Nomads in the Liberal State:
Liberal Approaches to the Problem of Roma and Traveller Itinerancy

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Thesis submitted in partial fulfillment of the requirements for the degree of DPhil in Politics in the Department of Politics and International Relations at the University of Oxford

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Abstract

May the state, from a liberal point of view, operate laws and institutions that impede the mobile lifestyle of nomadic Roma and Travellers, or should the state take steps to accommodate their nomadic way of life? This is the essence of the problem of Roma and Traveller itinerancy and the question that is at the heart of this three-partite dissertation.

The first part of the dissertation looks at public policy in France and the United Kingdom and describes the six public policy problems that constitute the problem of Roma and Traveller itinerancy. These problems concern the education of children, the French travel permits system, the legal conditions for voter registration and for GP registration, the housing benefits system, and the public provision of halting sites.

The second part looks at liberal political theory. It suggests that contemporary liberalism divides into two strands that take different views on the entitlements of cultural and religious minorities, and it provides a detailed outline of the prime articulations of each approach, namely the multiculturalist liberalism of Kymlicka and the classic neutrality liberalism of Barry.

The third part investigates what the two said liberalisms imply for the six policy problems from part 1. These analyses suggest that the two liberalisms have slightly diverging implications for the halting sites problem, the housing benefits problem and the problem of GP registration. They suggest furthermore that the two accounts converge on the question of voter registration and agree that the voter registration system must accommodate nomads, and may not make the possession of a fixed residence an absolute condition for voter registration. And the analyses suggest finally that the two liberalisms also converge over the education question and the travel permits question, but here support policies that are potentially inimical to Roma and Traveller itinerancy. The broader implications of these findings are that liberalism is potentially, but not necessarily and not intrinsically, inimical to Roma and Traveller nomadism, and that the disagreement between classic neutrality liberalism and multiculturalist liberalism is weak insofar as public policy is concerned.
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I dedicate this dissertation to my mother, Lena Carlsen Häggrot, who passed away before its completion.
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1) INTRODUCTION

2 CONVENTIONAL AND COMPULSORY EDUCATION VS. EXEMPTION: THE CLASSIC NEUTRALITY APPROACH

3 CONVENTIONAL AND COMPULSORY EDUCATION VS. EXEMPTION: THE MULTICULTURALIST APPROACH

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Chapter I

Introduction

1 The Problem of Nomadism

Most people in the world are (and have for a very long time been) sedentary in the sense that they permanently live in a geographically fixed abode or residence. But alongside the sedentary majority there have always existed nomadic or itinerant\(^1\) populations – i.e. groups whose members refuse to live in a fixed abode or residence and regularly move from one place to another.\(^2\) Examples of such itinerant groups include, just to mention a few, the Bedouins of the Middle East, the Nenets on the Russian Yamal peninsula, the Roma and Travellers (Gypsies) of Europe, but also the so-called New Age Travellers, hobos and other migrant workers. And these travelling groups tend to have a difficult relationship with the state, which is often ‘the enemy of people who move around’ (Scott 1998:1) and frequently operates laws, institutions and policies that adversely affect, or

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\(^1\) I use these two terms interchangeably. Sometimes I shall also speak of the travelling way of life.

\(^2\) This conception of nomadism is congruent with the definition of nomadism used by Gilbert (2014:3)
The most blatant example of states trying to impede nomadism occurs when states try to limit and control the movement of nomads across their borders and/or refuse to recognise such nomads as citizens (cf. Gilbert 2014; Claudot-Hawad 2006). But it is not only internationally moving nomads who face difficulties. States also tend to operate laws, policies and institutions which inhibit forms of nomadism that are exercised by citizens, within the national territory. Sometimes, this phenomenon takes the form of the state having laws and policies that prohibit or directly burden (i.e. restrict, limit, or condition) the travelling way of life – as when, for example, the French state places a legal duty on itinerant persons to carry special ID-documents and to regularly have those documents countersigned by police officials. But the phenomenon of the state impeding intra-state itinerancy does not always take this crude, restrictive form. It can also come in a form where the state aims to provide citizens with some good, but does so with the help of a policy-apparatus that is adapted for a sedentary population, not for itinerants, and so associates the travelling way of life with a (more or less significant) opportunity cost. A good example of this sort of actively sedentarist policy can be found in the UK, where the state aims to provide citizens with (publicly funded) primary health care, but where the primary care units (GPs) require that patients furnish a proof of a fixed address before they can access a GP’s services, and where nomadically living Roma and Travellers are

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3 Note here, that states have often done much worse than to inhibit the travelling way of life. States have regularly attempted to not just make the travelling way of life difficult, but to completely exterminate nomadic groups (see Gilbert 2014: chap.1). But I shall bracket this phenomenon from our discussion, as I take it as axiomatic that the state may never slaughter its own population.
4 For a brilliant, literary account see Ahmad (2012)
5 Cf. Law no. 69-3 of 3 January 1969 Relating to the Exercise of Ambulant Activities and the Regime Applicable to Persons Circulating in France without a Fixed Domicile or Residence. I have detailed discussion of this law in chapter 2.
effectively in a situation where the travelling way of life is associated with a rather important opportunity cost. And the phenomenon of the state impeding intra-state itinerancy can also, and finally, come in a third form where the state applies policies which (for one or another reason) fail to provide nomads with goods that are inessential for sedentary citizens, but essential for those who maintain the travelling way of life. This last type of omission-sedentarist or passively sedentarist policy is well exemplified by the situation that reigns in a range of European countries. Nomadically living Roma and Travellers need a rather special kind of good, that is not particularly useful to non-nomads, namely stopping places or halting sites where they can park their caravans and stay for a while. But many European states do not provide any such halting sites (Steinberger & Keller 2002; section 2), and are thus operating an omission-sedentarist policy par excellence.

