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Freedom and equality as necessary constituents of a liberal democratic state

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Chapter 12. A neutral view of the state?

12.1 Hitherto the rights of citizens amongst themselves have been dealt with; it appeared that there should be much room for them to express themselves, not being bound *in this respect* to prescriptive equality's stipulations. Chapter 13 intends to show that, while citizens are to adhere to prescriptive equality's demands *externally* (meaning that their outward acts may not conflict with these demands), this does not entail that they must also agree with the contents of this stipulation. The present chapter provides a precursory analysis to support that claim. In particular, it will be inquired whether a neutral view can be taken by the state when the issue of freedom of expression is concerned.

12.2 Citizens must act in accordance with the stipulations of the ignore principle, but this demand appears to leave them much room to express themselves, having to heed only what cannot reasonably be ignored by those (identified through basic equality) that might be affected by their actions. The question looms whether the same perspective can be taken when the state as a whole is considered. In other words: should the state operate from the presumption that no perspective is superior to any other? In that case, only *manifestations* are judged, citizens having the freedom to think whatever they want of each other so long as they refrain from acting in ways that cannot reasonably be ignored by others. The answer to the question of whether the state can take such a detached stance is to be found by simultaneously inquiring the meaning of the neutrality of the state. Can a state operate from a neutral position, and, if so, is such a position desirable?

First of all, it is misleading to speak of 'the state' as if it constituted a stable unity, which is a prerequisite for a state to have a view, at least if this is to be of any use: a view that may change from one moment to the next is without value, at least if this may happen capriciously.⁴¹¹ This does not mean that great changes, such as revolutions, occur frequently, but gradual changes are still changes. If they are *very* gradual, they may hardly be noticed, except by historians who survey long periods of time. This raises the question what the identity of a state might be, in the same way as uncertainty exists regarding the identity of Theseus's mythical ship, all its parts having gradually been replaced, no original part remaining.

In addition, it is important to determine what a state is. Conceptions of states that define them by means of some top-down structure, such as Hegel's, whose conception of the state has an 'ethical' character to boot,⁴¹² are possible but difficult to uphold. In any

⁴¹¹ I add the latter phrase in order to account for the fact that justified views, such as scientific ones, may also change thus. In that case, however, this happens because an unexpected discovery is made that is not reconcilable with the prevalent theory rather than on the basis of something as unstable as a majority preference.

⁴¹² G. W. F. Hegel, *Grundlinien der Philosophie des Rechts*, §§ 257-261 (pp. 328-342); cf. note 273, *supra*.

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event, I will interpret a ‘state’, presumably uncontroversially, as a defined territory with a (permanent) population and a government.⁴¹³ As such, if the state has a view, it can in the case of a liberal democratic state be no other than that of a majority of its citizens, the lack of stability being evidenced by the oftentimes fickle nature of majorities. In this case I say ‘a majority’ rather than ‘the majority’ since some items may be supported by different majorities (although mathematically at least *some* overlap is necessary in each case, of course).⁴¹⁴ For example, the majority that agrees with the expansion of freedom of expression may be constituted differently than the majority that agrees with the increase of the minimum wage. In representative democracy, such issues need not arise in the periods between elections, but that points to a procedural aspect and does not remove the problem of ‘the state’ having a view. In states where referenda are used, the aspect of effectiveness may be said to be sacrificed to the democratic aspect, but there, too, majorities are decisive and not, in addition to or instead of them, the state as some separate entity.

Such concerns are sufficient to be skeptical when the issue of whether the state may be neutral or not is assessed. However, a systematical inquiry warrants a more thorough analysis than this, in which the state may be treated *as if* it indeed constituted a stable unity with a simple majority, the more so since the latter element – the majority – is no problematic element in this place: only one issue – freedom of expression – is dealt with here. I will, then, proceed from such a fiction, but remark here that it follows from my minimalistic interpretation of the concept of ‘state’ that even in this conception the views the state holds cannot be considered separated from (the majority of) its citizens’ reasons to promote or at least agree with basic and prescriptive equality, in accordance with what was said in chapter 6.

