Henrik Dahlquist

Best Dissertation Prize Winner

MSc Political Theory 2016-17

gov.msc@lse.ac.uk

The scope of public reason under non-ideal conditions: Introducing *the interference view*

A dissertation submitted to the Department of Government, the London School of Economics and Political Science, in part completion of the requirements for the MSc in Political Theory.

August 2017.

10 323 words

Most views of the scope of public reason are either ‘narrow’ or ‘broad’. The narrow views require the ideals of public reason and the duty of civility to extend only to the *basic structure of society*. The broad views state that for all political decisions, public reason ought to apply. These views have been developed under heavy idealisation. No theoretical work has been devoted to examining the scope under non-ideal conditions. This paper is a first attempt to do so. I propose that under non-ideal conditions, the duty of civility should only be as demanding as it ‘needs to be’, based on the claim that the feasibility constraints of non-ideal realities trigger a need to theorise around cases where a failure to meet civility requirements would be particularly troubling. I propose a mechanism for determining which these cases are, called the liberal interference view.

According to the liberal interference view, a person advocating a law that creates additional interference in paradigmatically important cases have heightened civility requirements. Someone opposing said law would only have a baseline duty of civility, shared with participants in discussions of non-interfering rules. By discussing the liberal interference view against the backdrop of the French ban on face covering, popularly referred to as the ‘Burqa Ban’, I show that the properties of the view have important implications for minority protection. I conclude that my revised view of the scope of the duty of civility does a better job at protecting religious minorities from unjustified interferences than either the narrow or the broad view, and that it alleviates parts of the dualism-concerns of the standard objection to the duty of civility.

Religious polarisation is increasing in the UK. People in general are less religious than before, but those who are ‘generally have stronger beliefs and more favourable views towards religious leaders influencing politics’ than twenty years ago, while the non-religious are developing ‘less favourable views towards public religion’ (Wilkins-Laflamme, 2016: 632). Similar trends have been observed in the countries of the European Union and in North America (Polack, et al., 2016; Robbins and Anthony, 2016). Western societies are, empirically speaking, pluralistic. People genuinely value things differently. In Rawlsian terms, they have different conceptions of the good, conceptions of what is ‘valuable in human life’ (Rawls, 1985: 233-4).

These conceptions of the good are often mutually incompatible. Historically, these incompatibilities have led to numerous conflicts, and it is an empirical fact that the differences do not resolve themselves. This problem has received a lot of attention in liberal political theory, and it has even been argued that one of the core tasks for the liberal project is to outline a society where people can live together despite these differences (Rawls, 1987: 4, 13; 1993: 53-8, 63; Galston 1982: 581).

In recent years, an influential solution has been to advocate the use of *public reason*. The main idea is that the state should refrain from justifying its core principles and policies by appealing to conceptions of the good, 'only public reasons – reasons that are acceptable to all reasonable citizens – can legitimate the coercive use of state power over its citizens' (Quong, 2004: 233). For many liberal theorists, this also implies a *duty of civility*, citizens should be morally obliged to use only public reason when debating in the public forum (Rawls, 1997: 769).

One of the major points of criticism against public reason has been that most theorists idealise too extensively when they develop their accounts (for an influential critique of public reason idealisation see Eberle, 2002). Even though this objection is powerful, there is virtually no theoretical work devoted to outlining a non-ideal conception of public reason and the duty of civility (Quong, 2013). It has yet to be examined how public reason's 'significance or weight [is] affected by injustices and other nonideal social realities that are all too familiar features of existing liberal democracies' (Boettcher, 2012: 156). This paper is a first attempt to examine how the duty should be affected by a changed level of idealisation. If the duty of civility should have any normative weight in real-world political discourse, it is essential to establish what form it should take under these realistic conditions. This form is not necessarily the same as under heavy idealisation.

Since the territory is underexplored, there are naturally numerous features of the theory worth discussing under non-ideal conditions. One of the more pressing is whether the duty of civility should apply unequally depending on the person debating. Due to space

constraints, it will have to be left out. Instead, this paper will focus on the scope of the duty of civility under non-ideal conditions – given a prior commitment to one of the standard views of public reason.

Initially, I will outline the main features of public reason (I). I will then begin formulating an alternative to the traditional views of the scope of public reason (II), rework it to meet some possible objections (III) and apply it to the real-world case of banning niqabs in the public sphere (IV). Finally, I make a few concluding remarks (V).

I Public reason

John Rawls's conception of public reason is by far the most influential version in recent years. Even though the purpose of this paper is not to perform an exegetical reading of Rawls, I will rely heavily on his version in sketching an ideal type of the concept. I will not analyse the *content* of public reason in depth. There is currently considerable debate over what reasons or modes of reasoning that should be considered public, ranging from very thin to extensive definitions (for a critical examination, see Kramer, 2017). Instead, I will be relying on an 'open' definition, similar to how Quong (2004: 248) argues that 'the detailed content of public reason can only be worked out as part of the process of public reasoning. To avoid positioning myself firmly in the content debate, I will start from the following (all-encompassing) definition:

> **Public reason(s):** a set of reasons that are (in some relevant sense) acceptable to all (members of a certain group), or a certain (public) procedure for reaching a reason.

The term public reason thereby can cover a set of reasons, and a method for reasoning, a 'reason' distinct from private reason. For Rawls, the point of the public reason ideal is

that ‘citizens are to conduct their fundamental discussions within the framework of what each regards as a political conception of justice based on what values the others can reasonably be expected to endorse and each is, in good faith, prepared to defend that conception so understood’. This implies that all citizens should have a ‘criterion of what principles and guidelines’ that all other citizens could be ‘expected to endorse along with us’ (Rawls, 1993: 226). The arguments and justifications for one’s view when debating should not be based on one’s own conception of the good (or *comprehensive doctrine*), such as a religion or comprehensive moral theory. Public reason is a way of constructing arguments based on a shared understanding of what it is to be a citizen in a liberal democracy, it is an idea of ‘the politically reasonable addressed to citizens as citizens’, reasons that all reasonable citizens might be expected to share (Rawls, 1997: 766, 769; see also Nussbaum, 2011).

Public reason can be used to assess or evaluate whether a law is legitimate or not. But it is often also incorporated into a general framework of an ‘ideal conception of citizenship’ (Rawls, 1993: 213). The starting point for this ideal is derived from the idea of reasonable pluralism, and the empirical claim that when people disagree about political matters they must justify their preferred policy or course of action (Rawls, 2001: 27). Some public reason theorists argue that when citizens are engaged in these discussions they have a moral duty to provide public reasons, a *duty of civility*. The civility requirement is an ‘intrinsically moral duty’, not a legal standard – a transgression of the duty is not considered a crime, ‘for in that case it would be incompatible with freedom of speech’ (Rawls, 1997: 769).

Whether a commitment to public reason implies a moral duty of civility is a major point of contestation among public reason liberals. Some theorists argue that the political debates of citizens should be unconstrained (see for instance, Benhabib, 2002: 108-112; Bohman, 2003; see also Gaus, 2009; Vallier, 2014; esp. ch. 6) whilst others argue that the liberal citizenship comes with civility demands (notably Rawls, 1993; Quong, 2011). Even in the latter camp, there is disagreement over how exactly 'the ideal of public reason [is] realized by citizens who are not government officials' (Rawls, 1997: 769). In a liberal democracy, the question is complicated since citizens vote for representatives but (generally) do not vote on laws themselves. Yet, many proponents of the duty of civility, including Rawls, hold that citizens should think of themselves as if they *were* legislators, they should ask themselves 'what statutes, supported by what reasons' that are most reasonable to enact. The duty of civility is also about holding government officials responsible to the standards of public reason, voting them out of office if they fail to meet it (Rawls, 1997: 769). But it is also a duty of civility in the ordinary sense of the word, it includes a 'willingness to listen to others and a fairmindedness in deciding when accommodations to their views should reasonably be made'. Finally, it is the duty of citizens to show that the laws that they 'advocate and vote for can be supported by the political values of public reason' (Rawls 1993: 217). The duties of citizens are thereby like those of government officials, yet they are not as far-reaching (Rawls 1999b, 576-7).

