

# The Moral Foundations of Minority Rights: A Reply to Attas, Bardon, and Gans

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## 1. Main argument of the book

I'm delighted to have this opportunity to discuss my book with colleagues and to reply to their questions and challenges. My interlocutors raise many critical points, and it would strain the reader's patience if I were to try to engage with every one of them. The criticisms range over some big issues in the book but mostly focus on the book's core normative argument. I've tried to organize the criticisms thematically and to focus attention on questions that are likely to have some broader interest beyond the defense of particular claims in the book.

*Equal Recognition* sets out to reconsider the moral foundations of minority rights. The minority rights that I am mainly interested in are those that are contested in debates about multiculturalism and nationalism. Majorities and minorities often make competing claims on the resources and attention of the state. While majorities want their own values, traditions, norms, and identity to be expressed in meaningful ways in public institutions and policies, minorities often call for greater recognition and accommodation by the state of their distinct cultures and identities. Decisions about language policy are one arena in which these competing claims are voiced, as are decisions about the design and boundaries of democratic institutions. Majorities often want their own language to serve as the state's main public language, and they are comfortable with state-wide democratic institutions serving as the principal locus of collective decision-making. Cultural minorities, by contrast, want their own languages to be used by public institutions, and they want institutional and/or territorial spaces to be carved out in which they can enjoy a measure of autonomy and democratic self-government.

Liberal political theory does not speak with one voice about the competing claims of majority nationalism and minority rights. Multicultural liberals insist that, as a matter of justice, the state ought to recognize and accommodate the cultures of minorities by establishing institutional and territorial spaces in

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which those cultures can be expressed, enjoyed, and protected. Others in the liberal tradition—call them “liberal nationalists”—dispute this position. In strong formulations of liberal nationalism, the realization of liberal values positively depends on the successful creation and maintenance of a common public culture and language. In more modest formulations, the claim is simply that there is nothing in liberal principles that requires minority cultural rights or forbids the promotion of the majority’s culture.

In *Equal Recognition*, I argue that multicultural liberalism offers the better interpretation of liberal values. Most liberals will readily agree on cultural protections that are transitional and/or private, and they will acknowledge that liberal values will sometimes, as a contingent matter, be promoted by specific forms of cultural recognition and accommodation. I go farther than this, however, and argue that there are basic reasons of principle for thinking that certain policies of recognition and accommodation are owed to cultural minorities as such. I am not the first theorist to argue for this thesis. But I try to restate the case for multicultural liberalism in ways that make it more robust, more clearly grounded in liberal values, and less vulnerable to the challenges that have been put forward by critics in recent years.

The core of the book’s positive normative argument can be reduced down to two steps. The first consists in arguing that the liberal state has a responsibility to be neutral toward the different conceptions of the good pursued by its citizens. The second holds that, in certain domains, the most promising way for the state to discharge its obligation to be neutral is by extending and protecting specific cultural rights. There are other topics addressed in the book as well. Chapter Two elaborates a new, “non-essentialist” conception of culture and cultural preservation. Chapters Six, Seven, and Eight, apply the general theoretical normative framework defended earlier in the book to the specific topics of language rights, self-government and secession, and the cultural rights of immigrants, respectively. But the two claims about neutrality comprise the core positive normative argument of the book, and they are also the direct or indirect focus of my three commentators in this symposium.

## 2. Cultural preservation or equal recognition?

The relationship between cultural preservation and equal recognition is an important theme that recurs in a number of places in the book. The book defends two different propositions about this relationship, and it is easy to think they are in tension:

- (i) It is coherent and understandable for people to care about the preservation and flourishing of their culture.
- (ii) Cultural rights are not rights to cultural preservation or flourishing but to neutral treatment and “equal recognition.”

