



Universiteit  
Leiden  
The Netherlands

## Freedom and equality as necessary constituents of a liberal democratic state

Doomen, J.

### Citation

Doomen, J. (2014, May 21). *Freedom and equality as necessary constituents of a liberal democratic state*. Retrieved from <https://hdl.handle.net/1887/25825>

Version: Corrected Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/25825>

**Note:** To cite this publication please use the final published version (if applicable).

Cover Page



Universiteit Leiden



The handle <http://hdl.handle.net/1887/25825> holds various files of this Leiden University dissertation.

**Author:** Doomen, Jasper

**Title:** Freedom and equality as necessary constituents of a liberal democratic state

**Issue Date:** 2014-05-21

## Chapter 17. Remaining issues

The theory as I have presented it may appear to lead to some inconsistencies and problems. I will address the issues I think merit some additional attention below, by addressing some possible objections.

### 1. General issues

*1a. How can I warrant that what I have argued is true? I have presented a number of arguments why (basic) equality should be acknowledged in a liberal democratic state, leading, through prescriptive equality, to formal equality, and why freedom, albeit limited, should be allowed, but have other authors not presented their own arguments to claim other, conflicting views? How can I know that my account is true (and theirs is not)?*

1b. I have introduced as few assumptions as possible, and no notions whose meaning is controversial or even impossible to grasp. This still does not mean, of course, that no alternative account could be superior to mine, which is why I defend it by pointing to the fact that my claims are relatively modest. I have simply set out to find a theory that would optimally accommodate the difficulties and different – even conflicting – needs that arise in a liberal democratic state, without claiming that this theory would be in any sense an ultimate one, and the fact that this resolves me from what a ‘true’ account might be, or even mean, is, admittedly, no unwelcome consequence of this given. (Whether other authors who do profess to provide a ‘true’ theory manage to support such a claim I shall not discuss here, and is a matter I leave to the reader’s judgment.)

Such a stance would be hard to take for me in any event, as I consider myself to be a factor-determined being. I will not fatigue the reader with an extensive account regarding this issue and only remark the following. Factors ‘create’ an action if nothing besides factors is involved. A factor-determined being would, in order to present a more ambitious theory than the one excogitated here, have to be able to balance the factors themselves, which is only possible from a factor-free position, which is lacking for precisely the reason that I am such a being. I cannot, for example, abstract from the factors that have shaped my outlook (possibly elements such as my education – including reading what various thinkers have produced –, which, moreover, was provided in a specific country whose relatively liberal climate may have had a certain influence) and thus move in such a factor-free realm, but must rather acknowledge my limitations.

This is an important reason for me to resort, at times, to a pragmatic stance, to which I think may be added that this might differ considerably if I should contemplate the current issues from some point in a distant past or future; whether this is indeed the case I cannot, of course, say, for otherwise I would already be able to identify (some of) the factors that constitute my specific stance, thus isolating them and removing them from the analysis, which is precisely what I am, as a factor-determined being, unable to do. Others may leave

## CHAPTER SEVENTEEN

this position and aspire to a more ambitious view than mine, presumably from the starting point that they would *not* be factor-determined beings, but they would then have to make it clear, provided they could, *how* they would be able to reach a (presumably) factor-free realm.

*2a. Regardless of the previous matter, I criticize those who use notions or definitions of their own making as starting points, but do I not do this myself? An example is 'basic equality'.*

2b. As for the notions I have introduced, namely 'basic equality', 'basic rationality' and prescriptive equality', these are no items that have been exhibited *ex nihilo*. 'Basic equality' is an abstraction from what may be (approximately) equally observed and is thus no contrivance on my part, as 'human dignity', e.g., may be argued to be. The same applies, *mutatis mutandis*, to the other notions used by me in this study. 'Prescriptive equality', e.g., and its concretization 'formal equality' simply stipulate that some beings (namely, those who are basically equal) should be treated equally – notably, that they should enjoy the same rights. If someone should claim that this usage differs in any way from what is practiced widely in politics and in both legal science and practice, I would be curious to know what would evidence this.

As for another notion that has been used frequently, '(negative) freedom', it was not introduced here but is generally accepted, and – in case this is considered an *argumentum ad populum* – its manifestation in nature is easily corroborated in the form of freedom of movement, the freedom being manifested in the absence of opposition. Its specifically political manifestation is realized by the absence of opposition from the state or individuals.

Such considerations have also been decisive in preferring the minimalistic conception of 'democracy' that has been preferred to any other. Such considerations do not reflect any insight into 'reality', and it has not been my ambition to provide such an insight, irrespective of the fundamental question of whether this is possible in the first place.

### **2. The meaning of 'equality'**

*3a. 'Basic equality' is not clearly demarcated. It may at present be specified by 'basic rationality', but as I have indicated, this was specified differently (or alternative specifications were implicitly used) in previous societies. Besides, I have argued that once basic rationality is acknowledged anywhere, this must become the criterion, which seems to imply a development, or even progress. Do these observations not necessitate a reevaluation of the a priori character of the basis of my position?*

3b. It must be granted that various specifications are compatible with the account of basic and prescriptive equality. I have not claimed that any specific content of basic equality should be decisive, apart from basic rationality, once it has emerged. The *a priori* nature of my account is, then, rather to be recognized in the *structure* of the liberal democratic state. Whether one should speak of 'progress' once basic rationality is acknowledged I leave to the

## CHAPTER SEVENTEEN

reader to decide. Progress is in the eye of the beholder, and some may consider an ever greater number of beings being treated equally a negative development. Such an evaluative stance is not taken up here.