Even though the positions outlined so far still receive significant scholarly attention, I will not discuss them in detail. Instead, I will focus on examining *which* rules should be covered by civility requirements. There are two reasons for this. First, even though it would be possible to start from the other end, determining first *who* should be covered,

before turning to the appropriate site, would be difficult. One would have to determine how different people should conduct a debate without knowing what rules are debated. The second reason is instrumental: I will take John Rawls's and Jonathan Quong's versions of public reason as representatives for two distinct strands, both of whom agreeing that the duties should cover everyone involved in political debates in the public forum. I will follow them in assuming that public reason implies (some) duty of civility for all citizens without justifying this connection further. Discussions of a whole range of specific technicalities will also have to be left out. Instead, I will outline an idealised – deliberately opaque – account of the duty of civility that most mainstream theorists could be expected to endorse. I will not address the broader questions of how public reason can be used as a method of generating legitimacy or defend the ideal of public reason as such. The discussion thereby will be internal to variations of the standard Rawlsian view of public reason. The starting point (that eventually will be further delineated) of this opaque version of the duty of civility is:

> **Core claim:** citizens are required to provide public reasons when they discuss political decisions in the public forum.

Virtually all accounts of public reason narrow this claim down. For instance, some theorists argue that it should be allowed to use arguments from comprehensive doctrines as long as they later introduce public reasons. This is often referred to as the *wide view* (not to be confused with the *broad* view, discussed later) of public reason (Schwartzman, 2011: 375; Reidy, 2000; see also Rawls, 1997: 783).

Hence, it is permissible to introduce comprehensive reasons if one also provides political reasons in favour of the position later. A preliminary justification of the wide view, again following Rawls (1997), is that introducing comprehensive reasons might

deepen citizens' understanding of each other and their commitment to the democratic ideals. There is not something inherently wrong with using comprehensive reasons, only relying solely on them. Accepting the wide view, a second characteristic of my ideal type version of the duty of civility is that:

> **The wide view:** citizens may use non-public reasons, provided that they in due course also give public reasons.

The standard view of the duty of civility does not entail that *any* political discussion must meet the demands. A utilitarian seminar group naturally should be able to use utilitarian reasoning, within a mosque the Quran or the *hadiths* are permissible sources for guiding political reasoning, and a sports club can discuss the need for a new arena in perfectionist terms. In Rawls's words, these civil society groups belong to the *background culture* and they are exempted from any demands on public reason. But when members of these groups take the discussions public they have a duty to justify their preferred course of action with public reasoning (Rawls, 1997: 768; see also 1993: ch. 1). Following this view, a preliminary definition of the appropriate *site* of public reason is:

> **Site:** the duty of civility only concerns discussions and voting over/on some set R of political rules in the public forum.

From this follows that it needs to be determined what kinds of rules or actions that should be covered by the requirements of public reason, what the relevant R is. The granularity or scope of public reason must be specified. Roughly, most theorists that (at least to some extent) agree with the standard account can be divided into one of two strands. The first one, including theorists such as Rawls (1993), Barry (1995), and Scanlon (2003) defines R as a very narrow set of rules. Public reasons are necessary

only for questions concerning the *basic structure of society*. The basic structure of society consists of *constitutional essentials* and matters of *basic justice*. In Rawlsian political theory, constitutional essentials, in turn, also consist of two parts, (i) fundamental principles for the set-up and structure of the political process and government, and (ii) the set of rights and liberties that have special constitutional protection (Rawls, 1993: 227; Quong, 2011: 51). Matters of basic justice consists of things such as regulating social and economic inequalities (Rawls, 1993: 228-30; see also Quong 2011: 273). Quong (2011: 274) refers to this as *the narrow view* of public reason:

> **The narrow view**: public reason requirements should only apply to questions related to the basic structure of society.

Within the narrow view, any law or principle not part of the basic structure *may* be justified by public reason, but it is not necessary (perhaps not even desirable) (Rawls, 2001: 91; see also Rawls, 1993: 235; Quong, 2011: 273-4). Putting aside the difficulties in separating the basic structure from the rest of society, I will simply assume that there are two distinguishable kinds of cases within the narrow view; basic structure questions (covered) and non-basic structure questions (not covered). Proponents of *the broad view* question this division. Rawls (1993: 215) even raises the question himself; 'why not say that all questions in regard to which citizens exercise their final and coercive political power over one another are subject to public reason'? The broad view theorists have expanded this idea, arguing that public reason and the duty of civility should apply to all (or most) laws. In short, the argument is that if one is committed to the ideal of public reason, there are no valid grounds for arguing that it should only extend to only these few areas. Instead, whenever people 'exercise political power over one another', public reason ought to apply (Quong, 2011: 286). To these theorists, all laws require public

reasons (Quong, 2011: 274). Thus, the broad view can be defined (from Quong 2004: 234):

> **The broad view:** 'the ideal of public reason ought to be applied, whenever possible, to all political decisions where citizens exercise coercive power over one another'.

Just as for the narrow view, there is a wide range of theorists endorsing a broad view (see for instance Larmore, 1999: 607-8; Nagel, 1991: 159; for a discussion of a republican broad view, see Laborde, 2013). I will use Quong (general) formulation when discussing the view. The main idea of Quong's argument is that the narrow view of public reason is not demanding enough. If we believe that 'respect for each citizen requires that they not be subject to the exercise of political power on grounds that they cannot reasonably accept' there are no plausible arguments for not extending the application to as many areas as possible (Quong, 2004: 235). However, I will argue, this does not rule out the possibility of some rules being *in greater need* of special justification – especially under real-world feasibility constraints where the requirements of public reason are particularly demanding. These (non-ideal) implications have so far to be discussed (Boettcher, 2012: 156).

The exact characterisation of the difference between ideal and non-ideal theory is contested. Laura Valentini (2009: 332) states that most theorists apply the notion of ideal theory loosely, it is 'any theory constructed under false, that is, idealised, assumptions, which make social reality appear significantly "simpler and better" than it actually is'. I will rely on Hamlin and Stemplowska's (2012: 60) formalisation of the ideal/non-ideal space, where the distinction between ideal and non-ideal theory is not

dichotomous – it is a ‘multidimensional continuum’ (Hamlin and Stemplowska, 2012: 49-50). My conditions thereby will be more or less idealised.

It has been argued that the duty of civility only is necessary under full compliance, when everyone is committed to the idea. Rawls possibly defends this view (Rawls, 1993: 35; 1997: 765), for him, the duty of civility is a description of ‘what is possible and can be, yet may never be’ (Rawls, 1993: 213). Yet, it is unclear *why* the requirements belong only in a ‘well-ordered constitutional democratic society’.

One possible argument is that the duty of civility is a too demanding norm for real-world deliberation. But given a commitment to the norm under non-ideal conditions, would it not be mistaken to completely abandon it in actual politics? I claim that it would be. Instead, the non-ideal version of the theory should be adapted to meet the changed circumstances it is facing in the real world. These real-world feasibility constraints should require us to theorise around the instances where a failure to meet civility standards would be *particularly* troubling, also under non-ideal conditions, and let the civility demands be greater there. On this view, it is possible to rank under which conditions public reasons are more desirable, where there should be a greater need for public justification. Hence, if it is possible to rank rules and discussions according to the weight we put on them it would seem desirable to assign the corresponding duties of civility in relation to the relative importance of the law.

