Censorship, Condemnation, and Understanding

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Abstract. Some authors perceive a close connection between censorship and condemnation. They claim that censorship condemns the lifestyle from which the censored speech arises. Joseph Raz argues that condemnation is part of censorship's social meaning. Ronald Dworkin argues that censorship is often, as best we can tell, motivated by condemnation. These connections between censorship and condemnation reinforce the case for a robust free speech principle. Why? Because if it's wrong to condemn a good lifestyle, and if some harmful speech arises out of good lifestyles, then there's some harmful speech that it's nevertheless wrong to censor. I use Leslie Green's account of *understanding*, and the relationship between understanding and toleration, to challenge this reasoning. I argue that the effort to understand a lifestyle can mitigate or nullify the condemnatory potential of censorship that restricts bad speech arising out of that lifestyle.

1. Introduction

This paper presents an original take on a perennial issue in free speech theory, concerning the link between censorship and condemnation.[1] There are many cases in which authorities have *pro tanto* good reasons to censor speech, and have

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[1] Throughout I will use the term *censorship* and its cognates in a loose and capacious sense, as a way of referring to any deliberate suppression or regulation of speech, whether under the auspices of criminal or private law, or via the regulatory policies of public institutions. For the purposes of my argument nothing much hinges on the issue of whether *censorship* also encompasses restrictions carried out by private speech platforms, e.g. media companies or private universities. So I will set that issue aside.

to judge whether this is enough to override the right to free speech.[2] Among the factors to be weighed in these judgements, one is censorship's *condemnatory potential*. This is liable to be overlooked, because the 'official' aim and method of many speech restrictions – aim: prevent harm, method: deter/prevent speech – don't seem to require any condemnation.[3] But despite appearances, so some authors say, censorship really does condemn. It condemns the lifestyle of which the censored speech is a part. Joseph Raz says that censorship has a condemnatory social meaning, regardless of the justifying intentions behind it. And Ronald Dworkin says that the justifying intentions behind censorship are often opaque, and that we have some reason to ascribe condemnatory motives to censorship irrespective of the official justifications that the censors put forward, in any given case.

I think there's something worth taking seriously in Raz's and Dworkin's anxieties about condemnation, especially the social-psychological insights that they appeal to, vis-à-vis social meanings and opaque motives. But I will argue that we need not accept the hard-line pro-free speech conclusions that these authors favour. I'm more optimistic than Raz and Dworkin are about government's ability to utilise other policies to mitigate censorship's condemnatory potential. To this end I draw on Leslie Green's account of understanding, which he defines as a distinctive ethos of attention and concern to accompany practices of tolerance. I suggest an alternative way to address problems of unintended or unacknowledged condemnation (an alternative to the *laissez-faire* stance that Dworkin and Raz favour), which is to introduce auxiliary policies that institutionalise an ethos of understanding, and thereby counteract censorship's condemnatory power.

The paper has a straightforward structure. In §§2-4 I present Raz's and Dworkin's views about censorship's condemnatory power. In §§5-7 I outline Green's account of understanding, and expand on my argument above, about how an institutionalised ethos of understanding counteracts censorship's condemnatory power. I

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[2] Granted, some authors insist that we mustn't treat free speech rights as something to be balanced against other goods, goals, or rights (e.g. Nagel 1995, Heinze 2016). But unless one is willing to treat speech rights as *infinitely* stringent – an implausibly extreme stance – one must allow that there can be a preponderance of pro-censorship factors that override the right to free speech, in certain cases. That's all I'm committing myself to. I'm not saying (e.g.) that Nagel is wrong to regard the right to free speech as a source of agent-relative reasons to refrain from censorship, as opposed to it reflecting agent-neutral reasons to try to realise some ideal or goal. I'm simply allowing, as Nagel himself does, that the weight of those agent-relative reasons can sometimes, all-things-considered, be outweighed by other moral or political factors.

[3] Is harm-prevention *always* censorship's aim? Admittedly, no. But for present purposes we can just focus on the cases where it is. In other cases, where condemnation is the *official* aim, we are unlikely to overlook censorship's condemnatory power. And if we think condemnation is unjust, we have an obvious reason to worry about such censorship. (Although in some cases, where the lifestyle out of which the censored speech arises *warrants* condemnation, there may be little reason to worry; for discussion see de Silva and Simpson 2023). In any case, the problem that I am focusing on in what follows arises in cases where censorship's aim is not condemnation – e.g. where censorship merely aims at harm-prevention – but where, by hypothesis, censorship has condemnatory potential irrespective of its non-condemnatory purposes.

finish in §8 with some remarks on what policies of understanding might look like in practice.