The first of these propositions addresses the value of culture from the point of view of a member of the culture. Why does it matter to persons that they be able to enjoy, to express, and to follow their culture? Relatedly, why does it matter that the culture prosper and flourish rather than decay or disappear? To put this differently, what kind of complaint would persons have if they could not fully enjoy or express their culture, and/or if that culture were in danger of disappearance? Is it the kind of complaint that is relevant to the obligations and responsibilities of society as a whole? According to (i), it is a legitimate setback to persons when they are unable to enjoy their culture or when that culture faces threats to its survival.

The second proposition focuses more squarely on the obligations and responsibilities of society. If cultural loss is a legitimate setback to members of the culture, what does this entail for the obligations of others, and ultimately for the obligations of the state acting in everyone's name? According to (ii), what is entailed is an obligation on the state's part to treat neutrally the various cultural commitments and attachments of its citizens.

In his contribution to this symposium, Attas questions the book's framing of its general problem in terms of the cultural survival of minority groups. Related to this, he suggests that the book wrongly encourages the view that minority cultures, because of relatively small numbers, are inherently vulnerable to decline and extinction. The problem of cultural rights, Attas insists, arises for minority and majority, and for large and small groups. There are small groups that have fairly secure cultures and large ones that are systematically excluded from the public life of the society in which they are based.

I don't think that Attas and I really disagree about this issue. I do not think (or say in the book) that the success and flourishing of a culture can be reduced to the number of people belonging to the culture. Size matters to how a culture is faring, but it matters as a threshold. And size is not the only thing that matters for a culture's success. It is also important that a culture not be marginalized: that its members are able to enjoy and express the culture in a wide range of contexts of life, both private and public.

While it is true that the book sometimes considers the case of a culture facing "loss" or "disappearance" the context of these discussions is always an attempt to isolate relevant considerations by focusing on an especially stark case.<sup>1</sup> The extreme cases of cultural extinction do not, however, exhaust the context or the problem the book is addressing. The book's arguments also apply to cases of cultures that are marginalized or excluded or stifled in some way. These are central cases in Chapters Six and Seven of the book (on language and self-government respectively) where the standard concern is typically

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<sup>1</sup> On p. 69 of *Equal Recognition*, I mention the example of Misael, who laments the "impending disappearance" of his culture. Note though that the previous paragraph states the problem more generally: "In what ways would people be disadvantaged if the preservation or enjoyment of their culture were in jeopardy?"

not with outright extinction but with the relegation of the culture (language, national identity) to the private spheres of family and civil society only, and its exclusion from the design and operation of public institutions.

Still less do I mean to argue that cultural rights are rights to cultural survival. This is to conflate the two distinct propositions set out above. The point of the first proposition is that persons have a legitimate stake in how their culture is faring. What this stake implies for rights claims, or for the obligations of others, is a further question. So I don't think one can argue directly from the premise that people have an interest in cultural survival to the conclusion that it is justifiable to use the "coercive state apparatus" to secure cultural preservation. Nor do I disagree with Attas' claim that "absent any obvious discrimination or structural disadvantages imposed by the state" there is no basis for coercive state action to support a struggling culture (Attas, p. 60). As proposition (ii) highlights, my central concern is with a particular form of "structural disadvantage" that cultures sometimes face—namely, non-neutral treatment.

Gans' view of the relationship between cultural preservation and cultural rights is, in effect, the opposite of that favored by Attas. Whereas Attas thinks there is too much cultural survival in my account, Gans thinks there is not enough. Gans thinks that cultural preservation is a valid ground for cultural rights. It is good for the world to be divided into territorially distinct national communities each of which have substantial powers of self-government, Gans argues, because such communities are the best contexts for national cultures to survive and flourish. In Gans' view, my book fails to acknowledge the importance of cultural preservation and this helps to explain why it sets itself against the globalist understanding of cultural rights that he prefers.