12.3 The absence of a neutral stance does not mean that some worldview⁴¹⁵ is decisive, precisely because no stable majority is guaranteed and anyone may belong to a relevant

⁴¹³ These are, together with the capacity to enter into relations with the other states, the criteria set forth in the Montevideo Convention on the Rights and Duties of States.

⁴¹⁴ The existence of a population is not to be taken to mean, then, that a stable view would for that reason be in place. Some territory being more or less permanently inhabited by a population says nothing about the individuals’ outlooks, and the most realistic assessment of the situation in a democratic state is that various interest groups are vying for influence, so that one may speak of a fiction when the people as a unity with shared interests is concerned (H. Kelsen, *Vom Wesen und Wert der Demokratie*, § 2 (p. 15)). Such a unity may on the other hand be manifested when the whole is concerned, notably, against an external enemy or a natural disaster, but that is another matter.

⁴¹⁵ By a ‘worldview’ I mean an encompassing view with regard to religious, metaphysical and/or ‘moral’ matters. It may here be identified with what Rawls calls a ‘fully comprehensive’ conception or doctrine, the latter meaning a doctrine that “[...] covers all recognized values and virtues within one rather precisely articulated scheme of thought [...]” J. Rawls, *Political Liberalism*, Lecture V, p. 175. (In Lecture I, p. 13, virtually the same formulation (only substituting ‘system’ for ‘articulated scheme of thought’) is used for a ‘fully comprehensive conception’.)

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minority, so that those whose view is treated favorably, in that they encounter relatively few hindrances in expressing it in the *present* circumstances, are motivated to grant propagators of other views the same room they are allowed (as they understand that the circumstances may change). That does not mean that *anything* may be expressed: the ignore principle's demands rule out *some* expressions, namely, those which cannot reasonably be ignored by one or more citizens. The lack of neutrality is evinced, then, precisely where 'reasonably' is specified.

This makes a position such as Raz's problematic, who states: "If the state is subjected to a requirement of comprehensive neutrality and if its duties to its citizens are very wide-ranging then the principle of comprehensive neutrality is a principle of neutrality indeed. On those assumptions the state can be neutral only if it creates conditions of equal opportunities for people to choose any conception of the good, with an equal prospect of realizing it."⁴¹⁶ That the 'neutral' position of granting people 'an equal prospect of realizing their conception of the good' cannot be supported becomes clear when the differing consequences of the various conceptions are brought to the fore. Gender discrimination or performing a male circumcision on the basis of a religious conviction are outcomes of some worldviews while exponents of others refrain from such actions.

On the basis of the ignore principle, or a similar principle, such actions cannot be allowed, which means that some worldviews will face more restrictions than others. (This issue will be treated in more detail in the next chapter.) More specifically, those worldviews that are relatively liberal will face relatively few restrictions. (This outcome may be related to the character of 'liberalism', an issue that will be dealt with in sections 12.7 and 12.8.)

12.4 The state is not neutral if it accepts prescriptive equality as a directive, since prescriptive equality is always based on some specification of basic equality, which is not neutral. In the case of basic rationality, this follows from the fact that *rational* beings stipulate that *rational* beings should be treated equally. A consequence of this observation is that what I have argued is not neutral. One may argue that since every citizen is treated equally on that basis, prescriptive equality testifies to a neutral stance, but such a conclusion would rest on a superficial analysis of the issue. I do not merely mean to address here the fact that the demand that citizens should be treated equally already means that a selection has been made, namely, that animals and people who are not citizens should not, or, more precisely, not necessarily, be treated equally, but also argue that prescriptive equality demands far greater sacrifices from some views than it does from others, as will be shown in chapter 13. That such sacrifices should have to be made in the first place can be defended, on the basis of my analysis in the previous chapters, or a similar one, but that takes away nothing from the fact that no neutral stance is taken here.