2. Bad speech and good lifestyles

Let's begin with an initial observation/assumption (one which frames Raz's account in "Free expression and personal identification"): bad speech can be part of a good lifestyle. The concept of a *good lifestyle* at work here is meant to be broad. It includes any lifestyle that "should not be condemned by society through its official organs" (Raz 1994: 161). As for *bad speech*, we can just define this as speech that's harmful enough to be liable to legal restriction, in principle, even given a background commitment to free speech.[4]

Raz's main example of bad speech being part of a good lifestyle is religious apologism. There are some *pro tanto* good reasons to restrict this speech, e.g. that it encourages superstition. But at the same time this form of speech is an integral element of many religious communities, and generally speaking, those communities provide good lifestyles. (Of course there are exceptions, but it's easy to overestimate their prevalence.) When a government restricts religious apologism, it "condemns, and impedes the existence of, good ways of life of which [those] acts of bad speech are parts" (Ibid: 161). And it's a tenet of liberal justice that governments shouldn't engage in this sort of condemnation. So the policy-maker faces a dilemma: protect this speech and allow harmful superstition to bubble away, or restrict it and thereby preside over an illiberal, *de facto* condemnation of an overall-good lifestyle. Raz recommends the former option.

Another example of this problem – one that's more pressing now than when Raz's paper appeared – is radical naturalists and eco-activists spreading anti-vaccination messages. Of course a lot of anti-vaccination speech doesn't arise out of a good lifestyle. A lot of it comes from shills, trolls, or corrupt media sources (see Wilson and Wiysonge 2020: 2). But some of it arises out of good lifestyles, geared around activities like outdoor recreation, organic gardening, environmental protection, and other 'green' pastimes. In their aspiration to assorted ideals of 'natural' well-being, these lifestyles can encourage some distrust toward the health establishment, in particular, the potential corruption of medical science by pharmaceutical industry lobbying. And in some cases this suspicion slides across into vaccine hesitancy (Evans 2021). Anti-vaccination messages in public forums – es-

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[4] For some readers the term *lifestyle* may have connotations of superficiality, as if our subject matter were how often people exercise, or what they do to let off steam on a Saturday night. I mean to use this term in a way that carries weightier connotations – the connotations we more naturally associate with terms like *form of life*, or *way of life*. (*Way of life* is Raz's preferred phrase, in the paper of his that I'm discussing.) In other words, for my purposes, a lifestyle is a set of more or less integrated activities and practices, underpinned to a greater or lesser degree by some sort of morally-charged worldview or conception of the good.

pecially the manifestly false and fear-mongering kind – are harmful, in the aggregate at least (Hussain et al. 2018). Still, in some cases these messages arise out of an overall-good lifestyle. Again, it's a tenet of liberal justice that governments shouldn't condemn good lifestyles. And so, again, there is an uncomfortable dilemma: tolerate anti-vaccination speech and bear the public health consequences, or restrict it and thereby carry out an illiberal, *de facto* condemnation of an overall-good lifestyle.

Raz encourages us to bear the costs that the high-minded liberal stance would commend. His broader agenda in this is to highlight an underappreciated dimension of the justifying values behind free speech principles. Raz thinks that free speech serves an important public good vis-à-vis the *validation* of lifestyles. This good of validation is realised when lifestyles are described, or portrayed, or via some other expressive acts, fairly represented in public forums. The good consists in the public becoming more familiar with different lifestyles, in lifestyles getting a 'stamp of acceptability', and in their followers being more assured that the wider society welcomes them (Ibid: 155). And this validation then has downstream benefits in supporting the transmission and availability of the lifestyle/s in question, and in promoting the wellbeing of a lifestyle's followers (Ibid: 156).[5]

3. Condemnatory meanings

Let's consider Raz's claim that censorship condemns good lifestyles of which bad speech is a part. Can't we just flat-footedly deny that there's a puzzle or predicament here? The solution seems easy: censorship without censure. Restrict bad speech that we have a good justification for restricting, but take care not to go too far. With any legal restrictions we enact, to stymie vaccine misinformation or to stop people being indoctrinated into superstition, we should exclusively focus on preventing harm. Our laws mustn't condemn the associated lifestyles. The censoring body has to be clear that it isn't deriding the lifestyle as a whole, "that it rejects only the censored aspect of it" (Ibid: 162).

By Raz's lights, though, this approach just doesn't work. When we restrict bad speech,

> What is condemned is an objective matter, which does not altogether depend on the government's intentions. The perceived significance of the act is more sweeping… it is reasonably seen as a condemnation of that way of life as it is.

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[5] This account of free speech's justificatory foundations is linked to Raz's general liberal theory of justice, in *The Morality of Freedom* (1986), and its picture of people being provided with secure access to a range of valuable lifestyles across which to exercise their autonomy. Will Kymlicka (1995) and others subsequently developed philosophical accounts of *multicultural* liberalism, emphasising the importance of supporting the lifestyles of minority cultures, to support the autonomy of their members against the assimilating weight of mainstream lifestyles. For a recent account of the particular importance of cross-cultural literacy, as an aspect of liberal justice, and the role of arts institutions in supporting this, see Hume (2023).