In Chapter Three of *Equal Recognition*, which Gans considers in some detail, I argue that the idea of a right to cultural preservation faces a dilemma. Suppose we ask why it is a bad thing for a minority's culture to lose vitality or to disappear. What is it that members of the minority can't get in the majority culture? One possible answer is that the minority won't be able to *access* the majority culture options because of exclusion. The mechanism of exclusion may be discrimination, or it might be a deficit in some relevant form of social or cultural capital (e.g., inability to speak the majority language). But if this is why cultural loss is bad there seems to be an obvious alternative to cultural preservation. The familiar liberal nationalist alternative would be to do a better job of creating an inclusive national society based on the culture of the majority.

Alternatively, cultural loss might be bad for the minority, not because they are unable to access the options of the majority, but because they don't *value* the options of the majority as much as their own historic options. It is this sort of point that Gans is suggesting when he claims that cultural preservation is important because culture is central to identity. I agree that this kind of

objection to cultural loss would not be answered by the promise of a more effective liberal nationalist project of integration and inclusion. But there is a different problem with an argument for cultural preservation of this form, which is that there is no general moral right to a successful identity. Consider an applicant to an elite university whose family has attended the university for generations. It might be devastating for this person not to be accepted. The parents might be beside themselves. The university might truly be central to the family's identity. But I doubt that many people think that identity considerations should make any difference at all to admissions decisions. For parallel reasons, I doubt that identity considerations can ground any general right to cultural preservation. In the absence of such a right, I'm not sure I see the foundation of Gans' globalist alternative.

Gans tries to motivate his account by suggesting that my framework has trouble dealing with claims of religious identity. When a religion loses vitality, or when it finds itself on the brink of disappearance, it is little comfort to believers to be told that the society contains other religions offering comparable goods. It is their own particular religion that believers value. This is a situation in which religion is important for identity. Since liberals are highly concerned to accommodate religious identity, it cannot be the case that all claims based on identity should be regarded as weak. In fact, Gans thinks, some are very strong, and these include the attachments that people have to their culture.

Like Attas, Gans fails here to distinguish the two different levels of analysis that are operating in my argument—what I called earlier propositions (i) and (ii). He insists that I don't regard cultural loss as a "serious" setback to an individual, and this is why I dismiss preservation-based cultural rights (Gans, pp. 73–74, 76). But this misconstrues my argument. My point is that, from the fact that some option is of genuine, and perhaps great, importance to an individual, it does not follow that society has a general obligation to secure the availability of that option for the individual. It may just follow that society should secure for the individual a fair chance to access that option.

Religion is, in fact, a perfect illustration of this complex relationship between value and obligation. The key question is not whether to analyze religious loss as a blow to identity: I agree with Gans that it can be understood this way. Instead, the important question is what the state *owes* people in the way of support for their identity. My claim is that it owes them fair treatment. The deep importance of some of our ends—including religious ones—grounds the deep importance of equal treatment.

Gans seems to think that something else (something more) than equal treatment might be called for—a religious analogue of cultural preservation. Perhaps we have different intuitions about this, but I'll just report that I find implausible and unappealing the idea that people have any further claim on others (beyond the claim to equality) to support the availability of the particular religious options that they value. If under conditions of equal treatment, my

church is going to close its doors, and there is no other place to worship in my particular denomination in the local area, I don't think I have any claim on others for a subsidy. If nine Jewish men in a remote area need a tenth to make up a "Minyan" I don't think they have any special claim on state assistance or compensation.

So while I agree with Gans' basic point about religion and identity here, I think it ends up supporting my theory of equal recognition rather than undermining it. Where I think Gans' identity considerations do matter is in raising the stakes surrounding the fair treatment of conflicting ambitions and preferences. Because admission to an elite university matters so much to many people, it is especially important that admission processes be fair. The same general point applies to religious and cultural attachments. Because religion and culture can matter so much to people—they can be central to their identities—it is very important that the processes that shape religious and cultural outcomes be structured in a fair way. It is this point that brought me to the equal recognition approach, which tries to elaborate a vision of what fair background conditions are with respect to cultural attachments.