*4a. Does prescriptive equality not entail that worldviews that deny basic equality should be excluded beforehand from the range of acceptable worldviews?*

4b. Basic equality is a constituent of the liberal democratic state, as I have argued, but there are actually *no* worldviews that deny basic equality, precisely because it is not decisively defined. (The only exception would be a worldview that considers one being so special that none other is basically equal to it, but – if the analysis is limited to the political realm – I know of no such worldview.) For example, a worldview that considers women inferior to men would, if it should consider men, or a selection of men (regardless of the criteria that are used to make this selection), basically equal, still meet the requirement. Every worldview has a conception of basic equality; the relevant differences between worldviews are decisive in determining the criteria to specify basic equality and thus the scope of beings considered basically equal.

*5a. Supposing that the foregoing response is correct, should, once basic equality is identified with basic rationality, and basic rationality is thus acknowledged as the criterion for prescriptive equality, worldviews that deny basic rationality not be excluded from then on? In addition, a paradox seems to manifest itself: propagators of such worldviews demand that they be given an equal forum while it is part of their worldview that not every being be treated equally.*

5b. A decisive reason not to exclude such worldviews is that doing so would be based – if not on their acceptance leading to actions some people may not reasonably ignore, which is a legitimate reason to restrict actions from proponents of *any* worldview – on the presumption that basic rationality would represent some final stage, while the possibility cannot be excluded that another criterion will at some time be deemed superior to basic rationality, from whatever source. It must be reminded that basic equality is not part of a worldview, and that I, consequently, have not aspired to a ‘true’ account but merely one that most convincingly accommodates the various relevant interests. Rationality (or reasonableness, which is the same in my account) may be part of a (‘moral’) worldview (so a different view than the one presented here), but those upholding such a worldview should be able to make it clear to those adhering to a competing worldview why theirs is ‘true’ if they do not wish to be accused of clinging to a dogmatic stance, to which I would add that a position’s nonreligious nature does not guarantee the absence of such a stance.

As for the second part of the objection, if the criterion is that *every* being must be treated equally, it is clear that, if one is consistent, many generally acceptable views should be excluded, notably, those worldviews that differentiate between animals and human beings in

## CHAPTER SEVENTEEN

the most significant respects. Should ‘every being’ be taken to mean every reasonable being or every human being, the worldviews under discussion do not wish to be treated equally with other worldviews, but merely seek attention as a means to gain power, accepting the democratic process as long as necessary and in the most extreme cases as a ‘ladder’ to be discarded once the rise to power is realized. Should one persist on the paradox, the distinction presented in sections 16.3 and 16.7, between the means – the democratic procedure, up to and including the realization of (new) legislation – and the end, whatever it may be, must be recalled. Terminating the democratic procedure is not itself a goal but rather something considered desirable or necessary by those antagonistic to it in achieving their (actual) goal.

*6a. I do not deal with (the desirability of) economic equality, but should this not be treated in the beginning, i.e., once basic equality is discussed? After all, for those unable to fend for themselves this issue may be just as important as formal equality.*

6b. For any person in a liberal democratic state who accepts its form of governance, basic equality is what is crucial. Some sort of factual equality is deemed decisive in order to be treated formally equally, and once rationality is selected as the specification of basic equality, basic equality being specified by basic rationality, all human beings are relevant bearers of rights (in some cases artificially, i.e., by means of a fiction). For someone unable to fend for himself and who is dependent on (government provided) benefits, the import of economic equality overrides that of the political and legal equalities discussed in this study and formal equality is primarily of interest insofar as it serves to realize economic equality.<sup>542</sup>

Still, basic equality needs to be distinguished from the distribution issue in the economic domain since basic equality refers to the equality that is a necessary condition for a liberal democratic state to exist at all, which is what I set out to explain (and, more fundamentally, an equality must exist in *each* state (*vide* sections 6.4 and 6.7)), while economic equality, manifested in material equality (or an approximation thereof), is rather a specific outcome of such a state, which may be realized in various ways, dependent on political preferences. The more material equality is approached, the more the freedom of those able to generate an income and profit from their labors is limited, with, in the most extreme scenario, the realization of material equality at the cost of the dissipation of such freedom (at least the pecuniary freedom, to dub it thus) and, with it, equality of opportunity. Such a scenario is not a corollary of the model I have described, although social benefits for, e.g., handicapped people who are unable (or less able than ‘normal’ people) to generate an

---

<sup>542</sup> In the gravest conditions, one’s economic situation obviously outweighs one’s political needs; a starving person is not even able to express himself, let alone concerned (at that moment) with the right to do so. Economic equality may therefore be said to be at least on a par with formal equality, which would lead to other rights (cf. H. Shue, *Basic Rights*, pp. 7, 8, 24, 25, 29, 30, 70, 75, 78, 81, 82) (I do not agree, by the way, with Shue’s characterization of ‘moral’ rights (*op. cit.*, p. 13)).

## CHAPTER SEVENTEEN

income could be defended as a consequence, in order to prevent a societal schism that would endanger the very foundation of the model itself, basic equality becoming hard to defend if such measures are not taken. In a liberal democratic state, the majority of the citizens must assess what should be the extent of such benefits to suffice in order, on the one hand, to prevent such an upheaval and, on the other, to find a willingness of those who have to pay for these benefits to actually make the material sacrifice.