Since the duty of civility is a demanding norm with few plausible enforcement mechanisms, one should want to make it only as demanding as it ‘needs to be’. If it is impossible to let the duty of civility apply demandingly and equally, I argue that we

should want a clear baseline in place for every law, and a more demanding set of obligations for certain kinds of (important) rules. Under non-ideal conditions I argue that a gap should open between rules in need of a more demanding justification and rules without it, and that a similar gap also opens depending on where one positions oneself in the debate over these rules.

The question is what the appropriate ranking mechanism would be for determining which laws need special justification. The remainder of this paper will be devoted to arguing in favour of one version of such a mechanism. I call it *the interference view*, and show that it should apply regardless of what one believes to be the content of public reason, and regardless if one is committed to the broad or narrow view under idealised conditions. It would most likely not, however, work to convince someone not committed to the duty of civility at all.

II The interference view

There are specific problems with both traditional views of the scope of the duty of civility. The most pressing are that the narrow view is silent in cases where it should not be, and the broad view sees all laws as equally important – something that becomes troubling under real-world feasibility constraints. To show this, I will begin from the following hypothetical case:

> Imagine a city right next to a great (unowned) forest. Every night, a group of spiritual nature-lovers venture into the forest to meditate and reflect on the beauty of the place. These sessions are a fundamental part of their sense of self, indeed they are what make the lives of these people truly valuable. A recent review has determined that it might be dangerous to be in the forest, especially after dark. There are many uprooted trees and the evaluators are worried that people might fall and hurt themselves. Now, the

city council must decide on a mitigation measure. Two different laws are proposed:

L_1: Government spending on maintaining the forest will be increased to fill the holes after the uprooted trees.
L_2: Government spending on maintaining the forest will be increased to fill the holes after the uprooted trees, and people are no longer allowed to enter the forest at night.

Now, the council must justify their choice to the public. Are there reasons for believing that we should have greater justificatory expectations on one of the two laws? Starting from the traditional views of public reason, there are no reasons for believing so. On the narrow view, both laws are likely outside the basic structure of society, and are thereby not covered by the demands of the duty of civility. This means that the council would be allowed to use non-public reasoning in justifying their decision, for instance arguments such as 'being in the forest after dark is wrong because it upsets the tree-spirits'. Since the nature-lovers clearly would disagree, state power would be used against them based on reasons that they could not reasonably be expected to endorse. The broad view faces a different problem. Both laws are coercive in the sense that the funds necessary for avoiding the dangers are drawn from tax revenues that ultimately rely on the coercive power of the state. On Quong's view, we should thereby try to find public reasons when discussing *both*. The demands are equally great, regardless if the council would opt for L_1 or L_2. Hence, under the standard frameworks of the scope of public reason there is no way of separating the two laws. For Rawls, neither of the laws would have to be justified with public reasons, and for Quong both would have the same demands. Yet, intuitively it seems as if L_2 is more troubling and in need of a greater justification. Why could this be?

One variable separating the laws is that L_2 is creating additional *interference* whilst L_1 does not. This, I will argue, is a plausible trigger condition for heightened civility requirements. Such a formulation might start from the following general claim:

> **Draft interference view:** the duty of civility is greater for (a set of) laws that are interfering with people (in some relevant sense).

The draft interference view in this shape is incomplete, with several crucial components missing. The first issue is how 'interfering with people' should be defined. In determining this, I will rely heavily on Isaiah Berlin's (1997; 2006; 2008) conception of negative freedom. Based on Berlin's conception, a possible preliminary definition could be:

> **Interference**: an event or fact that causes or entails a reduction of options available to a person i (compared to the situation without interference).

Interference thus defined would have a very broad extension. It would include someone being caught in a blizzard, not understanding Latin, or losing all money in a poor investment. This seems implausible as a political definition. Thus, following Isaiah Berlin, I will focus only on human-made acts restricting peoples' choices. Non-interference, in this sense, is equated to Berlin's version of negative freedom – it is the absence of being coerced or forced to perform or not perform an act Φ. As he summarises it: 'I am normally said to be free to the degree to which no man or body of men interferes with my activity' (Berlin, 2006: 393).

But on Berlin's view, interference could also be more abstract than someone being physically prevented from Φ-ing. A restriction of the options that the agent has no desire to pursue would also count as interfering. Instead of focusing on the realisation of

certain desires, I will view non-interference as being about the 'actual doors that are open', not being interfered with is having 'a range of objectively open possibilities, whether these are desired or not' (Berlin, 1997: 112-3). On this view, L_2 would create more instances of interference than L_1 since no one would be allowed to enter the forest – regardless if they wanted to or not (it could be argued that L_1, too, creates *some* interference under this definition in the sense that the funds allocated to the forest project no longer can be used for some other purpose, reducing the number of options for the person(s) that contributed the funds (the relevance of different kinds of interference will be addressed under III). Where there previously was X doors open, there are now X-1

The debate on the value of non-interference is still on-going, and I am in no position to give the issue the weight it deserves (for a discussion, see for instance Pettit, 2011). I will, however, provide an intuitive argument for a presumption of non-interference, originally outlined by Stanley Benn (1988; also discussed in Gaus, 2011: 341-2). Benn begins from a simple thought experiment. He asks the reader to imagine Alan, sitting on a public beach splitting pebbles with his hands. Betty passes by and demands a justification for what he is doing. A justification, Benn argues, 'presume at least prima facie fault', it is a charge that must be countered. But 'what can be wrong with splitting pebbles on a public beach?' Benn (1988: 87) then asks us to further suppose that Betty is preventing Alan from splitting pebbles by:

> '(…) handcuffing him or removing all the pebbles within reach. Alan could now quite properly demand a justification from Betty, and a tu quoque reply from her that he, on his side, had not offered her a justification for his splitting pebbles, would not meet the case, for Alan's pebble splitting had done nothing to interfere with Betty's actions. The burden of justification falls on the interferer, not on the person interfered with. So while Alan might properly resent Betty's interference, Betty has no ground of complaint against Alan.'

Translated to the public reason context, it seems plausible that when Alan is being interfered with in this way, he should have a right to a proper public justification. Benn's example serves as a foundation for formulating an alternative to the broad and narrow views of public reason: an *interference view*.

It might be argued that the presumption in favour of non-interference should imply that any instance of interference is unjustified, regardless of whether there are public reasons for it or not. This Lockean (1960: 287) reading of the presumption in favour of liberty would maintain that only a limited government could be justified (see also, for instance, Narveson, 1988; Nozick, 1974: 160). Working within the public reason context, I will not address this challenge. Instead, I will take quite literally Mill's (1991: 472) claim that 'the burden of proof is supposed to be with those who are against liberty; who contend for any restriction or prohibition'. A generous understanding of this would not only accept that the *burden of proof* is with the interferer, but also hold that it is (in principle) possible to prove that an interference is justified, also for other reasons than those provided by Mill. Thus, an interference view need not imply that there are no possible justifications for interference, only that interferences need to be properly justified. Specifically, to a public reason theorist, *public reasons* would be a correct and acceptable standard of justification. Addressing head-on the libertarian challenge is well beyond the scope of this essay. Someone rejecting the relevance of public reason for justifying political power will most likely not be convinced by this 'moderate' presumption in favour of non-interference. Yet, the paper addresses public reason theorists with liberal non-interference intuitions rather than non-interference theorists with an interest in public reason.