### 3. Neutrality as neutral treatment

A core ambition in *Equal Recognition* is to rehabilitate the notion of liberal neutrality. I argue not just that the state owes fair or equal treatment to various cultural commitments but that it owes *neutral* treatment. As I observe at the beginning of Chapter Four of the book, this appeal to liberal neutrality is bound to strike many readers as unpromising. Liberal neutrality was a fashionable idea in the 1970s and 1980s, but many political theorists have come to question both its coherence and its justification. And, even if the general idea of neutrality is coherent and justifiable, the application to minority cultures seems highly problematic. Minority cultures are not typically satisfied with state indifference: they seek accommodation and recognition of their specific needs and characteristics.

Chapter Five of the book explores the relationship between neutrality and minority rights, arguing against the equation of neutrality with indifference. Chapter Four takes up some of the general challenges to liberal neutrality by introducing and defending a new conception of neutrality. Traditionally, neutrality is conceptualized as either neutrality of effects (a neutral policy is one that leaves rival conceptions of the good equally successful relative to an appropriate baseline) or neutrality of intentions (a neutral policy neither aims to advance a particular conception of the good nor presupposes as its justification claims about the inferior or superior value of particular conceptions of the good). I propose a third conception, which I call neutrality of treatment: a neutral policy is one that extends equal accommodation to rival conceptions of the good relative to an appropriate baseline. A policy is equally

accommodating when it imposes equivalent burdens and regulations on, and offers equivalent benefits and incentives to, different conceptions of the good.

Another distinctive feature of my account is the justification of neutrality that it proposes. Neutrality is often thought to be justified by considerations of autonomy or self-determination. There are well-known difficulties with this justificatory strategy, having to do, for instance, with non-coercive state interventions, which conflict with neutrality but don't seem to violate autonomy. In my view, the appeal to self-determination (as I call it) is only half the story. A more complete statement of the justification of neutrality would also highlight fairness considerations. The reason why the state has a presumptive obligation to extend neutral treatment to conceptions of the good is that it has a presumptive obligation to extend to each citizen a fair opportunity for self-determination.

A number of the points raised by the commentators either directly challenge neutrality of treatment or reflect a tendency to think in terms of a different conception of neutrality. Attas argues that neutrality of treatment isn't really distinct from neutrality of effects. He assumes that neutrality of treatment aims to leave people with "equal chances" to realize their conceptions of the good, and then remarks that the distance between equal outcomes (the traditional concern of neutrality of effects) and equal chances doesn't seem very great. Neutral treatment, so understood, is likely to be "vulnerable to most of the objections raised against neutrality of effects" (Attas, p. 61). Later in his comment, when Attas turns to the justification of cultural rights, he again associates neutrality of treatment with equal chances. He agrees that cultural rights should be allocated on a pro rata basis but thinks this can't possibly be squared with their supposed basis in neutral treatment. Pro-rating implies that small cultures will end up with fewer or weaker claims, but the combination of smaller size and fewer rights will sometimes imply that members of such cultures do not enjoy equal chances of success.

These comments rest on a misunderstanding of neutrality of treatment. I never suggest that neutrality of treatment should be understood as establishing equal chances, nor do I think it is illuminating to characterize it in that way. In general, there are all sorts of factors affecting the chances that individuals have to pursue their conceptions of the good successfully. State policies are one such factor, and neutrality of treatment is interested in those policies: the state's policies should be equally accommodating of different conceptions of the good. But the prior distribution of preferences also affects the chances of success, as do considerations of scarcity, time, and distance. Neutrality of treatment makes no attempt to correct for these other factors by equalizing chances in a way that takes them into consideration.

Consider the example I give in the book of neutrality between preferences for softball and cricket (*Equal Recognition*, p. 117). A town is opening a new field and makes it available to anyone on equal terms to use for the sport of their

choice. On my understanding, such a policy is neutral between cricket and softball because the same rules are applied to each. But if the distribution of preferences in the community is overwhelmingly pro-softball, the policy would not be neutral in terms of outcomes or chances. Despite the equal availability of the field, cricket enthusiasts would not have an equal chance to realize their preferences if they don't have enough players to get a game together.

