive laws against it that became unenforceable in 2003 or by passing laws threatening gay citizens with imprisonment or death, I would vehemently oppose these efforts. But it is the *activity* that I would be opposing, not the belief that "God hates fags." Similarly, the difficulty with Colorado's Amendment 2 was not that a majority of Coloradans did not *believe* that laws should protect sexual orientation, but that they *acted* to disempower political subdivisions from passing antidiscrimination legislation covering sexual orientation. The problem with both Westboro members and Colorado citizens revolves around public policies they might or did seek to enact into law, not what their beliefs are or whether these beliefs are religiously or secularly motivated.

In an interesting reexamination of the politics of multiculturalism, Sarah Song argues that many scholars concerned about women's subordination in minority cultures characterize these cultures as "well-integrated, clearly bounded, and self-generated entities," and as "largely unified and distinct wholes." Because they regard these cultures as monolithic, they tend to criticize entire cultures, rather than the specific practices of which they disapprove. "Such an account overlooks the polyvocal nature of all cultures and the ways in which gender practices in both minority and majority cultures have evolved through cross-cultural interactions."⁶⁰ Sometimes the gender norms of the majority culture indirectly support patriarchal practices in minority cultures in what she terms the congruence effect; at other times the minority culture influences the norms of the majority culture. The majority's condemnation of minority cultural practices, moreover, may exert a diversionary effect on attention to its own inequitable hierarchies. As an example, the nineteenth-century outcry over Mormon polygamy on the grounds that it subordinated women tended to obscure the patriarchal legal practices of the majority culture. Greater awareness of this interactive dynamic, suggests Song, "shifts the focus of debate from asking what cultures *are* to what cultural affiliations *do*."⁶¹ If we can recognize inequalities, albeit in different forms, that transcend cultural boundaries, we need not choose between cultural ac-

59 Brett Schneider, *A Transformative Theory* . . . p. 195.

60 Song, Sarah, *Justice, Gender, and the Politics of Multiculturalism* (New York: Cambridge University Press, 2007), p. 4.

61 *Ibid.*, p. 8, italics original. See also pp. 2-8, 169-170.

commodation that can leave internal minorities vulnerable, on the one hand, and forced assimilation to majority norms, on the other. "On this reformulation, then, 'culture' is not the problem; oppressive practices are."⁶²

Brettschneider seems to look at charitable organizations as the "largely unified and distinct wholes" that Song thinks mischaracterize cultures. His support for the withdrawal of tax exemptions from organizations deemed to act against the core values of free and equal citizenship bolsters my interpretation. He is willing to consider nuances, as in the case of the Roman Catholic Church, in deciding whether a religious organization deserves to retain its status. Once this determination is made, however, it draws a bright line between those who do and those who do not have a right to this status. This view is somewhat at odds with his criticism of those who adhere to static conceptions of religious freedom. Although he thinks they want to preserve religious beliefs and practices as they are, rendering them immune to alternation or transformation from outside, he underestimates "cross-cultural interactions" between religious or charitable organizations and the larger society, a point to which Spinner-Halev alludes and that I described above in the case of the Boy Scouts. Although organizations that lose tax-exempt status or are denied it at the outset can receive it in future, Brettschneider's proposal appears not to recognize the permeable character of religious groups, just as critics of illiberal cultural practices can fail to recognize this feature of those groups.

Until relatively recently, the majority culture's heterosexist norms have overwhelmingly dominated civil society as well as the law. It should not be surprising that a number of religious groups and other organizations such as the Boy Scouts have retained these beliefs. The longtime heterosexist norms of the Scouts reflect norms that have historically characterized the majority culture. By the same token, over time the "minority culture" of the Scouts has in part come to reflect the majority's more egalitarian norms, as the present discussion about admitting gay Scouts but not gay leaders illustrates. The logic of congruence that Rosenblum criticizes mandates that organizations reflect the values of liberal democracy. Song's congruence effect, however, demonstrates that the values promoted by liberal democracy may not themselves always promote free and equal citizenship. In accordance with Song's diversionary effect, moreover, efforts to bring faulty organizations into line distract us from the ongoing failings of the larger culture. The focus should not then be on particular religious or charitable organizations as such, but instead on specific practices that are oppressive, whether perpetrated within these organizations or by the larger society.