*7a. Irrespective of the point just made, may the need of economic equality not be promoted for the same reason I proposed that formal equality should be acknowledged, i.e., because a failure to acknowledge it would result in an upheaval, those not being treated equally protesting against their predicament, a civil war being the most extreme outcome? Their interest to realize material equality may, after all, be so great that they have more to gain from an uprising than from silently accepting their lot. This was manifested, e.g., in the Russian revolutions of 1905 and 1917.*

7b. There are two ways to answer this objection. First, it may be pointed out that the prevention of sedition is not the only reason why citizens are equally granted political and legal rights; as I pointed out in chapter 6, not granting rational beings the rights that are considered to be crucial for such beings would result in an inconsistency, the very basis for the granting of rights becoming incredible: as soon as a being appears rational, it must be treated equally with another being endowed with the same quality.

The remaining dichotomy will be one between rational and non-rational beings. Whether such a dichotomy is desirable is another matter; the beings entitled to answer such a question are invariably those that are also able to do so (i.e., the rational beings), so that – failing a conscious rebellious act by a faction of the animals – this situation will only change on the basis of a decision (by rational beings) that will limit some of the rights of rational beings in order to create room (to whatever extent) for the rights of non-rational beings.

Second, in the case of economic equality, ‘equality’ is not, or at least not necessarily,<sup>543</sup> to be taken literally. In this case, there are alternatives to an all-or-nothing solution that consists in realizing precisely the same results for each being. For example, a welfare system may consist of compensatory measures for those that have become unemployed in the sense that they are granted unemployment benefits, but such benefits do not have to be equally high as the salary they used to earn (or, in the case of those who have not worked a sufficient amount of time, the social assistance does not have to equal the minimum wage) (*inter alia* to stimulate their (renewed) participation in the labor market).<sup>544</sup>

---

<sup>543</sup> I add this caveat since this situation does apply (at least in theory) in a system such as communism.

<sup>544</sup> Irrespective of that, it would be nigh impossible to realize material equality if other than pecuniary aspects were taken into consideration. Someone who is unemployed may not merely care about money but may want to work, and – more dramatically – a handicapped person may wish to function as ‘normal’ people do.

## CHAPTER SEVENTEEN

Formal equality, on the other hand, is characterized by precisely such an all-or-nothing dichotomy. One cannot treat beings more or less equally. If there is no equal treatment, there is unequal treatment, which may have far-reaching consequences. To remain in the same sphere: unequal treatment on the labor market (exhibited by discrimination on the basis of, e.g., race) may result in people being confronted with a situation in which they consider resorting to illegal means preferable to accepting this inequality. In the case of economic inequality, on the other hand, it may (on the whole) be expected that even those who are dependent on benefits will agree with a material distribution of goods that does not lead to a complete material equality, not even if this is limited to the mere pecuniary aspects. So long as welfare measures are taken, policy makers may operate under the assumption that no grave problems are to be expected. Those crimes that will remain can be addressed individually, on the basis of the judicial system. To what extent the welfare system should be realized is a matter that cannot be decided *a priori* as this will depend on the preferences of those in charge (so in a liberal democratic state, the majority of the citizens will decide on these matters).

*8a. Since basic equality, and with it prescriptive equality, is a given in (virtually) any state, and not just a liberal democratic state (as set forth in section 6.7), have the specific conditions for a liberal democratic state to remain in existence been pointed out carefully enough?*

8b. First of all, strictly speaking, this question is inaptly put, since I have merely sought to indicate the conditions for a liberal democratic state to continue to exist; if such conditions should *also* prove decisive for other forms of government than liberal democracy, that result is insignificant for the questions that have directed my inquiry. Second, ‘basic equality’ is a concept that must be specified, which may be done in many ways. What I have argued is that basic rationality would be the most desirable and productive candidate for a liberal democratic state. Third, equality is only part of the analysis. Freedom is also a necessary element, and this provides a complement such that a state observing what has been argued may indeed be considered a *liberal* democratic one.

### **3. The limits of freedom**

*9a. I pointed out in chapters 13 to 15 that the public domain should not permeate the private domains lest the room for citizens to maintain their own (world)views be compromised, resulting in the worst scenario in a totalitarian state. Yet the result of the inquiry made in chapter 16 is that such a state should be possible. Do these results not contradict each other?*

9b. The analyses presented in chapters 13 to 15 apply to the liberal democratic state. As long as a liberal democratic state is in place, it must operate within the specified limitations. There would indeed be a contradiction if a liberal democratic state were *at the same time* a totalitarian



## CHAPTER SEVENTEEN

state, but my proposal wards off such a result. What it does not ward off, and now I turn to what was argued in chapter 16, is that a liberal democratic state can be *changed into* a totalitarian state, even by democratic means. Once a totalitarian state is indeed in place, the private domains may be permeated by the public domain, but such an outcome lies beyond the scope of the present inquiry, which only concerns what is necessary *within* a liberal democratic state. Accordingly, no contradiction arises at this level.