I don't dispute that there exists *some* conception of neutral effects that is equivalent to neutrality of treatment. Compare the distinction between equality of resources and equality of welfare. If one filters out all the different factors that account for welfare except for resources, and then call *that* welfare, then, trivially, equality of resources and equality of welfare would be equivalent. But this wouldn't be a very interesting result since we would eventually want some other term to describe welfare without all the filtering. An analogous point could be made about neutrality of treatment and neutrality of effects.

I also don't deny that neutrality of treatment is a controversial view of the state's obligations. Luck egalitarians may wonder why the state should concern itself with equalizing treatment alone and not with correcting for other unchosen factors that affect the success of different conceptions of the good. This question is in the background of some of Bardon's remarks about the relationship between neutrality of treatment and neutrality of effects. She correctly notes that neutrality of treatment does not guarantee the equal success of different conceptions of the good. Some conceptions of the good involve what are known as "expensive tastes:" these are tastes that require for their equal satisfaction more resources, or more accommodating treatment, than is the norm. Under a regime of neutral treatment and equal distribution of resources, more expensive tastes will be less successful than less expensive ones. Bardon's question, as I understand it, is why this difference in success should be regarded as fair. She finds it problematic that expensive tastes "do not require fair treatment at all" (Bardon, p. 82).

The short answer to this criticism is that expensive tastes *do* require fair treatment on my account. The state should extend neutral treatment to cricket enthusiasts, by making the field open to them on the same terms as it is available to anyone else, even if it expects that cricket will be less successful than other activities. Despite its relative lack of success, cricketers are treated fairly insofar as their preferences enjoy neutral treatment. But Bardon's question may be why neutral treatment is *sufficient* for fairness, given unequal success. Why doesn't fair treatment mean doing something more for predictably less successful conceptions of the good? The book's general answer to this question appeals to the liberal idea of responsibility. The state, acting on behalf of society as a whole, is responsible for securing fair background conditions. Individuals are then considered responsible for adjusting their ends in the context of this fair background to achieve the desired level of satisfaction. Although this liberal idea of responsibility is controversial, and defending it

fully is beyond the scope of the book, Section 4.7 of the book does offer a sketch of how such a defense might go.

Bardon returns to questions about the concept of neutrality later in her comment when she discusses the relationship between religion and neutrality. Echoing a familiar point, she argues that neutrality with respect to religion is impossible. This is because a leading strategy for achieving neutrality with respect to religion—the strategy I call “non-recognition”—does not in fact achieve neutrality at all. In Bardon’s view, “non-recognition accommodates secular conceptions of the good more than religious ones” (Bardon, p. 88). On a related note, Bardon also says that the non-recognition (or “privatization”) strategy is more accommodating of a “Protestant” understanding of religion—one that is individual, interior, and private—than it is of other forms of religiosity.

I’m afraid I don’t agree with either of these assertions, which seem to me to conflate neutrality of treatment and neutrality of effects. How exactly is non-recognition, or privatization, more accommodating of secularism than of religious conceptions? Or more accommodating of Protestant forms of religion than of others? To show that there is unequal accommodation, one would have to point to some right, or benefit, or form of assistance, that is extended to secular or Protestant conceptions that is not extended to others. Or one would have to identify some restriction or regulation or burden that is imposed on non-secular, non-Protestant conceptions that is not imposed on secular or Protestant ones. Bardon doesn’t show any specific inequality and there is no reason to think there has to be one. Under non-recognition, religious people have the same rights to organize around their conception of the good as the non-religious do, and face an equivalent set of taxes, regulations, and so on. Similarly, Protestants and non-Protestants enjoy the same rights, and the same access to resources, under non-recognition.

