Chapter 2
Democracy: A Paradox of Rights?

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Abstract Theorist Corey Brettschneider argues that in a "paradox of rights," liberal democracies are expected to allow freedom of association, expression, and conscience, but viewpoint neutrality dictates that they cannot themselves express the values of free and equal citizenship that undergird these rights. According to what he terms value democracy, the state should abrogate viewpoint neutrality and instead speak in ways that would transform recalcitrant citizens' views to support these core values. Although I support the values of free and equal citizenship, I question some of the means Brettschneider would use to promote these values. First, we cannot always count on the state itself to support the values of free and equal citizenship. Second, although he would withdraw tax exemptions from groups that oppose these values, making this determination accords too much power to public authority, and voluntary associations are not always monolithic in their values. Finally, the true threat to free and equal citizenship lies not in the beliefs that we fail to transform, but in the practices that individuals and groups may attempt to impose not only on others but also potentially on the larger community.

2.1 Introduction

What makes a democracy a democracy? A liberal democracy 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? Although a plurality of voluntary associations has historically been viewed as a check on the tyranny of majoritarian values and a hallmark of personal

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liberty, today "civil society is seen as a school of virtue where men and women develop the dispositions essential to liberal democracy" (Rosenblum 1998). 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" (1998). Therefore, 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, 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. 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" (Rosenblum 1998).

Political theorist and constitutional scholar Corey Brettschneider, however, believes that antidemocratic dispositions may indeed be corrected. In what he terms a paradox of rights, "liberal rights recognize the status of citizens as free and equal, yet the protection of rights to free association, expression, and conscience provides cover for groups and individuals who attack the equality of citizens" (Brettschneider 2012). On the one hand, "Citizens must be free from coercive threat as they develop their own notion of justice and the good. Otherwise, they would not be able to affirm and choose their own ideas about the most fundamental matters of politics (the just) and what constitutes, in their view, a valuable life (the good)" (Brettschneider 2012). On the other hand, on his view the government's viewpoint neutrality towards citizens' right to expression should not extend to neutrality in its own expression. "While liberal rights should be neutral in the sense that they protect all citizens regardless of the viewpoints they hold and express, the public values that underlie these rights cannot be neutral" (Brettschneider 2012).

According to what Brettschneider calls value democracy, the state should engage in democratic persuasion by expressing the values of freedom and equality that underlie the right to freedom of association, expression, and conscience in the first place. Specifically, he supports deliberate state efforts to change or transform beliefs that would undermine these core values. Value democracy expresses both the liberal element of limitations on the state's coercive power and the democratic element of freedom and equality for all. "A state is not fully democratic if it formally guarantees rights and democratic procedures, while failing to endorse the underlying values of self-government in its broader culture" (Brettschneider 2010b). Therefore, when the state protects expression that counteracts these values, "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" (Brettschneider 2010b).

When the Supreme Court, for example, struck down the Florida city of Hialeah's ordinance against animal sacrifice, Brettschneider 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 "have no place in a free society's deliberations about coercion" (2010a). The council had agreed to single out and ban animal sacrifice, an occasional but central practice of the Santeria religion, on the grounds that such a practice conflicted with the Bible and was morally repugnant—although it did not ban other animal killings. To the Supreme Court, this kind of animus was an illegitimate basis for the coercion involved in curtailing a practice. The councilmen's beliefs themselves deserve both a rebuke and a transformation by the state, although Brettschneider would rely on persuasion rather than coercion and would limit his efforts to beliefs that are inconsistent with the values of equal citizenship (2010a). 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" (Brettschneider 2010a). According to what he calls the *Lukumi* principle, the state must protect religious belief and practice, but it also "should explain why the democratic values underlying religious freedom are incompatible with religious beliefs that contradict the values of free and equal citizenship" (Brettschneider 2010b, 2012).

In addition to the dissemination of court decisions as a means of transformation, Brettschneider 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 17 years later despite its earlier rhetoric about the religious grounding of its policies, on Brettschneider'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 (Brettschneider 2010a).

Although I support the values of free and equal citizenship, in this chapter I raise questions about Brettschneider's means of promoting these values. First, we cannot always count on public authority itself to support the values of free and equal citizenship. Second, although I 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 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.

2.2 Congruence and Transformation

I agree with Brettschneider 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 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. Brettschneider argues, however, that "individuals have an obligation to endorse and internalize a commitment to public values through a process of reflective revision" (2012). He appeals to a principle of public relevance, which "claims that personal beliefs and actions should be in accordance with public values to the extent that private life affects the ability of citizens to function in society and to see others as free and equal citizens" (2012). To the objection that citizens' beliefs are not matters of public concern, he responds that democratic legitimacy requires not only the state's protection of democratic rights, but also "democratic congruence," or "democratic endorsement or citizens' agreement with the values that justify rights." That is, citizens must support the freedom and equality on which a legitimate democracy is grounded. Otherwise, "strict deference to popular opinion would mean the enactment of policies that potentially undermine the very values that undergird the right to participate in democracy in the first place" (Brettschneider 2012). Over time, moreover, a widespread rejection of the values of free and equal citizenship might undermine formal and/or informal respect for these values (Brettschneider 2010b).

To avoid an overweening state influence, Brettschneider does impose two limitations on the state's efforts at transformation (2010a, b). The means-based limit stipulates that the state use its expressive 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. But for those that challenge the core values of freedom and equality, 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" (2010a, 2012).