*10a. If a moral point of view that consists in considering people (or citizens) as equals provides more stability than the position that everyone is entitled to think what he wants so long as his behavior meets the required standards, is such a moral stance not to be preferred for that reason?*

10b. Stability may be specified in various ways (a totalitarian state may be very stable). Still, if stability is taken to mean a situation in which every citizen's rights are not only protected but also guaranteed (insofar as this is possible), a 'moral' perspective may seem to be preferable, since worldviews that are hostile towards granting rights to certain people, or towards democracy itself, may thus be offset. Still, the alternative I have presented starts from self-interest as the decisive factor, which appears to provide a stable basis, while starting with a 'moral' stance, which may be continually questioned (and not only by those who operate from a competing worldview but even by the very people who adhere to it), does not. Even rationality does not provide such an undisputed basis from a 'moral' perspective, as was shown in chapters 4 and 5. It does, however, provide a relatively stable basis if rationality is associated with self-interest, the latter element being considered decisive in the political realm.

An additional reason not to accept a 'moral' view as the politically decisive one is the following. In chapter 10 I pointed to the problems of religious exegesis, and the fact that this would mean that legislators would have to act as theologians. In this case, conversely, they would have to act as moral philosophers, which is not their task, either. Their task is not a verificationist one, seeking after the 'truth' of matters (although they are of course free to operate from any worldview that motivates them), but rather one of protecting the rights just mentioned. Those that *do* consider their activities to include such a quest face a burden of proof they will find difficult to meet if the observations in chapters 2 to 5 are taken to heart. In fact, the 'moral' status of a citizen, or, more generally, a person, is arguably as difficult to uphold as any religious tenet. The lack of stability that accompanies this insight is compensated by basic equality, specifically basic rationality, which has no other basis than self-interest.

### **4. The boundaries of democracy**

## CHAPTER SEVENTEEN

11a. *Even if one grants that the concept of 'democracy' in general does not include the rule of law, so that a democratic state may exist without it (cf. section 3.3), does the concept of 'liberal' democracy not include it, making militant democracy on that basis alone a superior alternative to formal democracy?*

11b. The concept of 'liberal democracy' is difficult to demarcate. I have throughout this study operated from a broad conception, including a democratic procedure and certain liberties. The rights granted on the basis of formal equality were shown in part 1 to apply to all who are basically equal, while the scope of the liberties was examined in part 2. It may be argued, in accordance with what was said in the introduction, that the rule of law is part of liberal democracy (though not of democracy without qualification), but that does nothing to ward off competitors to militant democracy. (Incidentally, if both 'liberal' and 'democratic' (or 'democracy') lack substance, as I have argued, it would be difficult to see why the rule of law must *necessarily* be observed in a liberal democratic state, as if it would somehow supervene on what is characteristic of a liberal democratic state.)

First, it is not a given that the rule of law is necessarily given up once a liberal democratic state is abolished. The rule of law does not uniquely find an application in a (liberal) democratic state, as was indicated in section 3.3. Second, the rule of law is no more eternal than the other elements of liberal democracy one may deem valuable. In a liberal democratic state, a (qualified) majority may abolish it on the basis of what was said in chapter 16. That the outcome of such a process is that the liberal democratic character of such a state is abandoned takes away nothing from the possibility that a liberal democratic state, including the rule of law, may be abolished. This outcome must not be confused, of course, with the *desirability* of such an abolition, which is, in a (liberal) democratic state, judged by none other than the (qualified) majority.

12a. *If militant democracy is not accepted, it cannot be excluded that, once a liberal democratic state has been dissolved, decisions are made that lead to outcomes that cannot reasonably be ignored, so that the ignore principle appears to be violated.*

12b. It is correct that such outcomes cannot be excluded, but the ignore principle has only been shown to apply *within* the liberal democratic state, and not to be based on a universal claim that should be granted. Should a liberal democratic state cease to be, the state being governed differently from then on, if an appeal is made to the ignore principle, this must rest on another basis. Liberal democracy, or democracy in general, has no monopoly on the ignore principle, but another form of government would not necessarily use citizens' interests as the criterion, so that the ignore principle, if upheld at all, should be based on another criterion, e.g., that citizens might rebel if their harm is not sufficiently prevented.

### 5. Normative issues

## CHAPTER SEVENTEEN

*13a. A descriptive and a normative analysis seem to be confused. The historical description in the first and last chapter is precisely that: a description. It does not follow that the historical course of action is also morally right. This appears most prominently in my analysis of 'formal equality' as a concretization of prescriptive equality, which follows from basic equality: I have indicated that equal treatment applies to those able to present themselves as proper candidates to be treated equally with those already in charge. That merely means that one may in retrospect (once the groups to which the beings that are now being treated equally belong have been included) conclude that the 'right' beings are treated equally, so that each situation is equally morally right (at least in retrospective), since a failure to include beings will merely result from their lacking the power to demand equal treatment, and that the status quo is always legitimated from this perspective.*

13b. First of all, I have not aspired to a 'moral' theory, and do not exclude the possibility that such an ambition may be mistaken for the simple reason that such a theory must appeal to notions that do not refer to anything. (I have not elaborated on this in the present study as it would lead to a greater excursion into meta-ethics than the subject matter justifies.) This does not mean that one may not use any criterion to distinguish various situations; I would myself consider desirability the 'proper' (so to speak) criterion, but that is an external criterion in the sense that (1) it may be used to judge whether other beings than those already included should be treated equally as well (notably, animals (but then the question again presents itself *which* animals)); (2) individual preferences will be decisive here to such an extent that no 'objective' standard can be found, or that it will in any event be difficult to do so within the confines of my modest account, which is evident from what I just indicated (should animals be treated equally, and, if so, which ones (or every animal (if possible)?), a question which must, of course, be answered by those already being treated equally).