Of course there are states that describe their own approach to religion using the language of non-recognition and privatization, but in fact privilege secular or Protestant conceptions in various ways. France understands itself to be following the non-recognition/privatization model but imposes restrictions on wearing “ostentatious” religious symbols in public institutions (schools, government offices, and so on) with no corresponding restrictions on secular displays or “Protestant” forms of religiosity. This conception of non-recognition and privatization is very different from the one that I discuss in the book. In part, the difference hinges on the divergent understandings of privatization and recognition. The French model understands these ideas in spatial and institutional terms: religious symbols are kept out of public spaces. My conception of recognition, by contrast, includes any state benefit or burden that is tailored to a specific religion or identity-related commitment. And my idea of privatization involves leaving it up to individuals to decide for themselves how to express their religious or other commitments.

Bardon's objections make sense if neutrality of effects is the standard rather than neutrality of treatment. Non-recognition may have a bigger *impact* on some forms of religion than on others. But the whole point of neutrality of treatment is to avoid thinking about neutrality in terms of impact. Impact-oriented conceptions of fairness are inherently problematic. Consider the problem of fairly dividing a cake between two people. The first wants the whole cake for himself; the second wants half the cake. Surely the just solution is not to split the difference, by giving the first three-quarters of a piece and the second one quarter of a piece. It is to give each half the cake, even though this is exactly what one asks for from the start, and is far from the other's antecedent preference. The problem of what rights to give people who have secular/Protestant religious views and what rights to give people with (say) theocratic views is structurally similar. The fair solution is not to split the difference but to give each an equivalent bundle of rights and resources with which to pursue the life they value.

Bardon's discussion of the state's treatment of rival views of gender and sexuality raises very similar issues. In Bardon's view it is appropriate for the liberal state to promote egalitarian ideas of gender and sexuality. She thinks that such a policy might be consistent with some notion of liberal neutrality, but she asserts that it is inconsistent with neutrality of treatment. The liberal state is more accommodating of progressive conceptions in these areas than it is of conservative ones.

There are some complexities lurking here that relate to the baseline against which judgments about equal accommodation are made. When the law prohibits assault, it is less accommodating to hooligans than to others, but I don't consider this to be a departure from neutrality. Instead, I build fair opportunity for self-determination into the baseline used for making judgments about neutrality. The hooligan doesn't have a complaint of non-neutral treatment, because his practices are inconsistent with others having fair opportunity for self-determination and fair opportunity is the basis of any claim he would have to neutrality in the first place. For similar (if sometimes less extreme) reasons, the refusal to accommodate certain inegalitarian beliefs and practices does not imply a departure from neutral treatment but is instead part of the baseline against which judgments of neutrality must be made.

More deserves to be said about these complexities, but we don't need to delve more deeply into them here in order to address Bardon's challenge. Let's unpack a bit more the case that she mentions—a liberal state promoting progressive ideas of gender and sexuality. Is there, in fact, unequal accommodation of progressive and conservative views here? It depends on what is meant by "promoting." If promoting means establishing a framework in which men and women, gays and straights, and so on, enjoy equal rights and equal access to state benefits and resources, then there is no conflict between promoting and equal accommodation. Promoting just means *establishing* a framework of equal

accommodation. Conservatives might respond that such a framework cannot possibly be equally accommodating since it looks exactly like what liberals are asking for from the beginning whereas they are asking that the state promote conservative values. But this response makes exactly the same mistake as the objections concerning secularism/Protestantism discussed earlier. Under equal accommodation, progressives and conservatives each have a fair opportunity to lead their own lives according to the values they affirm and to proselytize others into adopting those values. Neither have the right to impose their views on others. To think that the conservative has an equality-based complaint here is to adopt the position of the person who wants the whole cake (to live according to his values *and* to get others to live according to those values too) and thinks that an equal division unfairly privileges the person who only wants half. It is to adopt an effects-based conception of neutrality, not a treatment-based one.