Returning to Alan and Betty, suppose that they are committed to the ideal of public reason. Suppose further that Betty gives Alan a non-public reason for interfering with him, when stopping him from splitting pebbles. Maybe she argues that it is against her religion to split pebbles, or that from a utilitarian point of view Alan could spend his time much better. If we believe that using public reason is a good way of conducting civil discourse, then why should it not apply to cases where people are trying to impose their will on others? This points in the direction of it being plausible to retain at least *some* duty of civility for all interfering laws. Were Alan and Betty broad view theorists, Alan might be able to convince Betty that her justification is unacceptable. But this example illustrates one of the main difficulties for the narrow view. Just as with the forest example, it might be argued that Rawlsian public reason does not have any justificatory demands on Betty since the treatment of pebbles is not a part of the basic structure of society. On the other hand, it could be objected that within the broader Rawlsian framework, Alan would have a right that protects his activity – what is protected is his life-choice to split pebbles, not the splitting per se. Being allowed to split pebbles is part of Alan's basic rights – in line with Rawls's (1999a: 220) claim that 'each person is to have an equal right to the most extensive system of equal basic liberty compatible with a similar system for all'. The issue thereby *would* be a part of the basic structure of society, presumably triggering civility requirements. However, determining the exact content of this system of rights in the real world will be part of a political process of deliberation. Rawls (1981: 71-2) even points out that basic rights are not absolute, they can be 'restricted in their content' (if a wide application would create a greater reduction of the total set of liberties). But in determining this, citizens will inevitably fall on different sides of the issue. Some will claim that the right in question

should have a limited application while others will argue the opposite. It is also fair to assume that hypothetical citizens might be committed to the use of public reason but not to Rawls's *justice as fairness* and Rawls's theory of rights. Since Alan does not have a special protection from interference also *within* the Rawlsian public reason framework, there is a risk of allowing for extensive infringements. These problems, discussed next, are also shared with the broad view.

Within both traditional views of public reason, the duty of civility always applies symmetrically. Alan and Betty share the same civility demands. The same is true for virtually any account of public reason (Gaus's, 2009: 34-35, and Vallier's, 2014 views are important exceptions). Broad view theorists such as Quong would see it as troubling that Betty was trying to impose a law without appealing to public reasons. But he would consider it equally problematic if Alan was unable to provide public reasons for his pebble splitting, for opposing the law. For liberals, this should have worrying implications. Suppose that Betty *could* provide public reasons for stopping the pebble-splitting (admittingly, it might be difficult. But imagine a rather silly and extensive understanding of public reason that encompass things such as 'the sharp edges of the split pebbles hurt people and stops them from accessing the beach', 'everyone should have equal access to a smooth pebble beach' or 'the noise created by the splitting is disturbing peace and security'). Alan, on the other hand, is unable to provide public reasons for his pebble splitting. His only justification is that he enjoys splitting pebbles, to him, this is a central part of a valuable life – it is part of his comprehensive conception of the good. He would thereby be unable to defend his activity from unwanted interference. Since on Quong's broad view, both the person interfered with and the interferer have the same demands of civility, this would not be a problem for

him – it would simply be the case that Betty freely could interfere with Alan. A narrow view theorist arguing that Alan's behaviour *is* part of the basic structure of society would face the same difficulties. If this implication is unwanted, we have reasons for formulating a preliminary interference view:

> **The comprehensive interference view:** public reason requirements are greater for rules that are restricting people's options.

The interference view in this form is devoid of content. It only entails that there are two kinds of duties of civility, 'greater' and 'not-greater', but there are no judgements on what the different duties would consist of or how they should differ. As previously discussed, I do not commit to any particular understanding of the content of public reason. It is therefore not possible to precisely formulate an exact content-difference between the two levels. But it is possible to at least clarify a few things regarding the difference between the greater and lesser duties of civility. First off, it would be a mistake to see the lesser duty of civility as no duty at all. With an a priori commitment to public reason in place, it seems desirable – following Quong – to let the lesser duty include at least *some* requirement of civility. The lesser duty will thereby be called the *baseline duty of* civility. Since the definition lacks any substantive content it is impossible to say what it would consist of. I will work from the assumption that a baseline duty would be something that most citizens would be able to follow, regardless of their training, cognitive capacity, or metaphysical commitments.

> **The baseline duty of civility:** a set of duties that most (non-idealised) citizens could reasonably be expected to meet.

An example baseline duty of civility can be constructed from Rawls's version of the content of public reason. It might include a willingness to listen to and take seriously the

reasons provided by one's opponent and refraining from general uncivil (in the ordinary sense of the word) behaviour (Rawls 1993: 217). The requirements of the greater duty, on the other hand, exceeds those of the baseline duty. Without the content specified, it is only possible to define it in relation to the baseline duty; the duties are heightened:

> **The heightened duty of civility:** a more demanding set of civility requirements than the baseline duty of civility.

The argument for differentiating between a baseline and heightened duty of civility is negative, it is about determining where it would be particularly troubling to not have a strong public justification. Traditional views of the duty of civility identify different areas where public reason should or should not apply, leaving aside what the laws might lead to. In assigning the same justificatory demands to a person interfering and a person being interfered with, the traditional ways of conceptualising public reason might miss something fundamentally important. The interference view moves away from this idea, following traditional liberal accounts of non-interference and a fundamental presumption in favour of freedom (for instance, Mill's harm principle; Kant, 1996: 449). Even though the comprehensive interference view recognises that there are legitimate grounds for interference – just as other views of public reason do – it still serves as a way of bringing public reason closer to Millian liberalism. It acknowledges, with Mill, that we have reason for being wary of interference as such (Rawls, 1981: 5-6, in a clarificatory remark disagrees, he does not give liberty 'as such' special priority – in his theory of justice there is a presumption in favour only of a specific list of *basic liberties*, discussed under III).

The implications of a serious commitment to a non-interference view are profound for a public reason theory. The duties of civility would differ depending on where one is

positioned in a single debate. To illustrate this, imagine a rule that restricts people's options. At a given time the rule might be either *in place* or *not in place*. Depending on whether it is in place or not, there are two possible bills in relation to the rule:

> **LI:** If the rule is in place, it is possible to propose a bill that *lifts* it.
> **IM:** If the rule is not in place, it is possible to propose a bill that *implements* it.

To simplify, suppose that citizens might either be against or in favour of LI and IM. Someone in favour of LI would also be against IM, and vice versa (this is a reasonable assumption, yet perhaps not entirely correct – there might be people who are committed to the status quo regardless of what it is). The comprehensive interference view states that the duty of civility should be greater for laws that restrict peoples' options. But as is apparent, only one outcome of LI and IM respectively would restrict peoples' options. If LI was passed, peoples' options would increase. If not, they would still be restricted. The opposite is true for IM. As discussed, the different kinds of laws, and the differences between rejecting and supporting a law do not matter for traditional views of public reason liberalism; citizens ought not 'support (or reject) any coercive law for which she enjoys only a religious justification' (Eberle, 2002: 14). The comprehensive interference view rejects this claim. Instead of having the same duties, they would be assigned thus:

	Implement	Lift
Against	Baseline	Heightened
For	Heightened	Baseline

Now, let us return to Betty and Alan. Betty has realised that it is more effective to work through the legal system to stop Alan from splitting pebbles. Imagine two different scenarios:

> **IM*** It is currently legal to split pebbles. Betty advocates a bill that makes the practice illegal. Alan argues against the bill.
> **LI*** It is currently illegal to split pebbles. Alan advocates a bill making the restriction void. Betty argues against the bill.