Should it surprise the reader that equal treatment is based on a non-neutral starting point, it should be reminded that prescriptive equality insofar as it can be identified with

⁴¹⁶ J. Raz, *The Morality of Freedom*, p. 124.

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formal equality, presuming that basic equality is specified by basic rationality, is based on a number of starting points that are difficult to reconcile with some worldviews, such as the equality of men and women. This is a proper place to revisit the notion of ‘material equality’. I said in the introduction that it has no bearing on the analysis undertaken in this inquiry, referring there to the economic meaning of that variety of equality. Similarly, material equality, *taken broadly* as defined there, is no directive in this instance. If it were, the consequences of legislation should have the same outcome for every worldview, and, apart from the question of whether a pluralistic society would be possible in such a case, it is obvious that prescriptive equality would, in such a confrontation with material equality, become devoid of meaning.⁴¹⁷ One may accordingly say that neutrality presupposes a lack of content. As Fish puts it: “A real neutral principle, even if it were available, wouldn’t get you anywhere in particular because it would get you anywhere at all.”⁴¹⁸

12.5 To illustrate my point I present two cases: (1) a worldview according to which only people of a certain race and religious denomination are considered basically equal, and accordingly treated differently than others, by denying those others (some of) the rights that are granted on the basis of formal equality, and (2) a worldview that not only observes the stipulations presented in chapter 6, according to which basic rationality is the specification of basic equality, but actually accepts them as part of its outlook. Neither position is neutral. A greater number of citizens have the right to express themselves in the second case than in the first, but that only says something about the *extent* of the subjects, not about the *contents* of the respective worldviews, which are both non-neutral. In the first case, part of the worldview is that some races and religious denominations are inferior to others, while in the second, part of the worldview is that they are equal.⁴¹⁹

From the perspective of the public domain – while acknowledging that, strictly speaking, the state does not itself have a view (cf. section 12.2) – what should be decisive is

⁴¹⁷ Strictly speaking, the issue is slightly more complicated. Prescriptive equality is maintained, in a sense, but it bears on the equal treatment *of worldviews* rather than *of citizens*. Precisely for this reason it becomes meaningless when the *relevant* sense is concerned: the equal treatment of citizens is not prescribed by all worldviews, and if those worldviews that do not prescribe (or even condemn) such equal treatment cannot be treated differently from those that do (which is the situation in which material equality is accepted), prescriptive equality in the relevant sense cannot be maintained.

⁴¹⁸ S. Fish, *The Trouble with Principle*, p. 4.

⁴¹⁹ Even a worldview that – radically – includes all subjects, and thus maintains that all living beings should be treated – basically – equally is not based on a neutral starting point. Such a worldview would, using being alive, or being able to suffer, as the criterion to be treated equally, e.g. promote protecting all animals against being killed for their meat, even if this interferes with the interests of those who wish to do so. A state that would act in accordance with such a worldview (presuming this is possible) would have to take a stance against eating meat, and thus fail to take a neutral stance in treating beings equally. This is the clearest example of a situation in which the danger looms of confusing the extent of the subjects a (world)view includes with its – purportedly – neutral nature.

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that citizens *should be treated equally* rather than that they *are equal*.⁴²⁰ Such a stance is also taken in the first case, with the only difference that the criteria that are used are more restrictive, in the sense that fewer subjects are included. ‘Neutrality’ would in the first case mean that the way people are constituted (their race) and their outlook are relevant factors, while any other aspects, such as their social standing, are not taken into account. In the second case, the standard of ‘neutrality’ would be applied in a similar way, with the crucial difference that a greater number of aspects are disregarded, to such a degree that rationality remains as the only criterion, and the absence of reasonably ignorable harm remains as the only criterion with regard to the question of whether a view is acceptable.⁴²¹

If this is how ‘neutrality’ is interpreted, it is clear that it resembles a black hole in the sense that its manifestation consumes what is salient in any outlook, leaving in the most extreme case nothing. (In other words: if it is consistently applied, there are *no* criteria to decide what would be acceptable.) Such a description applies to neither case. This does not have to be demonstrated in the first case, while in the second case, rationality at least is still a decisive criterion, the non-neutrality most obviously being demonstrated by pointing out that animals are still treated differently than people (cf. section 12.4). Actual neutrality would amount to the *absence* of criteria to distinguish between beings and between (the outcomes of) worldviews.