Alternatively, “promoting” could mean something more than establishing equal accommodation. Perhaps the state is incentivizing couples to adopt norms of gender equality in their marriages. More would need to be said about such policies and their rationale for me to be confident about their compatibility or incompatibility with neutrality of treatment. But it would not be an embarrassment to neutrality of treatment, nor to the liberal credentials of that view, if it turned out that the policies in question were inconsistent with neutral treatment of progressive and conservative conceptions of gender.

#### **4. Is culture special?**

In addition to her remarks discussed above, Bardon also raises several other valuable questions about neutrality. In different ways, they each touch on an important assumption in the book, which is that there is something special about certain commitments that people have, including, in general, their cultural commitments and attachments.

In the book, I argue that neutrality of treatment is grounded in the state’s presumptive obligation to leave each of its citizens with a fair opportunity for self-determination. Because this obligation is presumptive, the state’s reasons to be neutral are also presumptive. And because cultural rights are grounded in neutrality, they are best regarded as presumptive too, and so as potentially defeasible by other important considerations. With each step in this argument referring to a presumption, an important part of the theory is to say something about the weightiness or significance of the presumptions in question.

In *Equal Recognition*, I argue that it is the significance of a particular end for a person that determines the weightiness of the presumption that person should have a fair opportunity to pursue and realize the end. While some of our ends have the status of mere preferences, others are more consequential for our lives. The consequential ones present themselves to us as non-negotiable, or they are salient for the respect we receive from others, or they belong to

areas of life in which it is important for the individual's own judgment to be sovereign. So while there is always some fairness-based reason for the state to leave us with a fair opportunity to pursue a particular end, even when it is a mere preference, there is an especially weighty reason for it to do so when the end matters to us in some special way.

Bardon has several concerns about this thesis. One is that the account I develop of what makes an end special seems to blend what she calls "subjective" and "objective" factors. The subjective factors focus on what the end means to the individual, while the objective ones focus on the object of the end and the objective significance of that object in human life. Bardon worries that the objective and subjective factors "do not perfectly overlap" and so in particular cases it may be indeterminate whether a particular end should be regarded as special or not. A second concern is that cultural commitments may not turn out to be special according to these criteria, which would conflict with the book's suggestion that there is a neutrality-based argument for cultural *rights* (which imply a fairly weighty presumption). And a third concern is that the argument seems to empower citizens and officials to make invidious judgments about what really matters to others, as Swiss commentators have, for instance, with respect to the question of minarets.

While these are all reasonable concerns, none of them rises to the level of a decisive objection to the proposal under consideration. On the blend of subjective and objective factors that go into the determination of whether an end is special, my proposal is meant to be a pluralist one. Some of the determining factors, e.g. non-negotiability, refer to the content of the end as it is held and experienced by the person who holds it. Other factors are a matter of the general importance of autonomy with respect to a particular area of life (e.g., basic normative commitments). And others refer to contingent social facts about what counts as respectful, exclusionary, and so on, in a particular context.

I agree with Bardon, to turn to her second point, that there is no necessary reason why a cultural commitment should turn out to be special in any of these senses. But it often turns out that people do attach great significance to their cultural commitments, and reasonably so. As I try to bring out in various places in the book, cultures are contexts of socialization for individuals and thus it is understandable for people to associate the treatment of their culture with the respect that is shown to them as individuals. In addition, cultural commitments often involve judgments about which basic social relationships a person wants to maintain and cultivate—surely judgments where we ought to leave persons with a significant measure of autonomy.

Bardon's concern about invidious judgments also strikes me as important, but I don't think it undermines the account being proposed. To some extent, there is no avoiding the need to make judgments of significance. We do so all the time in our private lives and in ordinary social interactions, and human life

would be greatly impoverished if we tried to flatten out all commitments by giving them the same valence. What can and should be avoided are overly objective characterizations of significance. All sorts of things can matter to people in ways that escape simplistic objective accounts of significance. As a pluralist view of significance, I think my proposal can avoid the worst excesses of objective accounts, including those that are on display in the Swiss minaret controversy.