In my theory, a factual situation is the starting point, after which a normative analysis follows, but normativity must be distinguished from (or is at least not identical to) 'morality' (in order to avoid such confusion, I have spoken of prescriptive rather than normative equality). For example, it is a norm that one should pay taxes and abstain from murder. In these cases, rules (legal norms) are involved that may be deemed normative (in that they put forward a norm), but no 'moral' considerations need apply. One may simply abstain from forbidden but desired acts in order to avoid penalties whose undesirability exceeds the undesirability of not obtaining the results that would otherwise come forth. I do not see how this sort of behavior is guided by anything but self-interest.

Perhaps an analysis such as the present one is only possible in retrospect, i.e., once it has become apparent on what basis the rights have been granted in the first place. I do not wish to imply by this – somewhat presumptuously – that this is the definitive analysis, since it is not necessarily correct. I merely want to express here the caution that must be used to prevent succumbing to the hindsight bias that one now 'knows' the 'right' theory, accompanied by the amazement at the presumable lack of insight with those in earlier times, who held slaves and/or suppressed women, since any theory may contain blind spots (if there are any here, I cannot of course identify them). The problem that the *status quo* is

## CHAPTER SEVENTEEN

always legitimated is mitigated by the fact that I do not take ‘legitimated’ to have a ‘moral’ connotation, and that those who do understand it thus can still debate amongst themselves whether animals should enjoy certain rights. In that sense, the *status quo* may be questioned, so it is not considered here to be the necessary (or ‘right’) outcome.

It appears that prescriptions can only arise within the context of the developments that have been the subject matter of the descriptions I have presented, those who are concerned with prescriptive questions being those that are able to do so in the first place. This does not, however, address the more pressing issue of whether the exercise is not futile, confused, or circular: the descriptive domain itself seems to be used as the touchstone for the prescriptive domain. This is manifested by the fact that I point to the (gradual) inclusion of minorities and women in the realm of beings to whom are granted the rights discussed in this inquiry, which is itself subsequently prescribed on the basis of my conception of basic equality (and specifically basic rationality) and its corollaries.

To this objection I would reply that there is an overlap between the prescriptive and descriptive domains, but that it does not manifest confusion or a circle, and the domains remain – at least methodologically – separated. It just means that the description can only take place at a stage at which at least part of what one intends to realize has already been realized. The prescriptive issues are not, in other words, presented *ab ovo*; they are concerned with the *expansion* rather than with the original *allotment* of rights (the original allotment possibly being the result of a spontaneous rather than a conscious process). The alternative would be to use a prescriptive criterion that is localized altogether outside the descriptive domain. I am not able to realize or even conceptualize a possible (let alone realistic) criterion of this sort, while the problems of the views of some important advocates of such criteria have been pointed out.

Moreover – in response to the objection that the argument is futile – my prescriptive model does not *inexorably* ensue from the description: one might alternatively acknowledge that the inclusion just mentioned has in fact taken place while arguing that it should not have, and must be reverted in some respects (depending on one’s philosophical and/or political outlook), or alternatively, that the inclusion has not been carried through sufficiently (and that (some) animals must be granted certain rights), even arguing that a ‘moral’ base is needed (thus identifying ‘prescriptive’ and ‘normative’). What I have done is to try to account for the granting of rights and the expansion of the domain of legal subjects, and subsequently how this may most stably and convincingly be upheld. This demonstrates the simultaneity of prescription and description; that these processes run parallel does not, however, manifest their (unwarranted) identification.

*14a. Irrespective of any reservations one may have with regard to ‘moral’ issues, might notions such as ‘(human) dignity’ not have a meaning? It would be presumptuous to conclude from the fact that I am unable to find such meanings that their existence is not possible.*

## CHAPTER SEVENTEEN

14b. I cannot conclude to the nonexistence of something on the mere basis that I have not encountered it, or am unable to comprehend it. Still, is this a problem? The position of one who states that something must have a meaning because its reverse has not been proved is not acceptable, and the accusation of committing an *argumentum ad ignorantiam* could rightly be leveled against him, so I would argue that the burden of proof is on those who defend such notions to make it clear, if they can, what they mean, or, if they cannot, to give them up. So long as there is no need to include such notions in one's theory, as is the case, as I have argued, in my theory, I would keep them at bay (leaving the matter here whether a theory that would include them is not *a priori* unacceptable). Should my approach be considered reductionist for that reason, I can only agree with such a designation, being unable to detect a derogatory qualification in a stance that abstains from using notions whose presence in one's theory is difficult or even impossible to uphold and which may even be devoid of meaning.

*15a. People who are cognitively impaired are considered fictitiously rational. Why should one not consider either 'human dignity' in the same way, or construct an encompassing notion that includes animals? As long as one is working with fictions, one may create fictions that apply to as many cases or beings as one wants.*

15b. The contrast between fictitious rationality and 'human dignity' is clear from the fact that in the latter case, an additional notion is introduced, whereas I, by using 'fictitiously rational', merely extend the application of an existing one to cases to which it does not *a priori* apply. In addition, the only reason why 'rationality' is extended thus is the same reason why fictitious rationality is introduced in the first place (namely, to protect the interests of those already rational), in which case the last justification to use 'human dignity', namely that it – supposedly – evinces a 'moral' quality, would disappear, leaving the notion not only without a reference but even *semantically* void (just as, e.g., a 'round square'). My alternative is vulnerable, I admit, from the following consideration. It may be said to be in the interest of rational beings to promote the interests of their own children, or perhaps mentally handicapped persons to whom they are related, but they may also have an interest in the well-being of animals.