In section 12.3 I distinguished between merely taking a – non-neutral – stance and expressing a worldview. The state acts (justifiably) non-neutrally if it favors a worldview over another on the basis of the fact that one acknowledges some specification of basic equality while the other does not, the non-neutrality consisting in the fact that the criteria to establish that specification (and thus to indicate which beings are to be treated equally in accordance with prescriptive equality) do not result from a neutral process. This does not mean that such a stance necessarily constitutes a worldview. It *may* constitute a worldview, namely, if the criteria are based on an outlook that purports to establish the ‘truth’ regarding some matter. For example, if the (non-neutral) stance of treating men and women equally is based on their both being equally ‘moral’ beings, or equally having ‘dignity’, the state acts on the basis of a worldview. The state having a worldview is not a *necessary* given, however, not even if it acts non-neutrally. Indeed, what I proposed in chapter 6 does not itself constitute a

⁴²⁰ This may seem to complicate matters, and even contradict my own account (equal treatment (prescriptive equality) being based, after all, on citizens being basically equal, so that such equality seems to be presupposed), but it must be reminded that in the present discussion, ‘being equal’ points to citizens’ equality on the basis of a worldview, and is motivated by significantly different considerations than mine. This is easily understood if one considers that in any liberal democratic state, and in any state for that matter, basic equality (whatever its specification may be) must be acknowledged, while a worldview need not similarly serve as a directive.

⁴²¹ As was remarked in various places, rationality is not *necessarily* the decisive criterion to specify basic equality, and I have merely argued its merit; as for the ignore principle, it may not be the decisive principle (namely, if I am simply mistaken), but it would then have to be replaced by a similar principle, which would either have to produce a non-neutral content, or, like the ignore principle, point to a domain where a non-neutral stance would, through a detour, be taken.

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worldview,⁴²² but merely a (and I would aver the most viable) way to ensure the continual enjoyment of the rights granted on the basis of formal equality, ‘basic rationality’ being a political rather than a ‘moral’ criterion. The ramifications of this stance will be presented in the next chapter.

It may be objected that freedom of expression points to a domain of neutrality. In light of the considerations presented hitherto, the meaning of ‘liberalism’ warrants an investigation.

12.6 There are two ways in which ‘liberalism’ can be approached.⁴²³ First, it may be considered to constitute a worldview, and as such not to be a neutral position, if only because of the way in which citizens are considered. This is argued by, *inter alios*, Dworkin (cf. section 9.2) and, from another perspective, MacIntyre: “My thesis is not that the procedures of the public realm of liberal individualism were cause and the psychology of the liberal individual effect nor vice versa. What I am claiming is that each required the other and that in coming together they defined a new social and cultural artefact, “the individual.””⁴²⁴

12.7 A second way to approach ‘liberalism’ is to focus on what its proponents argue. Liberalism defends a minimal interference in people’s actions, including their expressions, by the government or by other people. Freedom does not, as was shown in the introduction and section 7.2, testify to any contents but rather points to an *absence*.

Since the *absence* of something – namely, interference – is what characterizes liberalism, freedom may be considered a no man’s land whose necessity in a liberal democratic state is prompted by the fact that views diverge in some – sometimes very important – respects. This means that liberalism does not provide a substantive component; its presence is rather the result of a concession that follows from the acceptance of the plurality of views in a state.