Bardon also has a more fundamental objection to the argument that neutrality is weightier with respect to ends that have a special significance to individuals. Even if we could arrive at a satisfactory account of special significance, she argues, it is not fair to give an accommodation to someone who values something in a special way but to deny it to somebody else who values the same thing as an ordinary preference. In Bardon's example, the state cannot fairly accommodate ethical vegetarians (e.g., in public cafeterias) without also accommodating people who simply dislike the taste of meat.

As a practical matter, accommodations for special preferences may sometimes end up catering to ordinary preferences as well. For instance, to accommodate ethical vegetarians, public cafeterias might simply add a regular vegetarian menu item and let anyone order it, no questions asked. Setting aside this practical response (which won't be available in every context), the deeper question is whether there is any unfairness in accommodating someone with a special concern but not someone with an ordinary preference. To say that someone has a special concern, I take it, is to say that it would be especially burdensome to her to be denied a fair opportunity to pursue or realize that concern. By contrast, the frustration of a mere preference would be a relatively minor disappointment. Given this difference in the burdens that are at stake, it doesn't strike me as unfair to attach more weight to the presumption of fair opportunity for special concerns than for mere preferences.

## **5. National groups and immigrants**

Let me conclude by briefly considering a challenge offered by Gans to a discussion in the book that is not part of the core normative argument I have been focusing on for much of this article. According to Gans, a major weakness of the overall argument in *Equal Recognition* is that it cannot explain why immigrants have less far-reaching cultural rights than do national groups. He thinks that his alternative, globalist theory is better positioned to explain this difference. Immigrants have relatively weak cultural rights because such rights often refer to a homeland territory and, for immigrants, that territory is found in their country of origin. In Gans' view, immigrants who try to claim a full set of cultural rights would be acting as if they were trying to acquire a new territory for their nation. They should be treated as colonizers or invaders and "returned to their countries of origin" (Gans, p. 79).

I consider the issues Gans is raising here in Chapter 8 of the book. That chapter seeks to defend a moderate version of the voluntariness argument associated with Will Kymlicka and other scholars. The basic idea is that immigrants choose to move to their new country and so can be regarded as voluntarily relinquishing certain of their cultural rights. National groups, by contrast, were either involuntarily incorporated into the state or voluntarily joined but on the condition that their cultural rights be secured.

Gans points out that this theory has trouble dealing with the descendants of immigrants, who are sometimes considered immigrants themselves. The theory can explain why a first-generation Chinese immigrant in the United States has no right to a Chinese-language public education, but not why a descendant of that immigrant, who has maintained a Chinese identity, lacks such a right. I agree with Gans about this limitation in the argument, and say so explicitly in the book (see *Equal Recognition*, pp. 276, 294–96). In my view, states are permitted to seek the integration of the first generation, and of their children, and this will often leave members of the second and third generations (and beyond) without a deep commitment to strong cultural rights based on their ancestral culture. But if the state's integration efforts fail, then the claims for accommodation and recognition by later generations eventually ought to be regarded as being on the same level as comparable claims by members of established national groups.

Since this argument seems to strike Gans as unsatisfactory, it is worth asking if his view does any better at explaining why national groups have stronger cultural rights than the descendants of immigrants. Consider the case of descendants of immigrants who seek equal recognition of their ancestral language in their new country and who would like to establish institutions of self-government within that country. Suppose that these immigrants were born and raised in the state in which they live and have no desire to annex the territory of that country to their ancestral national homeland. They just want equal recognition in the state in which they live. Gans would have no reason for calling these descendants of immigrants “colonizers” or “invaders,” and in fact he does not. He says that if these descendants of immigrants maintain a distinct sense of nationhood then they “constitute a nation” and should be extended a strong set of cultural rights (Gans, p. 79). But then Gans' solution to the problem doesn't end up being any different than mine. We both think that immigrants have weaker cultural rights but that the descendants of immigrants who maintain a strong sense of cultural distinctiveness have a good claim on stronger rights.