As for the inclusion of animals in the realm of right bearers: it is indeed possible to include them by extending the fiction's application. After all, they are no less rational than people who are seriously cognitively impaired. Still, opting for this alternative would prove the arbitrariness of the fiction construed on this basis. It would hollow out, so to speak, the notion (just as is the case with 'human dignity'). This does not mean that the fiction I have used is any more 'true' than the one under discussion here: 'truth' cannot be the criterion if one knows beforehand that one artificially applies something of one's own making instead of acknowledging something on the basis of independently acquired findings.

The absence of arbitrariness in my case follows rather from the fact that there is a clear motivation for those that use it, i.e., those that *are* rational (lest they should not even be

## CHAPTER SEVENTEEN

able to create, use or understand the fictitious conception in the first place, so that the opportunity for the present discussion to take place would not even exist), namely to make sure that certain standards will be respected if they should lose their reasoning powers when it comes to their treatment (they may not, e.g., be killed for the simple reason that they have lost their reasoning abilities). Of course, if a sufficient number of people (and *in this case* that would be the majority) should believe in reincarnation between species, this would presumably mean that the fiction's application should be extended. In that case, the application of the fiction would *in that context* be no more or less arbitrary than mine is in the current one.

Perhaps some would argue that they have a bond with (some) animals as close as the one that exists with their own children, and would for that reason grant (some) animals at least the rights that shield them from torture and death. Such a position is a valid or perhaps even commendable one, but not from the *a priori* standpoint I have taken. It is, in other words, not necessary in a liberal democratic state that such a position be taken, and a matter that must be decided *on* rather than *within* the basis of a liberal democratic state.

*16a. May one distinguish as easily as I have done between humans and animals? Is there not a moral obligation to treat them all in a certain way?*

16b. This has not been my inquiry. I have in fact left 'moral' issues aside altogether. If one should argue from a 'moral' basis, such a view might be defensible. However, another criterion than rationality must then, presumably, be used.

*17a. I have pointed out that a number of authors can be accused of speciesism. Does my analysis not attest to precisely such a position? Rationality is considered the decisive criterion to treat beings equally, but this is supported differently than, e.g., in Kant's philosophy (which does not, as I have argued, exhibit speciesism).*

17b. I am a speciesist in the sense that I favor my own species as one that exhibits basic rationality, although this stance has a *de facto* basis and is not one of principle, as I would acknowledge (as Kant would) the position of aliens who demonstrate behavior on the basis of which they can be considered basically rational. The issue of speciesism presents itself as soon as one is confronted with the consequences of the alternative of acknowledging the position of other species than mankind, which would result in – presumably – unfavorable outcomes if these consequences are followed through. One may desist from eating meat, e.g., but one of the most basic rights – the right to life – would also be called into question once one kills a mosquito in order to prevent being bitten by it (which would arguably have to be considered a disproportional measure if (all) animal rights are to be taken into consideration). This may seem a somewhat exorbitant example, but it is the outcome of any outlook that does not operate from a speciesist framework. I did not point to the authors that espouse it to indicate that their position is ('morally') 'wrong', for that has not been my purpose. I have

## CHAPTER SEVENTEEN

merely pointed out the difficulties in accounts whose ambition it is, in contradistinction to mine, to present a ‘moral’ theory. It is everyone’s right to be inconsistent in matters such as this one, and to focus on finding a political solution rather than to aspire to expound a philosophical one, but ignoring the facts is in no instance an option (even irrespective of the issue of whether a political solution is thus forthcoming).

To be explicit, racism is, in my theory, no more ‘right’ or ‘wrong’ (in a liberal democratic state) than speciesism is. The difference is that those that belong to one’s own species share the crucial characteristic – reason – in common, and, not unrelated to this, that they are able to stand up for themselves. The treatment of racial minorities was a ‘moral’ issue as long as they were unable to stand up for themselves and claim rights, just as that of animals will remain one as long as they will be unable to do so. If the criterion to grant rights to beings is reason in a liberal democratic state, one’s race should no longer be a relevant factor, and if this is acknowledged, those belonging to a racial minority are themselves part of the group of beings that decide which (other) beings are granted the most important rights there are. In the case of animals, these rights are not political rights, of course – for the beings for whom they may be deemed relevant are themselves rational, so that the matter would be moot –, but rather the more basic rights to life and not to be tortured.

### 6. Difficulties in applying the theory

*18a. As was indicated in chapter 11, there is no guarantee that pointing to the possible consequences of some freedoms may not be used as a reason to reduce such freedoms to a point where they hardly exist. Is my solution to evade this outcome, namely, the existence of an independent judiciary in addition to the democratic procedure, not a mere pragmatic solution, so that the real issue, namely, to what extent it should be possible to limit liberties, is evaded?*

18a. I grant that the solution is a pragmatic one. The question, however, is whether a viable alternative exists. I have sought to steer clear from simple solutions in this case no less than in other instances where one was not forthcoming unless a straw man should be used to present a picture that would do no justice to the complexities of the matter. That matter is in this case, as I have said, that no all-or-nothing solution is possible in a world where one expression differs from the next, and it is difficult, if not impossible, to assess the reactions to each expression. What I have presented seems, in that light, the only acceptable perspective.