> Given that *this is the social significance* of such acts of censorship, that they are perceived as condemning the way of life as a whole, such *censorship constitutes condemnation*. The defence "we did not intend to condemn" is of no avail. What counts is what the government did, not what it intended to do. (Ibid: 162, my emphases)

Another way of putting this is to say that the social meaning of restricting some type of speech, S, is a public condemnation of the lifestyle of which S is a part.[6] And this isn't something that only happens on the rare occasion. Rather, on Raz's view, "almost every content-based criminalization or prior restraint [of speech] is perceived as expressing in part official condemnation of the content of expression" (Ibid: 159). The authoritative condemnation of good ways of life is unacceptable, in a liberal system of justice, and so this worry about social meanings supports the recognition of a constitutional right that limits the power of government and its agencies to restrict bad speech.[7]

There are caveats around this, naturally. Time, place, and manner-based restrictions on speech aren't called into question by this argument, because they don't carry a condemnatory social meaning. They merely limit the contexts wherein the good of lifestyle validation occurs (Ibid: 158). Moreover, the good of validation isn't a license for people to demand that their expression must be heard by particular audiences. And we need not refrain from censorship that condemns a lifestyle which lies beyond the pale of decency (Ibid: 163). On the other hand, even with these caveats, Raz still takes the upshot of this concern to be far-reaching. As much as the correlate right is justified instrumentally, by reference to a public good that it supports, Raz wants us to approach it in a categorical mood. Acts of censorship that condemn good lifestyles, he tells us, "cannot be justified". Even when they are enacted without any condemnatory or disdainful intentions, all the same, "they are wrong in themselves" (Raz 1994: 163), and "only extraordinary circumstances will justify overriding" this stance (Ibid: 163, note 33).

4. Condemnatory motives

The second element of condemnation that I want to consider is one that's discussed in Dworkin's influential critique of anti-pornography laws, in "Is there a

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[6] I'm using the term *social meaning* in the sense defined by Lawrence Lessig (1995: 951-52). Societies are by their nature rich in social meanings, on this account, that is, rich with "semiotic content attached to various actions, or inactions, or statuses, within a particular context." Lessig calls these meanings social, in order to "emphasize [their] contingency on a particular society or group or community... The aim is not to advance well known debates in the philosophy of language about the nature or function of meaning. It is instead to find a way to speak of the frameworks of understanding within which individuals live; a way to describe what they take or understand various actions, or inactions, or statuses to be."

[7] At any rate, the recognition of such a constitutional right is justified, for Raz, where this is the institutional arrangement best suited to protecting the interests for whose sake the right is recognised.

right to pornography?" The key premise in Dworkin's argument is that anti-pornography laws infringe on the right to moral independence, i.e. people's right to not be socially disadvantaged because others disagree with their worldviews or lifestyles (Dworkin 1981: 194). According to Dworkin, we recognise a right to free speech in part to secure the moral independence of people with minority values and viewpoints. Instances of censorship which advance the preferences of the community, viewed collectively, can at the same time turn members of a moral minority into *de facto* second class citizens. A right to free speech is therefore demanded by our basic commitment to civic equality.

Dworkin's whole framework of analysis here has been forcefully critiqued by Catharine MacKinnon and Rae Langton, among others. Dworkin portrays the main rationale for anti-pornography laws in a utilitarian guise. Most people find porn sleazy or debasing. So anti-pornography laws satisfy the majority's preferences. But the preferences in question are rooted in moralistic disdain for the pornography-user's lifestyle, and so basing policies upon those preferences, Dworkin says, lends an imprimatur of authority to that disdain, thus infringing other people's right to moral independence. For MacKinnon, though, this is a tendentious framing of debates around anti-pornography laws. She calls one of her papers "Not a moral issue" to drive her point home. Dworkin writes as if the supporters of anti-pornography laws are all just moralistic prudes. But the feminist critics are progressive egalitarians, striving to achieve equality for women, and to reform the social practices that impede this, one of which, they argue, is pornography. The irony, as Langton (1990) emphasises, is that Dworkin grounds his defence of the right to moral independence in an ideal of equality, while simultaneously ignoring and mischaracterising the feminist anti-pornography argument's egalitarian foundations.