In my characterization of ‘liberalism’ I spoke of ‘a *minimal* interference’, and the word ‘minimal’ is crucial. Should there be no interference whatsoever, there would be no government, or at least no active one. For example, the very existence of penal law and the institutions to effectuate it (being paid through taxation), which must be present in any state, represent such an interference. Liberalism can be *part* of a worldview, but it does not itself constitute one. This can easily be illustrated by contrasting two possible worldviews. The first, presumably liberal, propagates the equal treatment of men and women on the basis of the consideration that they are equal. The second worldview maintains that women are not

⁴²² This does not preclude the possibility of a worldview incorporating basic rationality in its outlook, which is characteristic of the second worldview mentioned in the example above.

⁴²³ It may be argued that ‘libertarianism’ is a more fitting term to use here, but this is usually associated with the economic position of minimal government interference, a topic I have excluded from this inquiry, and I have observed this interpretation.

⁴²⁴ A. MacIntyre, *Whose Justice? Which Rationality?*, p. 339. Cf. note 46, *supra*.

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to enjoy all the rights that are afforded on the basis of formal equality; they are to be considered unequal to men on the basis of a religious conviction. It is clear that according to the second worldview men and women should not be treated equally in some important respects.

On the basis of these descriptions, the first worldview is not more liberal than the second (which is why I said ‘*presumably* liberal’ above). After all, what is characteristic of the first worldview is that men and women should be treated equally, which actually requires government *interference* in situations where discrimination takes place, while such interference should in the case of women’s rights be absent. By contrast, the second worldview promotes more government interference than the first does when the right to act on one’s religious conviction is compromised (in the first worldview, such a right is apparently deemed less important than women’s rights), but *opposes* government interference when religious freedom is concerned, and is thus more liberal in this respect than the first worldview. Incidentally, my alternative of prescriptive equality as a result of specifying basic equality by basic rationality, with the addition of the ignore principle, would favor neither worldview *qua contents*, and is compatible with both, but should women’s rights be at stake, it is clear that *qua outcome* only that which the first worldview propagates can be maintained.

The liberal aspect of a worldview is accordingly something other than what characterizes it, which is its substance. All worldviews are liberal to some degree, save for those that propagate a totalitarian regime.

12.8 It is possible that it is part of a worldview, even a worldview espoused by a political party, that people and other political parties should be free to express their disagreement with that worldview. Such a political party will probably uphold that government interference in people’s lives should be minimal (disregarding here the views it may have concerning material equality, which is no issue in the present inquiry). Still, this stance cannot constitute the entire worldview, since that would mean that it is only *negative* (*viz.*, that government interference should be restricted).

Schmitt considers liberalism (‘*Liberalismus*’) to be characterized by the absence, or at least reduction, of the influence of the state on individuals,⁴²⁵ and to be without political content.⁴²⁶ I would expand this to the observation that it is without content altogether. As was argued above, liberalism, if ‘freedom’ is understood in the negative sense,⁴²⁷ is

⁴²⁵ C. Schmitt, *Der Begriff des Politischen*, § 9 (pp. 50-53).

⁴²⁶ C. Schmitt, *Der Begriff des Politischen*, § 9 (p. 50). Liberalism, Schmitt argues, does not produce a political outlook of its own; its presence rather indicates that a domain appears where no political decisions are made, and any decision that is made is of another nature, such as economic.

⁴²⁷ In order not to be accused of committing a *petitio principii*, I will briefly indicate why the analysis does not include positive freedom (defined by Berlin as freedom to do or be something, in opposition to negative freedom, which stresses the freedom *from* something) (I. Berlin, “Two Concepts of Liberty”, §§ 1, 2 (pp. 177, 178)). Positive freedom is not what I would deem characteristic of liberalism. There are variants of liberalism

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characterized not by something positive but rather by an *absence*, i.e., the absence of (government) intrusion on one's convictions, and, to some degree, the manifestations that accompany them. In the case of libertarianism, this absence extends to the economic realm, introducing 'laissez faire' policies and only appealing to the state for those means that are necessary to ensure a stable society, such as a judicial system and infrastructure.