I strongly support citizens' collective commitment to public purposes and to the values they represent, and I agree that through laws and their enforcement, the government can be an appropriate spokesperson for these purposes. My underlying disagreement with Brettschneider, however, is that he places greater trust in state speech than I do. Frequently, the system works as Brettschneider desires. Just as the Santeria case not only preserved religious freedom but also on Brettschneider's interpretation condemned the illiberal beliefs behind the Hialeah ordinance, 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" (*Romer v. Evans* 1996). Additionally, "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" (*Romer v. Evans* 1996). This forthright condemnation might or might not, however, 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.

In other cases, however, the state may speak 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 government 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" (1991). Although I disagree vehemently with what is sometimes called "the gag rule," 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 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" (2010b). Although the state need not be viewpoint-neutral in its utterances, limits exist. "I argue that these limits should be based on what is substantively illegitimate for the state to say. When the state speaks, it does not have the entitlement to say anything it wishes" (2012).

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. Therefore, we should be more cautious than Brettschneider 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 perhaps to change the beliefs of the dominant culture. Sometimes state speech counteracts the larger society's disrespect for free and equal citizenship. At other times, however, the state itself is the source of disrespect. The larger society or elements within it must then act against this disrespect to transform state speech. 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.

2.3 Public Funding, Tax Exemptions, and Public Power

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" (Brettschneider 2010b). Importantly, he includes here religious views "that would seek to impose by law religious beliefs at odds with this ideal" (2010a) which is well exemplified by the Hialeah case and by *Romer*. 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" (2010a).

After the school desegregation decisions of the 1950's and 1960's, the IRS ruled in 1971 that tax exemptions were not necessarily available to all charitable, religious, and public interest organizations and their donors, but only 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" (Turley 2008). At the root of the new regulation, Turley explains, 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" (Turley 2008). 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" (Turley 2008). 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" (Kmiec 2008), and may therefore stipulate conditions for their receipt.

For Brettschneider, however, discrimination concerning tax exemptions is still noncoercive. Organizations, after all, may legitimately resist transformation. In 2006, when 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, the law was not coercive because Catholic Charities could continue to operate under its chosen policies; it simply would not receive its customary state funding (2010a), just as Bob Jones University continued to operate for 17 years without its tax exemption.

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, he believes that nonprofit status "can encourage and support a rich associational life, and one that can shift with people's views and 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 (Spinner-Halev 2011). Unless we want to limit tax-exempt status to just a few organizations, he suggests, the use of nonprofit status should be scrutinized mainly for fraud or abuse.

Spinner-Halev offers several reasons for skepticism about Brettschneider's proposal. Even when they violate the tenets of equal citizenship, religious organizations contribute in valuable ways to the public good through the provision of education and social services. Moreover, issues of equal citizenship are often 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" (Spinner-Halev 2011). In fact, religious organizations themselves may be influenced by the egalitarian ideals of the larger society to rethink some of their own policies. 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 (Gill 2010). 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" (Spinner-Halev 2011). *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 would be "under the direction of a political appointee" and subject "to the vagaries of democratic politics" (Spinner-Halev 2011).

Brettschneider responds 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 (Brettschneider 2011).

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" (Brettschneider 2011). 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 opposition to free and equal citizenship as a criterion for tax-exempt status, I 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 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" (2011). 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 on occasion this interchange may push some in an illiberal direction, in other circumstances it can 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 (2011). 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" (Hayek 1960). 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.

Brettschneider maintains, however, that the state's use of its spending 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" (2012). 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. Unlike the Roman Catholic Church, the Boy Scouts has historically excluded gays and has done so without any clear explanation of its identity-based discrimination. Says Andrew Koppelman, "The BSA does not appear to care much whether it is implying that gays are intrinsically inferior. This insouciance conveys its own message" (Koppelman and Wolff 2009). There is no evidence, however, that the Scout policy towards gays has met Spinner-Halev's definition of invidious discrimination, or "systematic discrimination within a group that is part of a larger, institutional effort to undermine the basic idea of the equality of citizens" (2011). Furthermore, the Scouts itself has been internally divided about the role of gays in the organization. In early 2013, the Scouts said that it might drop the total ban on gay Scouts, eventually deciding that it would allow gay Scouts but not gay leaders (Eckholm 2013). Predictably, some have accused the Scouts of selling out, while others believe the organization has not gone far enough. Regardless of the reaction, the Scouts provides a good example of ways in which voluntary organizations may change without heavy-handed pressures by the government.

2.4 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 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" (2010a). I agree that 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" (Song 2007). 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. Greater awareness of this interactive dynamic, suggests Song, "shifts the focus of debate from asking what cultures *are* to what cultural affiliations *do*" we can recognize inequalities, albeit in different forms, that transcend cultural boundaries, we need not choose between cultural accommodation 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" (Song 2007).

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 alteration or transformation from outside, he underestimates "cross-cultural

interactions" between religious or charitable organizations and the larger society. 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.

The historically heterosexist norms of the Scouts reflected norms that have historically characterized the majority culture. Over time the "minority culture" of the Scouts is more likely to come to reflect the majority's more egalitarian norms than the reverse. The logic of congruence that Rosenblum criticizes mandates that organizations reflect the values of liberal democracy. Song's congruence effect, however, demonstrates that 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 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. On this point, Brettschneider and I are in full agreement.

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