Dworkin's framing of this issue seems dubious, then. But a part of his argument remains attention-worthy, namely, his claim about the mixed motives behind speech restrictions. Dworkin agrees that when a person calls for controls on pornography there *needn't* be a moralistic viewpoint underlying her stance. Her stance isn't necessarily "the product of some conviction that those with other opinions or tastes are people of bad character" (Ibid: 196). However, in practice, Dworkin doesn't think we can sustain a non-moralistic interpretation of the anti-pornography advocate's motives. This is because

> We encounter, in peoples' motives for objecting to... pornography, at least a mix and interaction of attitudes, beliefs, and tastes that rule out any confident assertion that regulation justified by appeal to these motives would not violate the right to moral independence. We simply do not know whether, if we could disentangle the different strands of taste, ambition, and belief, so as to winnow out those that express moral condemnation or would not exist but for it, the remaining strands would justify any particular scheme of regulation. (Dworkin 1981: 197)

Dworkin actually wants to takes the argument a step further, and say that the issue isn't merely epistemic – it isn't just the difficulty of gauging the motives behind people's preferences for restricting pornography – but also conceptual. "The vocabulary we use to identify and individuate motives" he says, "cannot provide the discrimination we need" (Ibid: 197). This further suggestion seems farfetched. Our everyday conceptual lexicon *does* afford us the capacity to discriminate between different kinds of motives. Indeed, Dworkin uses elements of that lexicon in discussing this issue. Granted, we may interpret him as saying that these vocabularies aren't fine-grained enough to allow us to fully analyse a person's motivational states into all of their constituent elements. But we don't need that level of discrimination in order to address the worry he's raising. If someone offers a non-moralistic justification for restricting speech, we need a way to say whether this stance is or isn't rooted in disdain for the lifestyle that the speech is a part of. We aren't so badly served by our folk psychological concepts as to be incapable of even articulating these judgements.[8]

The credible part of Dworkin's analysis is his more quotidian point about just how hard it is to confidently assess people's motives, in practice, given the background facts about our psychological complexity and opacity. Even if we are very confident that the anti-pornography activist's declared egalitarian motives are not a smokescreen for moralistic disdain, still, we *often* cannot be sure about whether moralistic disdain for other people's lifestyles is feeding into support for censorship.[9] As I have suggested elsewhere (Simpson 2019), this murkiness is evident in mainstream progressive attitudes to anti-hate speech laws. Centre-left views on the policy reforms that would be needed to reform racist social hierarchies (e.g. radical redistribution of resources) lie along a spectrum from lukewarm to hostile. This casts doubt on the genuineness of the egalitarianism that supposedly motivates the centre-left's strong support for anti-hate speech laws. What the centre-left really wants, we may suspect, isn't to repair racial injustice,

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[8] Here is an example to illustrate. Suppose I'm refereeing a paper that argues for a view that I find repugnant. I can ask myself "am I rejecting this paper because I hate its conclusion? Or do I genuinely believe that it's academically sub-par?" And while it's of course possible that I could slip into some form of motivated reasoning or self-deception, in trying to answer this, there isn't some huge conceptual or terminological barrier that prevents me from formulating my judgements. I have ways of articulating answers to myself, and the vocabularies that I use for this – limited though they may be – are not so coarse-grained as to guarantee that my motives will remain ineffable, and therefore opaque to introspective inquiry. The same is true when I'm trying to gauge what's going on with other people's motives. Different difficulties crop up in trying to ascertain my own motives and trying to ascertain other people's motives. But in either case, I have conceptual tools that enable me to express considered views about what's going on with respect to conscious or unconscious motivations, and their possible admixture.

[9] Part of why Dworkin's framing of debates about pornography seems tendentious is because the feminist arguments whose underlying motivations he's questioning – the ones that ground anti-pornography activism in an egalitarian critique of patriarchal domination – have such *evident* egalitarian foundations. It seems hyper-suspicious to view these arguments as a potential smokescreen for prudish moralism, given that the feminists espousing the arguments manifest a political commitment to women's equality in all sorts of other conspicuous ways. Then again, some feminist authors who share the anti-pornography feminists' egalitarian aims have echoed Dworkin's worries and suspicions, e.g. Royalle (1993).

but to performatively disdain the deplorables who don't share our values. Put generally, the worry is that apparently reasonable (e.g. harm-prevention) motives for censorship can be jumbled-in with illiberal, moralistic motives. It's a dicey business levelling this charge in any particular case. But one would need a rather naïve psychology of motivation – and of political motivation in particular – in order to simply dismiss the worry Dworkin is driving at.

5. Policies of understanding

Raz's thought is: it doesn't matter if the government doesn't intend to condemn a good lifestyle. The social meaning of censorship is condemnation, regardless of the authority's intentions. Dworkin's complementary thought is: even if the censor doesn't consciously intend to condemn good lifestyle, condemnatory motives can still be an impetus for that censorship. All of this adds up to a reason to support the stringency and robustness of the expressive rights that serve as a general barrier against censorship.

As I said in §1, I think we should be taking seriously the concerns about condemnation that Raz and Dworkin are adverting to. But I don't think the upshot of these concerns needs to be the entrenchment of a hard-line pro-free speech stance, and a neurotic reluctance to regulate harmful speech. This is because there is, so I want to argue, another way to address these concerns, which is to have other policies and practices which moderate or nullify censorship's condemnatory power. What's needed in this respect, more specifically, are policies that express and institutionalise an attempt at good faith understanding, on the part of government, acting as a representative for the broader society, towards the followers of marginalised (but overall good) lifestyles.

We can call these *Policies of Understanding*, or PUs.