The thought experiment could thereby be incorporated into the general framework:

	Ban splitting pebbles	Legalise splitting pebbles
Against	(Alan) Baseline	(Betty) Heightened
For	(Betty) Heightened	(Alan) Baseline

Alan and Betty would not be under the same duty of civility. Since Betty is instigating interference (IM*), or advocating its prolonging (not-LI*), she would have greater duties of civility than Alan. Alan would only be required to meet the baseline duty of civility in the two different debates. Betty, on the other hand would be expected to meet a more extensive civility standard. It could be argued that Gaus (2009, 29-31; see also Gaus and Vallier, 2009) develops and defends a version of the view. Gaus endorses the idea of an asymmetric duty of civility for legislators. They are permitted to advocate and vote *against* any policy for only religious reasons, whilst public reasons are required for implementing (any) law. Yet Gaus's public reason is not Rawlsian, his convergence

view of the concept entails that legislators would also be permitted to use religious reasoning *in favour* of all policies if they sincerely believe that there also are other reasons that citizens might reasonably accept. Citizens, on the other hand, are never covered by the duty of civility. They are allowed to advocate any policy – even coercive or interfering ones – with religious reasons, including explicitly religious policies for religious reasons. They are permitted to use religious reasons even when they believe that the law is not publicly justified (Gaus, 2009: 25-9). Thus, for Gaus, there would be no special obligation for Betty to justify her interference with public reasons. Gaus (2011: 341-2) also follows Stanley Benn in establishing that the burden of justification is with the interferer, using the presumption of non-interference as a way of grounding a set of individual rights. But due to Gaus's rejection of the duty of civility, it does not serve as a way of differentiating the duties for individual citizens positioned on different sides of a debate. Instead, he holds that Alan would have no duty at all to justify what kind of policy he would prefer. While this is trivially true, it is an unlikely position in actual politics. Alan might not have a *duty* to justify why he would not want to continue splitting pebbles, but it might be prudent to do so if he would want to stop a law from being enforced. This would force him out to the public space, where he would *need* to justify his preferred policy. Despite this, as should be evident, the asymmetric property of the interference view owes a significant debt to Gaus's work on public reason.

III Refining the interference view

The comprehensive interference view serves as a preliminary basis for dividing laws as more or less in need of a thorough justification. But it would be wrong to assume that any instance of interference would be equally troubling. Charles Taylor has extensively developed the idea that some kinds of interference have nothing to do with freedom, and

are thereby not something we should try to avoid. His most notable example is installing an extra traffic light on a street. This would increase the number of interferences on that street since cars would be stopped more often. But according to Taylor, this should not be understood as a restriction of people's freedom, as a trade-off between liberty and some other value: 'it is not just a matter of our having made a trade-off, and considered that a small loss of liberty was worth fewer traffic accidents, or less danger for the children … we are reluctant to speak here of a loss of liberty at all' (Taylor, 2006: 155).

While I will avoid the question of whether a traffic light is a restriction of freedom or not, Taylor's example effectively demonstrates that all instances of interference are not of equal concern (regardless of their relation to freedom). There are several other such cases (for an overview, see for instance Carter, Kramer, and Steiner, 2007) where it is questionable if non-interference should be as valuable as in other cases. It thereby seems desirable to find a way of separating these 'trivial' instances of interference from 'non-trivial' instances to determine where it would be particularly troubling to implement interfering laws without public reasons. Since public reason is a demanding norm for political reasoning, it is important to limit the demands only to these non-trivial cases, to make complying with the norm only as difficult as it needs to be. To do so, one would have to identify an area as uncontroversially 'non-trivial', a distinctively important area, encompassing only issues of special importance.

Within liberal theory, there are standard maxims for defining classes of choices that are distinctively important. One such area concerns central choices in the personal sphere, henceforth referred to as paradigmatically fundamental choices (PFCs):

> **PFC:** a choice over something with great significance for a person's conception of the good, broadly defined (including sense of self, culture, and religious or metaphysical worldview).

The PFCs are related to a traditional concern for liberal theories, preserving freedom of the person, conscience, and belief (Habermas, 1995: 127). The definition is deliberately vague to allow it to fit with most liberal theories' conceptions of the personal sphere. But from a liberal point of view, it seems plausible that an interference in this area would be more worrying than the interferences created by, say, traffic lights. Working from this, the comprehensive interference view can be narrowed down:

> **The limited interference view:** public reason requirements are greater when implementing laws that objectively interfere with PFCs.

Now, going back to the initial example we have grounds for assigning greater justificatory expectations on the law making it illegal to be in the forest after dark. Recall that the nature-loving meditators see it as a fundamental part of their identity to be in the forest at night. Spending their nights in the forest is what gives their lives value. Passing L_2 removes this PFC from their set of options. The same is not true for L_1. If the city council would decide only to spend money on making the forest safer, no PFCs are restricted, even if public funds are drawn for the project. Naturally, it might be that there are plausible public reasons in favour of L_1 if the dangers are great enough (analogous to how there might be public reasons for banning recreational drug use, see for instance De Marneffe, 1990: 259-60). But to a liberal, it should be more disconcerting to interfere in this way in the personal sphere than to not do so, ceteris paribus. The limited liberal interference view ensures that instances of such interference are at least justified with reasons that the person interfered with could be reasonably expected to endorse.

It might be objected that the limited interference view does not cover some cases that also should warrant special protection. Suppose that a law is being advocated that would significantly limit a person's 'public' expressions, without directly affecting her PFCs. Working from the presumption in favour of liberty, it seems plausible that this case, too, should need a more demanding justification. Henceforth, I will call these kinds of freedoms second-order liberties. Traditionally, they are about a person i being able to freely develop and express her views, form and join associations, hold meetings, and so on. The justification for the need for special protection of second-order liberties vary substantially in liberal theory. There are perfectionist justifications, the freedoms might be necessary to develop the skills necessary for arriving at a conception of the good, for being able to make well-reasoned PFCs. They might be essential for things such as character development and moral-political education (see for instance Humboldt, 1903 vol. 1; also in Mill, 1963, vol. 18: 267). It is also possible to see them, with Mill (2010: ch. 2), as necessary for tracking the truth or ensuring that truths do not become dogmas (for other justifications, see for instance Waldron, 2002). A more extensive interference view can be agnostic to the justifications for these liberties, but relying solely on perfectionist assumptions would be troubling in a broader political liberalism context. The claims might, however, be supplemented with explicitly 'political' justifications such as Rawls's view that they are necessary for protecting first-order liberties (1999a: 220; 1981: 13; see also Habermas, 1995: 127) or Larmore's theory of rights (1996; 1999). Regardless of their basis, these liberties are often an integral part of liberal theories, political or perfectionist. Call these paradigmatically fundamental second-order liberties (PFLs). The area made up of PFCs and PFLs, I will henceforth refer to as

paradigmatic cases. With these definitions in place, a final version of the interference view can thereby be outlined:

> **The liberal interference view:** public reason requirements are greater when implementing laws that interfere in paradigmatic cases.

While the comprehensive interference view has a sound intuitive basis, the difficulties in attributing value to non-interference makes it implausible as a guideline for actual political discussions. The liberal interference view is a pragmatic solution to real-world feasibility constraints. But it also has strong theoretical foundations. On the interference view, an interfering bill is more troubling than a non-interfering. The liberal interference view acknowledges that an interfering law in paradigmatic cases is more troubling than an interfering law in trivial (non-paradigmatic) cases. Hence, it is possible to rank laws:

> Non-interfering < interfering in trivial cases < interfering in paradigmatic cases.

A possible objection is that the interference view should reflect this when assigning duties. However, mapping such detailed duties would require substantive public reason content. Focusing only on PFCs and PFLs is a crude way of avoiding grey zone cases. Given the high demands, cognitive and other, of public reason it is desirable to ensure that it is a non-ideal requirement only in cases of special concern.

To illustrate what the area that encompasses PFCs and PFLs consists of one might imagine the set of choices covered by the set of personal liberties traditionally identified as of special importance in liberal theories (see for instance Rawls, 1981: 5; for an overview, see Pettit, 2008). This area will significantly differ depending on what set of rights and liberties that are outlined in the liberal theory. Most justificatory liberalisms

should reasonably be expected to accept having an area of special concern that contains PFCs and PFLs.