Following this logic, we can perhaps shift our gaze, in Song's terms, from what these organizations *are*, or what its members think or believe, to what they *do*. When organizations seek to *impose by law* beliefs at odds with the ideals of

62 Ibid, p. 170.

free and equal citizenship, whether these are religious or not, those who support free and equal citizenship should oppose these efforts with all the tools at their disposal. Along these lines, the Supreme Court correctly rebuffed Hialeah's attempt to impose restrictions on the practice of Santeria. These restrictions limited both the liberty of Santerians and treated them as unequal to adherents of Christianity. In recent years, many religious individuals and groups have expanded their interpretations of the requirements for the free exercise of religion. Not only do they wish to worship as they believe God dictates and to live their own lives in accordance with these dictates; in some cases they also want others to live in the same way. As Rosenblum explains, however, whereas typically marginalized groups made claims on religious exemptions from the effects of general laws, now all groups make these claims. Those whom she describes as "integralists want to be able to conduct themselves according to the injunctions of religious law and authority in every sphere of everyday life, and to see their faith mirrored in public life."⁶³ The difficulty for these individuals and groups is that liberal democracy is not and, in Brettschneider's and my views, should not be hospitable to these kinds of demands. I shall close with a brief examination of two instances in which we should be less concerned with what these organizations or groups believe and more with what they actually seek to do.

In 2011, the Roman Catholic Church sought a broad exemption from federal requirements that contraceptive coverage be included in health insurance plans offered to employees of Catholic hospitals, colleges, and social service agencies. The existing rule exempted houses of worship, the primary purpose of which is to promote religious belief, but Catholic bishops declared that this was so narrow as to be almost meaningless, despite the fact that these other organizations serve and employ many individuals of different faiths. The administration of President Barack Obama decided in 2012 that maintaining the narrow exemption properly balanced religious freedom against the availability of contraceptives the use of which can promote women's health. Subsequently, the National Association of Evangelicals declared, "Employers with religious objections to contraception will be forced to pay for services and procedures they believe are morally wrong."⁶⁴

Forcing individuals to conduct their lives in accordance with the religious beliefs of others, however, violates the core principles of free and equal citizenship. These principles are violated if I am forced to use contraceptives when this would violate my conscience, or if I am forced to marry a person of the same sex when I am heterosexual. These principles are not violated, on the other hand, if I

63 Rosenblum, Nancy L., Introduction: Pluralism, Integralism, and Political Theories of Religious Accommodation, in *Obligations of Citizenship and Demands of Faith: Religious Accommodation in Pluralist Democracies*, edited by Nancy L. Rosenblum (Princeton, NJ: Princeton University Press, 2000), p. 15. See pp. 13-20 for different types of integralists.

64 Pear, Robert, "U.S. Denies Exemption Sought by Church on Coverage for Contraception," *New York Times* (January 21, 2012): A15.

cannot force *others* to forfeit contraceptive coverage or refrain from entering into a civil marriage with the person of their choice. In appealing to Obama to expand the exemption, the United States Conference of Catholic Bishops stated that the proposed required coverage of contraceptives was “an unprecedented attack on religious liberty.”⁶⁵ I understand that both Catholics and other religious organizations that oppose contraception think that by including contraceptive coverage in insurance plans, they are cooperating with what they view as an immoral practice. Making some individuals live in accordance with the religious principles of others, however, is the true attack on religious liberty.

The second example centers on increasing attempts by ultra-Orthodox Jews in Israel to impose their views of proper religious observance on other Jews whose standards are more relaxed. In 2011, ultra-Orthodox men accosted a second-grade schoolgirl en route to school, spitting on her, insulting her, and calling her a prostitute because her mode of dress did not accord with their stricter code.⁶⁶ This incident was symptomatic of growing tensions between the ultra-Orthodox, who have high birthrates, and other Israelis, some religious, who are more flexible. In the same year, a pediatrics professor at Hebrew University was awarded a prize by the Jewish Health Ministry for a book on hereditary diseases that often afflict Jews. The modestly dressed professor was astounded to learn not only that she and her husband would have to sit separately at the ceremony, but also “that a male colleague would have to accept the award for her because women were not permitted on stage.” Women were also barred from speaking from the podium at a conference on women’s health and Jewish law. Although “religious authorities said liberal groups were waging a war of hatred against a pious sector that wanted only to be left in peace,”⁶⁷ it seems on the contrary that the ultra-Orthodox want the entire society to conform to their views of their interpretation of the correct role of women in Israel. They are not content with observing religious law themselves; if they could, they would enshrine it in public policy to which all would be subject. Once again, however, they can participate in observances of their faith without extending it to the larger society. Just as many Roman Catholic women practice birth control despite the Church’s official stance, many Israeli Jewish women experience no difficulties with integrating men and women in the public sphere.