Why would PUs moderate censorship's condemnatory social meaning? Because the social meanings of policies are, both in general and in this particular case, affected by the broader political context where they operate. A policy that might otherwise mean "lifestyle L merits disdain", can mean something different – something non-disdainful – in a political context where other, anti-condemnation policies are in effect.

Why should PUs counteract our concerns about the condemnatory attitudes that might be partially motivating censorship? We can't be certain that in trying to understand L, an actor will rid themselves of disdainful attitudes towards L. But we can make sensible, balance-of-considerations judgements on this. It seems pretty neurotic to believe that some actor who has taken proactive measures to try to understand lifestyle L, and who feels no conscious disdain for L, but who judges that some speech issuing from L should be censored – for reasons that

aren't at all premised upon disdain for L – is nonetheless, in taking this stance, being motivated by unrecognised disdain for L.

In sum, governments can restrict bad speech that arises out of good lifestyles – subject to ordinary caveats (caveats which apply to any and all restrictions on speech) – so long as they make a good faith effort, embedded in policy, to understand the lifestyle in question, thus moderating censorship's potential condemnatory meanings and motives.

6. What is understanding?

The concept of *understanding* underlying PUs is the concept that Leslie Green gives us in his paper "On being tolerated". Green notes that being tolerated can easily feel like an affront to the tolerated, and he wants to consider how 'the tolerator' might alleviate this (2008: 277). Being tolerated is affronting, on Green's view – even when it is done in the right spirit, and with the appropriate scope and grounds – because to be tolerated is to stand on the disempowered side of an asymmetric relationship. It's similar in this respect to being pitied, or to being shown mercy. "Toleration does not cause or legitimate [the] difference in power, but it does reflect it" (Ibid: 284). And this is what makes toleration an affront to the tolerated, even when it is acted out with due aplomb.[10]

Having isolated the problem, Green then explains why two *prima facie* promising remedies cannot provide effective treatment. One of the inadequate remedies is *acceptance*. To be tolerated is to be subject to an adverse judgement; an adverse judgement that the tolerator refrains from acting upon. In response to this adverse judgement, the tolerated party may want to say: how about you (the tolerator) don't just refrain from acting on your adverse judgement of me? How about you also withdraw the adverse judgement? The plea is relatable, but futile. If I didn't already judge L adversely, then there would be nothing for me to tolerate vis-à-vis L. I am in a situation that calls for toleration precisely because I believe that L *does* merit an adverse judgement. Asking me simply to stop it, is about as

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[10] With these framing observations about asymmetric relations, Green is situating his inquiry within what Rainer Forst (2017) calls the *permission* conception of toleration, on which toleration involves an authority or social majority permitting relatively non-powerful actors to live according to their own beliefs as long as they accept the authority or majority's superior status. This conception can be contrasted with more reciprocal conceptions, on which toleration is an ethos expressed between similarly powerful groups, seeking to build trust or avoid conflict. Forst also recognises a more demanding *esteem* conception of toleration, which is roughly similar to the ideal of understanding that Green develops and defends. I find Green's view on this – i.e. that practices of esteem or understanding are distinct from and complementary to toleration, as opposed to being forms or conceptions of toleration – more plausible. But this is arguably just a terminological disagreement. Wendy Brown's (2006) work on toleration is animated by the same kind of anxiety that animates Green's account, vis-à-vis the asymmetries of power that are implicated in toleration, although for Brown, the real problem isn't about interpersonal affront, but rather the power of the liberal state to culturally transform and flatten the lifestyles and worldviews that it is tolerating.

effective as asking your opponent in a debate whether they might just drop their view and adopt yours instead. In essence, acceptance is already off the table in the circumstances in which we're trying to lessen the affront of tolerance.

Maybe what's needed, then, Green suggests, isn't acceptance but *recognition*. To recognise a person's L-hood you need not pretend to drop your adverse judgement of L. But you do need to figure out a new way of relating to L – a way of relating that's somehow more aligned with L's perspective, and not judgmentally standing outside of it.

> The idea is not that I need to share your values but that I need to know your identity. I do not need to accept Christ as my saviour in order to interact with you on the basis that you do. But... in order to properly represent this fact about you – a fact which may in some complex way also prove crucial to the shape of my own, different identity – I must also get it right. (Ibid: 290)

The problem with this, though, Green says, is that the demand is ultimately *too* demanding. Unlike with acceptance, the demand for recognition doesn't require me to take leave of my own judgement. So far so good. But it does require me to evince a degree of imaginative empathy that's beyond most of us, especially given the immense diversity of recognitive demands that we are faced with, in culturally diverse societies. As Green says, discussing a relatively low-stakes example, most of us find it hard to acquire an internal sense of recognition even about another culture's *culinary* practices, especially the practices that sharply diverge from our own cultural standards. This is because in any attempt to 'get inside' those practices, either via experience or imagination, our perceptions are still going to be mediated through our own consciousness and interpretative framework. "Our imaginations seem endemically limited", Green says, and thus "our prospects for authentic recognition [seem] proportionately poor" (Ibid: 291).