This, it might seem, leads the interference view back to the Rawlsian narrow view of public reason. While there is some truth to this claim, it is – on the whole – mistaken. As discussed, while Rawls assigns special importance to a predetermined list of basic rights, the liberal interference view does not, it only recognises that there *will* be paradigmatic cases, not specifying which these cases are. This strategy also makes the view less susceptible to Habermas' (1995: 128) democratic critique of Rawlsian political liberalism. Habermas points out that the Rawlsian list of basic liberties is determined prior to actual deliberation, 'the process of realizing the system of basic rights cannot be assured on an ongoing basis'. The citizens would thereby see the process as already completed, contrary to what 'the historical circumstances demand'. The liberal interference view grants that the listing and application of the basic liberties must be ongoing processes, the content of the paradigmatic cases will be subjected to political debate and political decision-making. But contrary to Rawls, it makes clear that the burden of proof lies with the person wanting to restrict the liberties. If the Rawlsian set of liberties is questioned and debated, something that is to be expected in actual politics, the symmetric distribution of the duties of civility means that someone wanting to restrict (for instance) people's freedom of association would be under the same duty as the person arguing against it.

Presumably, as idealisation increases it easier to meet the demands (cognitive and other) of the duty of civility. Hence, more cases could be covered by heightened civility requirements, beginning with interference in trivial cases since the norm would not be as

difficult to comply with. Under heavy idealisation, Quong's broad view thereby might be feasible. This means that as idealisation increase, the demands of the liberal interference view and the broad view converge. However, this point may lie beyond Quong's own level of idealisation.

The liberal interference view thereby could work alongside broad views of public reason. It already retains Quong's insight that the discussion over all rules should be covered by some duty of civility. The liberal interference view is deliberately elastic to accommodate most broad views, remaining agnostic to their content, and the exact scope of the view varies depending on what cases are considered paradigmatic. Next, I will apply the liberal interference view to a real-world case to demonstrate that it alleviates some concerns traditionally brought against the duty of civility.

IV The French ban on face covering

It has been objected that the duty of civility should not apply at all in real-world political debates, and that difficulties arising here should lead us to reject public reason altogether. The main idea is that liberal restraint might lead to a vacuum since people will want to listen to comprehensive reasons. The vacuum could then be filled by unreasonable people exploiting and manipulating public discourse by introducing dishonest or harmful comprehensive reasons to gain political power. As Boettcher (2012: 175) puts it: 'why should one adhere to these requirements when others refuse to do so?' Michael Sandel (1994: 1793-4) refers to this as the 'political cost' of public reason. Where liberals use civil discourse and neutral arguments, 'fundamentalists rush in'. Political liberalism creates a 'moral void that opens the way for the intolerant and the trivial and other misguided moralisms',

Yet, this worry seems to presuppose that someone committed to public reason does not engage in metaphysical reasoning at all. Thus, if we reject the wide view of public reason it should have some force (assuming that Sandel is empirically correct). But when accepting the idea that comprehensive reasons are acceptable if political reasons are provided 'in due course' it should not be as worrying. When the intolerant charge their moralisms against some essential part of the liberal society it is reasonable to assume that it is possible to use several kinds of arguments against it, both comprehensive and public.

But there are other problems with the duty of civility when faced with non-ideal realities. Rawls briefly discusses cases where religious views (supported by political reasons) are defeated. He argues that a Roman Catholic might oppose a pro-abortion law but still 'recognize the right as belonging to legitimate law enacted in accordance with legitimate political institutions and public reason' (Rawls, 1997: 798-9). It should not be too worrying since Catholics 'need not themselves exercise the right to abortion'. While this is true for cases such as abortion, it is not for any regulation going against someone's religious practices. Rawls fails to address the inevitable follow-up question; what about laws where citizens *do* need to alter their way of life to oblige with them?

This is related to another, powerful, critique against public reason. Even if religious citizens repel legislation targeted at them there is still a possible harm. Critics such as Carter (1993), Murphy (1998), and Yates (2007) have pointed to the effect on the identities of citizens of faith. These citizens, the critics argue, cannot debate as their full selves since the advocates of public reason fail to recognise how central to one's identity

religion often is, they must bring a 'dualism' to the public forum. Perry (1988: 181-2), for instance, argues that 'one's basic moral/religious convictions are (partly) self-constitutive and are therefore a principal ground … of political deliberation and choice. To "bracket" such convictions is therefore to bracket – to annihilate – essential aspects of one's very self.' There are thereby (at least) two possible dangers with traditional views of public reason: i) the ways of life of religious minorities might be particularly vulnerable, and ii) the identities of citizens of faith might be particularly vulnerable. To show how the liberal interference view works to mitigate these problems, and to demonstrate how it can be applied to a real-world case, I will discuss it in relation to the French Burqa Ban of 2010 (*Loi interdisant la dissimulation du visage dans l'espace public,* 2010-1192).

The niqab case arguably is messy in some dimensions, including religious, patriarchal, authentic self-expression or other 'positive' forms of freedom (for a discussion, see for instance Gustavsson, 2011: 11), but it is not in relation to interference. If people are freely choosing to wear the niqab, a ban will be interfering and decrease the number of options available. To wear the niqab is probably also a PFC on most readings (it might even be argued that it is in the intersection of a PFC and PFL with freedom of expression being at stake). Wearers typically see it as a fundamental part of their identity, culture, or religion (Østergaard et al. 2014; Brems, 2014; see also Clarke, 2014; Koyuncu-Lorasdagı, 2009 Shira and Mishra, 2010;).

Assume that there are X choices of how to get dressed that an average person will be interfered with when they make, choices that are outside the realm of possible choices. These are choices that are 'off the menu', because conventions, norms, and laws make it

so (examples include going out wearing only underwear or with controversial political symbols). Assume further that the choice of wearing a niqab is among the choices in not-X at T_1, before a possible ban. I call this the *average assumption* (the framework and terminology was originally developed in my *Problems with Banning Niqabs in the Name of Freedom*, GV4B7).

	Average person
Interference at T_1	X
Interference at T_2	X+1

A ban at T_2 would thereby increase the instances of interference. Instead of there being X 'interference choices' there would be X+1 since covering the face is added to the list. Someone deciding to wear the niqab despite the law will be interfered with and possibly fined. This is a very real possibility, over the law's first five years 1 623 police stops had been made, with 1 546 fines given out (McPartland, 2015).

Under the average assumption, the liberal interference view entails that in France in 2009 (T_1), before the ban was implemented, those who advocated a ban should have been under heightened duties of civility. At the same time, those arguing against the bill should only have been under baseline duties. Now that the ban is in place (T_2), those advocating a bill lifting it would have a baseline duty of civility whilst those arguing against it would have a heightened duty.

	T_1 Implement burqa ban	T_2 Lift burqa ban
Against	Baseline	Heightened
For	Heightened	Baseline

This means that religious citizens, when defending their comprehensive practice, would not have to 'split themselves' in the public sphere. Instead, they would be free to oppose the law by referencing only non-public reasons. It also means that they would not be interfered with for reasons that they should not be reasonably expected to endorse, protecting against both kinds of vulnerabilities. This is not what happened in France. In the debates leading up to the Burqa Ban, it was made explicit that it targeted Muslims specifically (van der Schyff and Overbeeke, 2011: 425; Leane, 2011: 1033-4; Davis, 2011: 136-7; see also Parvez, 2011; Joppke and Torpey, 2013), and it was mainly justified with comprehensive doctrines (often French Republicanism, see for instance Daly 2012; Laborde 2012; Baehr and Gordon, 2013; for a different (still comprehensive) interpretation see Gustavsson, 2014). The final wording of the law, however, was devoid of any such references. Instead it was said to protect peace and security, arguably two 'political' values (van der Schyff and Overbeeke, 2011: 426, see also Arneson, 2003).