No one-size-fits-all litmus test exists for the sorts of tensions I have discussed above. Brettschneider’s effort to achieve a balance between the liberal state’s commitment to free and equal citizenship and its protection of inegalitari-

65 Pear, Robert, “Democrats Urge Obama to Protect Contraceptive Coverage in Health Plans,” *New York Times* (November 20, 2011): A13.

66 Kershner, Isabel, “Israeli Girl, 8, Finds Herself at Center of Tension Over Religious Extremism,” *New York Times* (December 28, 2011): A4, A6.

67 Bronner, Ethan and Kershner, Isabel, “Israelis Facing a Seismic Rift: Role of Women,” *New York Times* (January 15, 2012): A10; see also A1.

an beliefs in the private sphere is admirable. I agree that when laws and court decisions are handed down, we hope that the government is speaking on behalf of and giving reasons for its support for these core values. I cannot agree, however, that it is the proper role of the government itself to try deliberately to transform the beliefs, religious or otherwise, of its citizens. I also disagree with the treatment of voluntary organizations as the monolithic and unified wholes that his proposal for withdrawing the tax-exempt status of some of them implies. When some groups seek to impose by law religious—or nonreligious—beliefs at odds with the ideal of free and equal citizenship on others, however, we should resist this effort as vigorously as possible. Addressing the Catholic bishops' attempt to broaden the religious exemption from providing for birth control, columnist Neil Steinberg emphasizes the fact that religion, at least in the West, is a voluntary proposition. Not all, unfortunately, seem to recognize that this is and should be the case. Although he is addressing a specific controversy, his reflections have a broader applicability. "Is religion voluntary? Should some faiths have their quirks encoded into law, a favor to those who aspire to see their beliefs reflected everywhere they look? . . . How long will they harbor that aspiration? Can they ever let it go? And must the rest of the country indulge them?"⁶⁸ When their actions threaten the ideals of free and equal citizenship in the public square, the answer is no. On this point, Brettschneider and I are in full agreement.

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68 Steinberg, Neil, "In the same boat, paddling all ways," *Chicago Sun-Times* (January 23, 2012): 16. Regarding the push for female modesty in Israel, Orthodox Rabbi Dov Linzer puts the onus on those who are disturbed by women's dress. "The Talmud tells the religious man, in effect: If you have a problem, you deal with it. It is the male gaze—the way men look at women—that needs to be desexualized, not women in public. The power to make sure men don't see women as objects of sexual gratification lies within men's—and only men's—control" (Dov Linzer, "Lechery, Immodesty, and the Talmud," *New York Times* [January 20, 2012]: A23).

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Емили Гил

РЕЛИГИЈА, ЦИВИЛНЕ ВРЕДНОСТИ, И ЈЕДНАКОСТ ГРАЂАНСТВА У ПОЛИТИЦИ ЛИБЕРАЛНЕ ДЕМОКРАТИЈЕ

Резиме

Да ли верска и остала волонтаристичка удружења треба да рефлектују јавне вредности је контроверзно питање. Кореј Бретшнајдер тврди да држава треба да истиче своје вредности слободног и једнаког грађанства, делиберативно покушавајући да трансформише уверења илибералних група кроз судске одлуке и селективног повлачења пореских олакшица. Међутим, ја тврдим да све док се индивидуалци и група придржавају закона, није посао државе да мења њихова уверења. Штавише, саме власти нису увек пример жељених вредности. Даље, иако се противим директном финансирању група које се супростављају јавним вредностима, само одређивање које то групе се залажу са "праве вредности" даје превише моћи властима. Чак, многа удружења еволуирају током времена. На крају, права претња лежи у пракси коју волонтаристичка удружења желе да наметну широј заједници.

Кључне речи: верска убеђења, трансформација, цивилне вредности, једнако грађанство, слобода говора, слободна удружења

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