The turn towards the ideal of understanding follows from these observations about the limits of acceptance and recognition. To be clear, Green's concept of understanding is a term of art, defined by its functional purpose. We are looking to describe an ideal which, when it's instantiated by the proper actors, serves to moderate the feelings of affront that often come with being tolerated. So the following claims about what this ideal consists in, and how it differs from recognition and acceptance, aren't supposed to hinge on how the term *understanding* is used in ordinary discourse. This is a little piece of conceptual engineering, albeit one that doesn't take us too far afield from one familiar subset of the ordinary meanings and connotations linked to the word.

So, what does the difference between understanding of L and recognition of L involve? For Green, both of these attitudes aim at inhabiting some kind of internal

perspective on L.[11] But understanding is supposed to be more achievable, in three ways.

First, understanding can be more piecemeal in its objects than recognition. I can understand token practices or activities. I can understand what a person means when they say certain phrases. Whereas recognition aims at accurate knowledge of L-hood in some rich and integrated sense, one can understand L-related beliefs and behaviours in a way that makes no necessary reference to the broader social identities that give those beliefs and behaviours their ultimate significance for their followers (Ibid: 295).

Second, understanding aims at acquiring 'ballpark' knowledge of its object. In trying to recognise some cultural identity, I'm trying to fully grasp what it means to belong to that culture's lifestyle. Accuracy and depth matter in achieving this aim. By contrast, when I'm trying to understand a practice I'm mainly trying to rid myself of wildly *in*accurate ideas. I'm trying to avoid the kind of gross misinterpretations of people's acts or attitudes that are liable to occur when I naively project my own values onto those acts or attitudes. It's less about gaining full comprehension of the significance that something has, for the actor, and more about avoiding blatant misinterpretations that are going to jaundice my stance towards that thing. Green illustrates what he has in mind as follows.

> I am sure that I do not fully understand what it is like to feel the need to veil one's face in public; but I do know that it is not normally a fashion statement... What I know almost certainly involves misrecognition: there are aspects of its significance that elude me, perhaps necessarily. Nonetheless, I think I have some idea about the interaction among beliefs about personal modesty, the place of sexuality, and the value of tradition that inspires such a view, and therefore some idea of the sort of things that are at stake if we do not tolerate it, or if we tolerate it as if it were no more significant than a teenager's fashion crimes. (Ibid: 292)

Third, to adopt an ideal of understanding is to place greater emphasis upon the empathic journey, as opposed to the empathic destination. Admittedly, Green doesn't build this into his definition of what differentiates understanding from recognition. In principle, then, one could think that what matters is *trying to recognise* other identities, even if one doesn't get very far. Still, I think this is one important part of Green's reasons for favouring understanding over recognition, as a remedy for toleration's ills. He says

> The knowledge that tolerators are making good faith efforts at understanding, that they are at least trying to grasp the stakes as they seem to the tolerated,

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[11] Green likens understanding to both (i) adopting the internal point of view on a practice, in the sense that H. L. A. Hart uses in arguing against reductivist theories of law, and (ii) a *Verstehen* approach to sociology, i.e. one that seeks to interpret the significance practices by emulating a cultural insider's perspective.

provides some reassurance to the tolerated that they are indeed being addressed as members of our fellowship. (Ibid: 293)

As this passage reminds us, understanding isn't meant to replace toleration. Rather it's meant to supplement toleration, in a way alleviates toleration's affront. It isn't pleasant to live by other people's grace and favour. But this becomes easier if those people show a little curiosity about why you live the way you do. Nor is it pleasant to know that those people have an adverse judgement of your lifestyle. But this also becomes a little easier if people's adverse judgements aren't based on them turning your whole lifestyle into a figment of their imagination, borne of an interpretative caricature. So tolerators should try to understand the tolerated. And this isn't merely because feelings of affront are objectionable in their own right. This imperative is premised upon the idea we have reasons to try to defuse the sources of volatility and instability that threaten to break pluralistic societies apart. The affront of being tolerated is one of these sources.

7. The imperative to understand

If Green is right, then in any context where there are good reasons to practice tolerance, there is also some imperative to understand. It's unclear whether and how we can turn this into a more concrete prescription, which tells us how much understanding is needed – or what quantity and quality of attempts at understanding are needed – in order for an instance of censorship to be made permissible, in the face of Raz' or Dworkin's concerns. Nonetheless, this proposal gives us a different way to conceptualise the available options for responding to cases where the censorship of bad speech is inadvertently condemning a good lifestyle. Instead of eschewing censorship and bearing the costs, we could devise PUs that mitigate censorship's condemnatory power. In cases where we have strong *pro tanto* reasons in favour of a particular form of censorship – cases in which censorship is going to prevent a lot of harm – this option will sometimes be the lesser of two evils.