If niqab wearers are freely choosing to wear the garment, the liberal interference view would ensure that there is a greater threshold for unwanted interference, and that the identities of these citizens are protected since they do not need to be split it in the public

sphere (an argument similar to the latter is mentioned in Gaus, 2009: 31). However, the average assumption might be challenged – with interesting implications for the liberal interference view. Suppose that people are *not* freely choosing to wear the niqab, they are forced by their families to do so (the empirics of this statement are, at best, questionable – studies have found that 'there is no evidence, in either France or Belgium, of pressure from husbands or relatives to wear a face veil; while there is recorded pressure from husbands and relatives to not wear a face veil', Brems, 2014: 545; see also Clarke, 2014; Shira and Mishra, 2010. Yet, some are advancing this argument despite this, see for instance Fourest, 2005; 72; Sander, 2004; Volz, 2003). Perhaps niqab wearers have fewer choices (Y) than average persons, all choices involving a niqab. If so, a ban against the niqab would *increase* the number of choices available to *some* women. I will call this *the diverse interference assumption*.

	Average person	Niqab wearer
Interference at T_1	X	Y (<X)
Interference at T_2	X+1	~X+1

If the diverse interference assumption is true, what would it entail for the interference view? On the face of it, it seems as if the duties of those arguing in favour of a ban should revert to the baseline. On this view, it would be argued, the law does not interfere with niqab wearers since they are forced to wear it in the first place. Hence, those arguing in favour of a ban against the niqab would only be under a baseline duty of

civility since the law (would it be implemented) does not interfere with the women wearing niqab; the choice to do so was not theirs to begin with. One possible objection to this is that in the West, there are currently very few people wearing the niqab (see for instance Østergaard et al. 2014). This means, one could argue, that even on the diverse interference assumption it would be very difficult to claim that the aggregate number of interferences would increase with a ban. This is because the decreased interference on the minority would be matched by massively increased instances of interference for the average person, the number of interference choices would increase from X to X+1. Yet, since the liberal interference view only is concerned with paradigmatically fundamental choices it opens the possibility of countering that for people not interested in wearing the niqab it is not a PFC, not making it valuable to keep it 'on the menu'.

But, recall Berlin's definition of freedom as non-interference. For him, choices that are undesirable should too be given weight. It thereby seems reasonable to assume that the liberal interference view should treat cases that have the *potential* to be paradigmatic as in need of special justificatory requirements. Clearly defining this potential must be the subject of future theoretical work. It is also possible to imagine a scenario where the choice to implement or not implement a law would lead to equal instances of interference. The most plausible distribution of duties here would be that both sides of the debate should be assigned heightened civility requirements, even though fully working out these implications will have to be subject for further interesting research.

V Conclusion

What I have outlined here is a first attempt to present a coherent proposal for applying the duty of civility to non-ideal conditions. I have argued that there are limitations to the

broad and the narrow view of public reason when applied to real-world cases. My solution has been to provide an alternative view suitable for less-than ideal conditions: the liberal interference view.

It might be the case that the need for additional justificatory requirements should extend to more laws as the level of idealisation increases. Citizens with better cognitive capacity, higher norm compliance, and a less diverse set of ideas might be expected to meet the demands of public reason regardless of what law or rule they are debating. On this view, the gaps between the broad view, the baseline and heightened duties of civility opens as conditions are becoming less-than ideal. The theory could thereby work as a supplement to the broad view of public reason, providing a fragmented answer to the question of how public reason should be applied in the real world.

The implications of the liberal interference view have yet to be worked out in detail. There are interesting challenges in developing the view further. As the niqab case shows, the complexities of the real-world will call for a detailed analysis of how the basic assumptions should be applied on a case-by-case basis. The difficulties, however, should not deter us from further examining what role the duty of civility might play in our everyday lives. They only show the necessity of further philosophical work in the area.

VI Bibliography

Baehr, P., and Gordon, D. (2013): From the headscarf to the burqa: the role of social theorists in shaping laws against the veil. *Economy and Society*, vol. 42(2), pp. 249–280.

Barry, B. (1995): *Justice as Impartiality*. Oxford: Oxford University Press.

Berlin, I. (1997): Freedom and determinism. In: *The Proper Study of Mankind*. London: Vintage books.

Berlin, I. (2006): Two concepts of liberty. Reprinted in: Goodin, R., and Pettit, P. (eds.). *Contemporary Political Philosophy: An Anthology*. Oxford: Blackwell Publishing.

Berlin, I. (2008): Introduction. In Hardy, H. (ed.). *Liberty*. Oxford: Oxford University Press.

Benhabib, S. (2002): *The Claims of Culture: Equality and Diversity in the Global Era*, Princeton: Princeton University Press.

Benn, S. (1988): *A Theory of Freedom*. New York: Cambridge University Press.

Boettcher, J.W. (2012): The moral status of public reason. *Journal of Political Philosophy*, 20(2), pp. 156–177.

Bohman, J. (2003): Deliberative toleration. *Political Theory*, 31(3): 757–779.

Brems, E. (2014): Face veil bans in the European Court of Human Rights: The importance of empirical finding. *Journal of Law and Policy*, vol. 22(2), pp. 517–551

Carter, I., Kramer, M. H., and Steiner, H. (eds.) (2007): *Freedom: A Philosophical Anthology* Oxford: Blackwell.

Carter, S. (1993): *The Culture of Disbelief*. New York: Basic Books.

Clarke, L. (2013): *Women in niqab speak: A study of the niqab in Canada*. Ganoque: Canadian Council of Muslim Women.

Daly, E. (2012): Laïcité, gender equality and the politics of non-domination. *European Journal of Political Theory*, vol. 11(3), pp. 292–323.

Davis, B. (2011): Lifting the veil: France's new crusade. *Boston College International and Comparative Law Review*, vol. 34(1), pp. 117–145.

De Marneffe, P. (1990): Liberalism, liberty, and neutrality. *Philosophy and Public Affairs*, vol. 19(3), pp. 253–74.

Eberle, C. (2002): *Religious Conviction in Liberal Politics*. New York: Cambridge University Press.

Fourest, C. (2005): *La tentation obscurantiste*. Paris: Grasset.

Galston, W. (1982): Moral personality and liberal theory: John Rawls's Dewey Lectures. *Political Theory*, vol. 10(4), pp. 492–519.

Gaus, G. (2009): The place of religious belief in Public Reason Liberalism. In: *Multiculturalism and Moral Conflict*, Dimova-Cookson, M., and Stirk, P. (eds.). New York: Routledge, pp. 19–37.

Gaus, G. (2011): *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World*. Cambridge: Cambridge University Press.

Gaus, G., and Vallier, K. (2009): The roles of religious conviction in a publicly justified polity: The implications of convergence, asymmetry, and political institutions. *Philosophy & Social Criticism*, 35(1): 51–76.

Gustavsson, G. (2011): *Treacherous Liberties: Isaiah Berlin's Theory of Positive and Negative Freedom in Contemporary Political Culture*. Uppsala: Acta Universitatis Upsaliensis.

Gustavsson, G. (2014): The psychological dangers of positive liberty: Reconstructing a neglected undercurrent in Isaiah Berlin's 'Two Concepts of Liberty". *The Review of Politics*, 76(2), pp. 267–291.

Habermas, J. (1995): Reconciliation through the public use of reason: Remarks on John Rawls's Political Liberalism. *The Journal of Philosophy*, vol. 92(3), pp. 109–31.

Hamlin, A., and Stemplowska, Z. (2012): Theory, ideal theory and the theory of ideals. *Political Studies Review*, vol. 10, pp. 48–62.

Humboldt, W. (1903): *Gesammelte Schriften*, edited by Königlich Preussische, Akademie der Wissen-schaften, 17 vols., Berlin: Behr.

Joppke, C. and Torpey, J. (2013): *Legal Integration of Islam: A Transatlantic Comparison*. Cumberland: Harvard University Press.

Kant, I. (1996): The Metaphysics of Morals., In: *Immanuel Kant Practical Philosophy*, Gregor, M. (trans. and ed.). New York: Cambridge University Press.