Liberalism's main significance, then, is its promotion of the absence of (state) interference.⁴²⁸ If, as was just remarked, it does not itself uphold a worldview but rather maintains that there should be room for various worldviews to coexist, true liberals have no positive outlook, or such an outlook consists in the optimization of preferences.⁴²⁹ One may, then, say: "The overriding good of liberalism is no more and no less than the continued sustenance of the liberal social and political order."⁴³⁰ This state of affairs might account for the simultaneous advent of liberalism and nihilism. Liberalism's lack of content is the downside of its presence. So liberalism is nothing more than the space that is granted by the state to various individuals and groups of people to express themselves. This space may either be void, unlimited, or something in between. In the first two cases there is no liberal democratic state to begin with (but rather a totalitarian state and a virtual state of anarchy,⁴³¹ respectively). The middle ground between these extremes is not determined in a neutral way, but rather on the basis of a consideration of the interests of the citizens, concretized by basic equality (by some specification) and formal equality and the ignore principle. Liberalism cannot fulfill such a role, lacking the content to do so.

12.9 In light of the foregoing, it is worthwhile to consider Brettschneider's proposal, who maintains that the state should protect hateful viewpoints but also criticize them,⁴³² maintaining that "[...] liberalism is faced with a "paradox of rights": its commitment to free

that incorporate it, but it is not a necessary element, nor is it exclusively found there: socialists, for example, can also claim to want to realize it. Negative freedom, on the other hand, is characteristic of liberalism.

⁴²⁸ That this absence is to be understood within the context of the state was pointed out above, in section 7.2. Incidentally, those who are liberals but not libertarians may defend (some) state intervention in the economic realm, which is a matter that may be treated independently from the one under discussion here.

⁴²⁹ Cf. A. MacIntyre, *Whose Justice? Which Rationality?*, p. 338. I add to this, though, that my interpretation of 'liberalism' differs from MacIntyre's (cf. sections 12.6 and 12.7).

⁴³⁰ A. MacIntyre, *Whose Justice? Which Rationality?*, p. 345. Alternatively (since it would be strange why people would merely want to maintain an order, which is no goal but rather a mere *means* to something they want to realize), it may be argued that, if liberalism is indeed without (political) content, its promotion may lead to a diminution of the goods one considers valuable, and perhaps even to a degeneration into commodity fetishism (K. Marx, *Das Kapital*, vol. 1, pp. 37-39), people finally *identifying* what is valuable with what is profitable being no mere remote possibility.

⁴³¹ The latter may seem an extreme outcome. I say 'virtual state of anarchy' as the very existence of a state excludes that of a state of anarchy, but even within a state, the absence of limitations to express oneself would mean that hate speech can be expressed without restraint.

⁴³² C. Brettschneider, "When the State Speaks, What Should It Say? The Dilemmas of Freedom of Expression and Democratic Persuasion", p. 1006.

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and equal citizenship in the public sphere is undermined by its protection of inegalitarian beliefs in the private sphere of civil society and the family.”⁴³³ (Incidentally, ‘liberalism’ is interpreted as constituting a substantive view, which is difficult to uphold if my analysis is correct.) Brettschneider defends ‘viewpoint neutrality’, which “[...] is [...] the idea that the state cannot privilege one political viewpoint over others.”⁴³⁴ This position seems inconsistent: “Viewpoint neutrality can be defended [...] in the liberal tradition by grounding it not in a viewpoint or value neutral justification, but in a commitment to treat all persons potentially subject to coercion as free and equal.”⁴³⁵ After all, what this presupposes is that *all* citizens are to be considered free and equal,⁴³⁶ which is not a neutral position⁴³⁷ but rather one that either starts from considerations such as those presented in chapter 6, or from a ‘moral’ viewpoint (and thus a worldview); that the latter is decisive is made clear.⁴³⁸