A complaint one might have about this suggestion pertains to the qualitative differences in the negative experiences of being tolerated and being censored. Being tolerated can be affronting, but being censored is generally much more affronting, and also affronting in different ways. Whereas toleration marginalises, censorship tends toward excommunication. So even if it's right that understanding lessens the sting of toleration, it doesn't yet follow that it will do much to defuse the condemnatory power of censorship.

However, with respect to censorship's social meaning, notice that the remedy we're after isn't primarily about mollifying the feelings of the censored. No matter how much understanding they receive, they could still feel that in being censored they have been disdained. In short, the *perceived significance of* censorship shouldn't

be equated with the *perceptions of* the censored. It should, instead, be a matter of how reasonable observers would interpret what's occurring in a particular case, based on the public record. Consider: when I receive a rejection letter from a journal, I may get a detailed explanation as to why my work wasn't suitable for publication. The fact that this explanation is cogent, supposing it is, may not be enough to stop me from taking the rejection as a sign that the journals are biased against my kind of work, and that it's all so unfair. But does it follow that the social meaning of this act of gatekeeping by the journal was to disparage my kind of work? No. At any rate, not unless there are a host of other things going on around this that would lead a reasonable person – as opposed to me, the aggrieved rejectee – to perceive a pattern of derision of which this specific rejection was a part.

In a similar way, laws that restrict the spreading of misinformation about vaccines may well feel disdainful, for some of the naturalists I mentioned earlier. But the social meaning of those restrictions is a function of what a third-party observer would make of them, as opposed to what the frustrated anti-vaxxer makes of them. If a well-evidenced public health argument for restricting misinformation has been presented as the official justification for the regulation, then that by itself casts some doubt on an interpretation which equates regulation with condemnation. That interpretation is further undermined if, in addition, there has been some good faith attempt at understanding the naturalist lifestyle that is the source of (some) vaccine misinformation – especially if that attempt is a publically *observable* act of government, and thus part of the public record that informs and conditions the social meaning of other government acts, for the general observer.

We must interpret the social meanings of government action in something like this way – that is, with some sort of built-in 'reasonable observer' caveat – or else the key premise in Raz's account, namely, that the social meanings of government acts should be factored into deliberations about those acts, will lead to absurd implications. Suppose a majority of people in society S are persuaded by wealthy media moguls that inheritance taxes are tantamount to grave-robbing. Assuming we all agree that the state shouldn't grave-rob, does it follow that S's government has a reason to abolish inheritance taxes? Presumably not. However, if we haven't set some kind of reasonable observer caveat on our account of social meanings, then such counterintuitive implications are going to follow. After all, if everyone in S perceives the social meaning of inheritance taxes as grave-robbing, then inheritance taxes in S in some sense *do* mean something like grave-robbing. Our choice is either to deny that social meanings should have any bearing on policy, or instead – the better option, I think – allow that social meanings should be factored in, while changing how we construe social meanings from something purely sociological, to something that adjoins sociological observation to independent normative judgement.

Raz may well be correct that the censorship of bad speech that is a part of a good lifestyle, L, is often taken to mean "L is bad". However, as I said above, the social meanings of acts are conditioned by the wider political context in which they occur. Therefore policies of censorship can come to mean something far less disparaging when the censoring agency has made a good faith attempt at understanding L. In order for this shift to work it isn't necessary that all of L's adherents no longer feel condemned. What is needed is public evidence that they are not in fact being condemned. Raz is right that what matters, vis-à-vis the social meanings of censorship, is what a government does, not what it intends to do. By that token, though, what matters isn't what the censored party takes the government to have done, it is, precisely as Raz says, what the government did.

8. Imagining policies of understanding

The obvious question remains as to how a government can implement an imperative to understand in the form of workable PUs. Some absurd possibilities may spring to mind. We can imagine government officials being sent out on assignment to spend time trying to understand different ways of life from the inside, like 19th century anthropologists. Or maybe we could establish a dedicated government agency – call it the Federal Bureau of Understanding – with trained officials doing something similar. Again, these ideas seem absurd. Is there a way to translate the imperative to understand into an institutional format that doesn't simultaneously serve as a *reductio ad absurdum* of the whole idea?

A good place to focus our attention is government activities that have an essentially consultative function. One form that this takes in the UK is the publication of Green Papers, i.e. consultation documents produced by government departments, intending "to allow people both inside and outside Parliament to give the department feedback on its policy or legislative proposals."[12] Similar institutions exist in other Commonwealth nations and in the European Commission. One could argue that the very institution of Green Papers *already* answers to the imperative to understand. After all, a parliamentary democracy could just tell citizens who want to voice their views on policy initiatives to contact their MPs, or to set up a grass-roots activist group. The Green Paper system signals a proactive interest in countenancing public opinion, and in that respect it at least partly gestures towards the value of an institutionalised ethos of understanding.