Koyuncu-Lorasdagı, B. (2009): The headscarf and resistance identitybuilding: a case study on headscarf wearing in Amsterdam. *Women's Studies International Forum*, vol. 32, pp. 453–462.

Kramer, M. (2017): *Liberalism with Excellence*. Oxford: Oxford University Press.

Laborde, C. (2012): State paternalism and religious dress code. *International Journal of Constitutional Law*, vol. 10(2), pp. 398–410.

Laborde, C. (2013): Political liberalism and religion: On separation and establishment. *Journal of political philosophy*, vol. 21, pp. 67–86.

Larmore, C. (1996): *The Morals of Modernity*. Cambridge: Cambridge University Press.

Larmore, C. (1999): The Moral Basis of Political Liberalism. *The Journal of Philosophy*, vol. 96(12), pp. 599–625.

Leane, G. (2011): Rights of ethnic minorities in liberal democracies: Has France gone too far in banning Muslim women from wearing the burka? *Human rights quarterly*, vol. 33(4), pp. 1032–1061.

Locke, J. (1960): *Two Treatises of Government*. *A Critical Edition with an Introduction and Apparatus Criticus*. Laslett, P. (ed.). Cambridge: Cambridge University Press.

McPartland, B. (2015): Burqa ban five years on – 'We created a monster'. *The Local France*. 12 Oct. [Available from]: http://www.thelocal.fr. [accessed]: 2017-08-11.

Mill, J. S. (1963): *Collected Works of John Stuart Mill*. Robson, J. M. (ed.). Toronto: University of Toronto Press.

Mill, J.S. (1991): *On Liberty and other essays*. Gray, J. (ed.). New York: Oxford University Press.

Narveson, J. (1988): *The Libertarian Idea*. Philadelphia: Temple University Press.

Nagel, T. (1991): *Equality and Partiality*. New York: Oxford University Press.

Nozick, R. (1974): *Anarchy, State, and Utopia*. New York: Basic Books.

Murphy, A. (1998): Rawls and the shrinking liberty of conscience. *The Review of Politics*, vol. 60(2), pp. 269–76.

Nussbaum, M. (2011): Perfectionist liberalism and political liberalism. *Philosophy and Public Affairs*, vol. 39(1), pp. 3–45.

Parvez, Z.F. (2011): Debating the burqa in France: The antipolitics of Islamic revival. *Qualitative Sociology*, vol. 34(2), pp. 287–312.

Perry, J. (1993): Religious morality and political choice: Further thoughts and second thoughts on Love and Power. *San Diego Law Review*, vol. 30, pp. 703–727.

Perry, M. (1988): *Morality, Politics, and Law: A Bicentennial Essay*. New York: Oxford University Press.

Pettit, P. (1997): *Republicanism: A Theory of Freedom and Government*. Oxford: Clarendon Press.

Pettit, P. (2008): The Basic Liberties. In: Kramer, M. Grant, C. Colburn, B. Hatzistavrou, A. (eds.). *The Legacy of H.L.A. Hart: Legal, Political, and Moral Philosophy*. New York: Oxford University Press.

Pettit, P. (2011): The instability of freedom as non-interference. The case of Isaiah Berlin. *Ethics*, vol. 121, pp. 693–716.

Pollack, D., Müller, O., and Pickel, G. (2016): *The Social Significance of Religion in the Enlarged Europe: Secularization, Individualization and Pluralization.* New York: Routledge.

Quong, J. (2004): The scope of public reason. *Political Studies*, vol. 52(2), pp. 233–250.

Quong, J. (2011): *Liberalism without Perfection*. New York: Oxford University Press.

Quong, J. (2013): Public reason. *The Stanford Encyclopedia of Philosophy* (Summer 2013 Edition), Zalta, E. (ed.), [available from]: https://plato.stanford.edu/archives/sum2013/entries/public-reason.

Rawls, J. (1971): *A Theory of Justice*. Cambridge, MA: Belknap.

Rawls, J. (1981): *The Basic Liberties and their Priority*. The Tanner Lectures on Human Values. [available from]: http://tannerlectures.utah.edu/_documents/a-to-z/r/rawls82.pdf

Rawls, J. (1985): Justice as Fairness: Political not metaphysical. *Philosophy and Public Affairs*, vol. 14(3), pp. 223–251.

Rawls, J. (1987): The idea of an overlapping consensus. *Oxford Journal of Legal Studies*, vol. 7(1), pp. 1–25

Rawls, J. (1993): *Political Liberalism*. New York: Columbia University Press.

Rawls, J. (1997): The idea of public reason revisited. *The University of Chicago Law Review*, vol. 64(3), pp. 765–807.

Rawls, J. (1999a). *A Theory of Justice*, revised edition. Cambridge, MA: Harvard University Press.

Rawls, J. (1999b): *Collected Papers*. S. Freeman (ed.), Cambridge, MA: Harvard University Press.

Rawls, J. (2001): *Justice as Fairness: A Restatement*, Cambridge, MA: Harvard University Press.

Reidy, D. (2000): Rawls's wide view of public reason: not wide enough. *Res Publica*, vol. 6(1), pp. 49–72.

Robbins, T., and Anthony, D. (2016): *In Gods We Trust: New Patterns of Religious Pluralism in America*. 2nd ed. New York: Routledge.

Sandel, M. (1994): Political Liberalism. *Harvard Law Review*, vol. 107, pp. 1765–1794.

Sander, H. (2004) *Nichtgläubige und Gläubige, Kopftücher*. [available from]: http://www.isioma.net/sds00204.html [accessed]: 2017-08-08.

Scanlon, T. M. (2003): Rawls on justification. In Freeman, S. (ed.), *The Cambridge Companion to Rawls*. Cambridge: Cambridge University Press, pp. 139–67.

Schwartzman, M. (2011): The sincerity of public reason. *Journal of Political Philosophy*, vol. 19(4), pp. 375–398.

Shira and Mishra (2010): Young Muslim women on the face veil (*niqab)*: A tool of resistance in Europe but rejected in the United States. *International Journal of Cultural Studies*, vol. 13(1), pp. 43–62.

Taylor, C. (2006): What's wrong with negative freedom? In: Carter, I., Kramer, M., and Steiner, H. (eds.). *Freedom: A Philosophical Anthology*. Oxford: Blackwell Publishing.

Valentini, L. (2009): On the apparent paradox of ideal theory. *Journal of Political Philosophy*, vol. 17(3), pp. 332–355.

Vallier, K. (2014): *Liberal Politics and Public Faith. Beyond Separation*. New York: Routledge.

van der Schyff, G. and Overbeeke, A. (2011): Exercising religious freedom in the public space: A comparative and European Convention analysis of general burqa bans. *European Constitutional Law Review*, vol. 7, pp. 424–452.

Volz, R. (2003): Zwangsheirat in Deutschland-eine tolerierte Menschenrechtsverletzung Beiträge zur feministischen theorie und praxis. *Wenn Heimat global wird*, vol. 63, pp. 199–202.

Waldron, J. (2002): *God, Locke and Equality: Christian Foundations of Locke's Political Thought*. Cambridge: Cambridge University Press.

Wilkins-Laflamme, S. (2016): The remaining core: a fresh look at religiosity trends in Great Britain. *The British Journal of Sociology*, vol. 67(4), pp. 632–654.

Yates, M. (2007): Rawls and Habermas on religion in the public sphere. *Philosophy & Social Criticism*, vol. 33 (7), pp. 880–891.

Østergaard, K. Warburg, M. Johansen, S. (2014): Niqabis in Denmark: when politicians ask for a qualitative and quantitative profile of a very small and elusive subculture. In: Brems, E. (ed.). *The experience of face veil wearers in Europe and the Law*. Cambridge: Cambridge University Press.