There is one alternative, but it depends on more presumptions than I have been willing to include in the analysis, notably the idea that a single answer exists, waiting to be unearthed, to be found if one looks hard enough. Absent the means to perform such a Herculean task (whose challenge would consist in indicating precisely which expressions should be allowed, thus being able to predict accurately the outcomes of each of them), the

## CHAPTER SEVENTEEN

pragmatic solution, characterized by both its unpretentiousness and its reliability, must suffice, at least for now.

I remark here that a pragmatic approach is to be preferred to one that starts from the presumption that one solution to problems such as those discussed here exists, and I have not presumed that what I have proposed in this study is the final answer to those problems. Several issues remain that are not resolved and whose final resolution – meaning that an answer would be provided that would be acceptable from *any* point of view – is not forthcoming. I have merely indicated what I consider to be the best (in the sense of most desirable) perspective, without excluding the possibility that certain aspects need to be altered; as the answers have been proposed by a factor-determined being, no alternative disposition would be warranted.

*19a. The ‘reasonably’ part of what can reasonably be ignored remains a difficult issue. Is it realistic to expect it to cover all cases and thus serve as a guiding principle?*

19b. I have not aspired to a theory that would cover all situations that may arise, as I deem this unrealistic. I have not started from that premise or with the ambition of a theory that would constitute a reflection of reality (whatever one takes this to mean), for – apart from the fact that such an aspiration may be considered impossible *a priori*, depending on one’s epistemological outlook – the variety and complexity of issues would turn a claim of complete foreseeability on my part into a pretension. Rather than to defend a shadowy thesis, I acknowledge the limitations of my approach. This means that the ignore principle serves as a guideline for the judiciary, who can tailor it to the specific instances they encounter.

I indicated in various instances that a completely *a priori* solution is not forthcoming: the ignore principle is rather an amalgam of an *a priori* basis and an *a posteriori* superstructure. One may argue that this weakens the force of the principle, but it does on the other hand provide the necessary substance, while the danger of a forlorn relativism is adverted by the *a priori* core that constitutes its basis.

Just as in other cases, I did not start out with the ambition to produce the optimally ‘aesthetic’ or ‘neat’ theory as this would either result in a procrustean outcome, or an air castle of the author’s own making, which are both as useless as (unfortunately) already readily available. I consider what has been said about the ignore principle to constitute the weakest part of this inquiry, but have found no way to remedy this other than by resorting to the drastic measures just mentioned, which would, as that part of the theory would cease to be realistic, reduce it to little more than an exercise in futility.

*20a. Returning to the previous objection: when the ignore principle must be applied, a demarcation line appears difficult to find when it must be decided which harmful acts can be tolerated. Male circumcision was argued to conflict with the ignore principle, which interferes with people’s freedom to bring their children up as they want to. Should the same criterion be applied to the contents of a child’s upbringing, which is arguably*



## CHAPTER SEVENTEEN

*something a child cannot reasonably ignore (as it (presumably) shapes at least part of its outlook and identity)? After all, a child has (presumably) not yet evolved to an individual capable to critically assess what it learns. Should parents' freedom be restricted in this respect, so as not to harm the child?*

20b. The failure to definitely specify the ignore principle is admittedly a great weakness of my account, as was acknowledged in section 10.6. This is a clear illustration of the shortcomings of a model whose justification cannot be fully *a priori*. I have indicated the reason behind this, but that does not exempt me from my duty to respond to the present objection. Perhaps it is desirable, or even necessary, in a liberal democratic state that some education be provided on the basis of which citizens can, however paradoxical this may sound, be 'molded' into critical citizens, which presupposes that no worldview, not even one that best suits the prevalent specification of basic equality, should be promoted or rejected (an exception may be made with respect to worldviews that act contrary to the ignore principle, although this is controversial since the ignore principle protects those considered basically equal, so that some arbitrariness would remain at that point).

Incidentally, the education process points to an important given, namely, that no strict dichotomy is necessary in all instances, the dichotomy being that one either allows or restricts (speech) acts. As long as a means to sufficiently mitigate the effects of such acts is available, it would be excessive to restrain them. As Sumner puts it: "[censorship] should [...] be the last, not the first, resort of government for preventing the harm in question. Where less coercive measures (education, counterspeech, etc.) promise similar results they should be preferred. Where a narrower infringement of freedom of expression will be equally effective it too should be preferred."<sup>545</sup>

This need not interfere with parents' freedom to convey their worldviews on their children, so long as what has been sketched is offered in schools, while all schools are committed to teaching programs dictated by the state. The criticism that the state would subsequently dictate what one should think is easily refuted: a critical attitude is realized, even towards those governing the state, which would be difficult to reconcile with a state unilaterally prescribing what one should think.

*21a. In chapter 16 it was pointed out, using the prohibition of alcohol in the U.S.A. as an example, that ineffective legislation will not last. Does the same consideration not apply to, e.g., male circumcision, which was argued, in chapter 10, to be something that should not be allowed?*

21b. It is not the case that the consideration of chapter 16 applies to *all* legislation. It applies merely to legislation that is usually, or generally, disobeyed by a substantial number of people. This does not yet answer the question, as a substantial number of people might disobey legislation that prohibits male circumcision. The government must create a policy on the

---

<sup>545</sup> L. W. Sumner, "Incitement and the Regulation of Hate Speech in Canada: A Philosophical Analysis", p. 207.