Granted, one doesn't need to be overly jaded to see that in practice, today, governments often use Green Papers in a way that doesn't reflect this high-minded ideal. Often Green Papers seem to be used in the same way that newly appointed university leaders use their initial period of consultation with staff and stakeholders – namely, figuring out how to sell the rollout of an agenda whose core elements

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[12] See www.parliament.uk/site-information/glossary/green-papers for further information.

are already decided upon, and gauging the forms of stakeholder pushback that will need to be overcome in order to achieve this. But all the same, it's open to us to ask how a government, governing in good faith, might develop or adapt an institution like the Green Paper system, in a way that more authentically and effectively operationalises the imperative to understand. There are all kinds of possibilities: making concerted attempts to solicit and engage with submissions from groups likely to be aggrieved by a proposal; offering in-person consultation sessions with government officials, as an alternative or supplement to the opportunity to provide written submissions; prioritising replying to submissions, after the fact, with explanations as to how invited feedback was factored into policies formulated in the wake of the Green Paper process. These are rough proposals, admittedly, but they're realistic enough – and close enough to real existing practices – to indicate that creating institutionally feasible and politically palatable PUs isn't just some silly, ideal theoretic fantasy.[13]

Suppose that a national government – still dealing with the aftermath of a global pandemic, and eager to combat vaccine hesitancy – plans to implement new media regulations imposing penalties on companies that negligently host and transmit anti-vaccination misinformation.[14] Such laws may, in isolation – due to unacknowledged motives, or social meanings, or both – serve to condemn the naturalist lifestyles that give rise to some anti-vaccination speech. Our anxieties about this condemnation are apt. But the conclusions that Raz and Dworkin derive from them, namely, that government should refrain from restricting bad speech, don't follow. Condemnation-related anxieties can instead inspire novel PUs. The government can enact a beefed-up Green Paper process, in which vaccine hesitant groups are urged to convey their concerns to state agencies, and explain how they tie into their broader lifestyle and beliefs. Assuming the speech restrictions still seem like sound policy, in the wake of this, this consultation process can nullify worries about their enactment being an illiberal condemnation of the relevant lifestyle. To echo Green, the knowledge that the state is making an effort at understanding – that it is grappling with what's at stake in this policy, from the naturalists' point of view – provides a prophylactic validation of that lifestyle's place in our society. This is a better way forward than dropping the restrictions and trying to bear the resultant public health costs.

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[13] There is no in-principle limit to the creativity of the methods that governments might devise in order to facilitate the understanding of lifestyles. And not all novel proposals will be as farfetched as a Federal Bureau of Understanding. One example: in 2008 Australia's newly-elected Labour government organised a convention, *The Australia 2020 Summit*, inviting a thousand delegates, drawn from a diverse pool of lifestyles and communities, to discuss and submit proposals on a range of critical areas of government policy.

[14] For discussion of the free speech issues around such proposals, see e.g. Mello (2022).

9. Conclusion

As it goes for this scenario, so it goes for other examples of bad speech that are a part of good lifestyles, but which nevertheless merit restriction on the balance of considerations. In general, the attempt to understand a lifestyle mitigates or nullifies the condemnatory power of censorship that restricts speech arising out of that lifestyle. The invention and enactment of PUs is a way to institutionalise this imperative to understand.

As well as nullifying the illiberality involved in the condemnation of a good lifestyle, this alternative approach also has some potential to mitigate the social costs that come with antagonising the censored parties. I have said that I think we would do well to pay more attention to the anxieties about condemnation that Raz and Dworkin are adverting to. My reason for this is that I think it's all too easy – for all of us, but especially for progressive critics of liberal free speech thinking – to underestimate just how much mistrust and discord can result from well-meaning censorship. In worst case scenarios, this antagonisation can contribute to a full-blown crisis of political legitimacy with respect to certain segments of the population. That isn't the focal point in either Raz's or Dworkin's argument, but it chimes with the general spirit of their accounts. The power of censorship to condemn isn't nullified simply because the justification for censorship is motivated by wanting to protect vulnerable people from harm. Inadvertent condemnation isn't merely illiberal. It can be positively incendiary.

People who are censored in modern Liberal societies often seem to feel condemned in their lifestyles, much as Raz's and Dworkin's accounts would predict. And this experience doesn't seem to lead many people to reconsider their lifestyles. Rather, typically, it inspires them to take an oppositional stance towards the legal and cultural authorities by whom they feel disdained. It's hard to see a solution to this when dealing with groups whose lifestyles are beyond the pale of decency. This is a perennial problem for non-ideal political theory, of how to deal decently with indecent lifestyles. But when it comes to good lifestyles, the costs of censoring bad speech, to do with polarisation and mistrust, seem like they should be preventable. Institutionalising the imperative to understand, in the form of PUs, is a way of mitigating these costs, but one that doesn't force us into a libertarian stance on free speech, with all of its attendant downsides.[15]

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