Actual viewpoint neutrality is not possible, not even if only *manifestations* are considered a proper reason to interfere in citizens’ private domains, as is the case with the ignore principle. So if ‘democratic persuasion’ is pleaded, the state expressing ‘its own values’,⁴³⁹ it is clear that some worldviews are from the outset treated differently than others, such that viewpoint neutrality is an illusion. In fact, if viewpoint neutrality *were* the standard, no democratic persuasion would be possible, since there would be no position to use as the high ground – whether this be considered ‘moral’ or not – from which to start to persuade the advocates of alternatives of their ‘wrongness’. An appeal to “[...] the values of freedom and equality essential to the legitimacy of a democratic state [...]”⁴⁴⁰ is without meaning until it is clarified *who* should be treated equally with whom and *which viewpoints* should be freely

⁴³³ C. Brettschneider, “When the State Speaks, What Should It Say? The Dilemmas of Freedom of Expression and Democratic Persuasion”, p. 1006.

⁴³⁴ C. Brettschneider, “When the State Speaks, What Should It Say? The Dilemmas of Freedom of Expression and Democratic Persuasion”, p. 1007.

⁴³⁵ C. Brettschneider, “When the State Speaks, What Should It Say? The Dilemmas of Freedom of Expression and Democratic Persuasion”, p. 1007.

⁴³⁶ Brettschneider acknowledges that this is his stance (“When the State Speaks, What Should It Say? The Dilemmas of Freedom of Expression and Democratic Persuasion”, p. 1006).

⁴³⁷ Brettschneider himself – rightly – indicates that the values of freedom and equality are non-neutral (“When the State Speaks, What Should It Say? The Dilemmas of Freedom of Expression and Democratic Persuasion”, p. 1006).

⁴³⁸ C. Brettschneider, “When the State Speaks, What Should It Say? The Dilemmas of Freedom of Expression and Democratic Persuasion”, p. 1007: “Respect for the two moral powers of citizens [...] requires viewpoint neutrality.” On p. 1011, he speaks of “an ideal of political morality”. This is admittedly contrasted with “morality per se”, but that takes away nothing from the fact that a ‘moral’ element is maintained.

⁴³⁹ C. Brettschneider, “When the State Speaks, What Should It Say? The Dilemmas of Freedom of Expression and Democratic Persuasion”, pp. 1009, 1011.

⁴⁴⁰ C. Brettschneider, “When the State Speaks, What Should It Say? The Dilemmas of Freedom of Expression and Democratic Persuasion”, p. 1006.

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expressible.⁴⁴¹ The choice to treat every citizen equally and criticize those viewpoints that interfere with this directive can be maintained, but not on the basis of the misnomer ‘viewpoint neutrality’.

12.10 Summary and relation to chapter 13

The state cannot have a neutral viewpoint when the rights that are granted on the basis of formal equality are concerned. Apart from the fact that states do not have views at all, any viewpoint that pertains to these matters differentiates between worldviews, even if such a viewpoint is not itself based on a worldview. With respect to the issue which beings should be treated (basically) equally, no neutral position is forthcoming, either. There may be differences with respect to the number of subjects being treated (basically) equally, but even a view that includes all beings cannot be deemed neutral. As for liberalism, it does not itself constitute a worldview, but it may be part of one (and it is in fact part of various worldviews). This follows from the fact that the freedom that is defended in liberalism is negative freedom. By contrast, positive freedom, which a worldview may defend together with negative freedom (as they do not exclude one another), does attest to contents. Positive freedom is not, however, inquired here. In the next chapter it will, with these results in mind, be inquired to what extent the state may intrude on citizens’ private domains.

⁴⁴¹ The need to provide such a clarification is reflected in the present study by the introduction of, first, ‘basic equality’ and its specification (‘basic rationality’ being the most promising candidate), with prescriptive equality as a consequence, and, second, the ignore principle.