## CHAPTER SEVENTEEN

basis of which the focus will be more on certain transgressions than on others. The most desirable result would be that people who want to circumcise their sons would take the ignore principle seriously and balance it against the religious duty they think they must perform. A liberal democratic state may penalize actions, whether they result from religious considerations or not, but it may not intrude on people's (religious) convictions. If it considers an act grave, it must penalize it harshly, so as to deter offenders, who will hopefully, balancing the outcomes of an act against each other, restrain from carrying it out.

Irrespective of the foregoing, I would point out that a crucial difference between male circumcision of children and drinking alcohol is that the latter only affects those who themselves drink, so long as no exterior effects, such as violence, result from their behavior (which can be separately penalized).

*22a. The ignore principle provides a standard to find a balance between realizing a stable society and granting citizens the rights they consider important. However, those that do not want to reasonably ignore acts they perceive to be harmful will oppose such acts. My theory does not seem to accommodate this given.*

22b. Such people desire more restrictions – and these are, incidentally, restrictions that may ultimately, ironically, prove to yield undesirable results *for themselves*, for example when they themselves wish to express something considered controversial (and harmful) by others – than is warranted in a liberal democratic state seeking to optimize freedom while balancing it against equality; there is sufficient justification to penalize any action that results from their reluctance to accept the fact that such restrictions are absent.

*23a. In chapter 6 I argue how a stable liberal democratic state may be realized through basic rationality as the most viable specification of basic equality, which is presented as a superior alternative to 'moral' outlooks. However, to what extent can this stability be guaranteed? Is it not possible that a majority arises that operates on interests that run counter to the interests (hitherto) shared in common?*

23b. A first response is that in this scenario, there is a majority, operating, presumably, under the banner of *some* notion of basic equality, whatever its specification may be. After all, if *no* specification of basic equality were acknowledged, there would not be a sufficient basis for a majority in the first place. A majority can only exist if those composing it share something in common. So the issue appears less problematic than it may seem at a first approximation: the only real change is that one common interest has been replaced by another. Still, the weakness of this response is manifested by the fact that it accepts *any* majority outcome, so that the desired stability is not forthcoming.

A more productive response is the following. Such an outcome cannot, admittedly, be excluded on the basis of the premises set out in this study. Although it must be acknowledged that one should, in defending one's viewpoint, only resort to pointing out the

## CHAPTER SEVENTEEN

weaknesses of the alternatives to one's own perspective as an *ultimum remedium*, I venture to say that it is not amiss to recall the difficulties those who argue such outlooks must face.

One might still pragmatically cling to them, which would mean that a government, while not believing in 'moral' tenets, would instill beliefs into the populace so as to make them compliant. Apart from the fact that such a position would be difficult to reconcile with a liberal democratic outlook, nothing would be gained thus. Such a *modus operandi* would, unless such a government should take measures to enforce such tenets – thus giving up even the pretense of operating under the banner of a liberal democratic stance –, be no more effective against the rise of a hostile majority than the premise of basic equality, and perhaps even less so, since those who defend basic equality can at least support their claims by means of reason; whether the aspiration to disarm the majority is unrealistic will of course depend on the majority itself, especially the nature of the views its adherents hold and, not unrelated to this, their disposition (i.e., whether they are hostile or not). By proposing basic equality as a starting point, a balance is aspired to between, on the one hand, an encompassing ('moral') outlook that would be hard to find and would not motivate those who do not share such an outlook, in which case stability would be found but at an unacceptable price, and, on the other hand, the absence of *any* starting point, whether it be a 'moral' one or not, in which case the stability would not be forthcoming, at least not at this level.<sup>546</sup>

It may yet be argued that universally shared 'moral' considerations might provide the desired stability, for example when the abolishment of slavery is concerned. Whether genuine 'moral' actions are possible at all is too far-reaching an issue to discuss here. Applied to the subject matter at hand, I can say that in light of the observations made in chapters 2 to 5, a 'moral' foundation, on which to base one's disapproval of (human) slavery, is not forthcoming. (It is possible, of course, that a satisfactory explanation I have simply overlooked exists, but I venture to say that I have sufficiently scrutinized the various alternatives to conclude that a 'moral' position would at least be problematic.) That leaves the option to – somewhat cynically, perhaps – propagate a 'moral' outlook in order to promote desirable actions, but, as I have said, to forgo such a strategy and resort to basic equality (in the guise of basic rationality) is preferable, both from a political and a philosophical perspective.

A possibility to remedy the issue of stability while maintaining a liberal democratic outlook is to incorporate elements of militant democracy. The viability of such a position, resulting in using such elements as a superstructure to the foundations discussed in the first part of this study, was inquired in chapter 16, concluding that it is untenable.

---

<sup>546</sup> I add the phrase 'at this level', since *external* factors, such as a natural disaster or a commonly shared enemy, may contribute to the rise of the desired stability, but, first, such factors, while providing a union, would presumably render a situation dire enough to render the present issue moot, and, second, there would be no reason to presume that once they would abide the union would continue to exist, so that the stability problem would once again arise.

## CHAPTER SEVENTEEN

The desired guarantee is not, then, forthcoming. An appeal to rational beings that it is in their own interest not to dissolve the liberal democratic state and to use the characteristic they share in common, rationality, as the crucial characteristic to be (continually) treated formally equally is the most constructive alternative.