So the relation between nomads on the one hand and the state on the other hand is a rather difficult and conflictual one. And as a result, there arise several normative questions that we can group under the heading ‘the problem of nomadism’:

1) May a state refuse citizenship to nomadic people who move in and out of its territory, or must it treat and recognise such people as citizens?

2) Is a state permitted to limit the cross-border movements of inter-state nomads?

3) Is it permissible for a state to operate laws, institutions and policies that prohibit or burden citizens’ intra-state itinerancy? Or should the state try to make its policies less burdensome for the travelling way of life?

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6 See chapter 2 for a more detailed account of this system.
7 For further examples of actively sedentarist, omission-sedentarist and burdensome/prohibitive policies, see Gilbert (2014:67-70)
4) Is it permissible for a state to operate laws, policies and institutions that are actively sedentarist and associate the nomadic way of life with opportunity costs? Or should the state render its laws and institutions non-partisan and ensure that they do not associate the travelling way of life with any particular opportunity costs?

5) May a state operate laws and policies that are omission-sedentarist, or should it try to be attuned to the needs of travelling groups and provide goods that are essential to them?

2 The Problem of Nomadism in Liberal Political Theory

Now, how has contemporary political theory and liberal political theory in particular responded to the problem of nomadism? What do theorists who subscribe to values of individual liberty and equality, and who endorse expansive individual rights, have to say about nomads and the way the state ought to treat them?

Nothing. Liberal political theory has in the last 25 years or so been concerned to explore how the state should treat religious and cultural minority groups and the practices that are distinctive to them. Liberals have, for example, scrutinised how the state should deal with linguistic minorities, and, more specifically, asked if (a) members of linguistic minorities should be able to use their own languages when they communicate with state agencies (e.g. multilingual social services, translation in court proceedings, multilingual ballots and voting material), if (b) members of linguistic minorities may be expected to learn the dominant language of the polity, and if (c) the

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8 The reason I immediately focus on liberal theory is that most work on the claims of minority groups has been conducted ‘within a broadly liberal tradition’ (Patten 2015:19).

9 i.e. intergenerational communities that share practices, norms and beliefs.
public should provide or finance minority language education (e.g. Lagerspetz 1998, Patten 2001, Barry 2001:103-9, Rubio-Marín 2003, Carens 2000: chap. 5). Much attention has also been devoted to exploring the extent to which the state should interfere in the upbringing of minority children and whether it, for example, should be legally possible for minority parents (like the Amish) to withdraw their children from school and/or to bring up their children according to traditional, but harmful norms (e.g. norms that mandate female genital mutilation or preclude blood transfusions for children) (Kymlicka 1995: chap. 8, Carens 2000:145-53, Barry 2001: chap. 6, Kukathas 1992, Shachar 2001b). And there have been attempts as well to investigate whether the state ought to recognise and enforce minorities’ customary law (e.g. religious groups’ family law; aboriginal peoples’ property regimes) (Shachar 1998, Shachar 2001b, Carens 2000:155, Levy 2000: chap. 6); whether minority groups should be allowed to maintain group-internal, non-legal norms that are illiberal, in-egalitarian or misogynistic10 (Barry 2001:158-62, Kukathas 1992); whether minorities should be exempted from general laws that conflict with their traditional practices11 (Barry 2001:chap. 2, Waldron 2002); whether minority members should be able to invoke the so-called cultural defence to obtain lenient treatment (or even exculpation) in criminal law cases (e.g. Renteln 1993, Renteln 2004, Suri 2001, Philips 2003); and whether public institutions and private companies may insist on uniform requirements that are incompatible with minorities’ dress codes (Carens 2000:155-9, Parekh 2006:243-8, Kymlicka 2001:165, Barry 2001:57-62).12 The problem of nomadism, however, has been completely ignored in these

10 E.g. norms to the effect that women cannot become priests.

11 E.g. Sikhs’ custom of wearing a ritual dagger; Native Americans’ religious use of peyote; Jews’ and Muslims’ slaughter practices

12 For a more extensive and fine-grained portrayal of the minority-related questions that are discussed in
discussions. I have searched about 50 books on multiculturalism, fourteen of the most important political theory journals, and the Philosopher’s Index (a database indexing content from over 1600 philosophy journals), and yet I have not found any substantial discussions of the problem of nomadism. I have only collected a handful of sparse, by-the-way remarks on the very specific question of whether nomadic Roma and Traveller children should be partially exempted from school attendance requirements (cf. Kukathas 1992:126, Barry 2001:239-42, Daskalovski 2002:45).

So what we observe is, in short, a lacuna in an otherwise rich literature. Contemporary liberal theory has, as yet, failed to articulate and to resolve the problem of nomadism, and the general aim of this dissertation is accordingly to fill this gap: What I want to accomplish here is to address the problem of nomadism and to investigate how liberals should think about this issue.

But the problem of nomadism is a broad and multifaceted problem that encompasses a range of conceptually and institutionally different questions. So it is not possible to deal with the problem in its entirety, and I shall narrow it down to a more manageable size. I propose to do so in two ways.

3 The Problem of Roma and Traveller Itinerancy

First, I propose to leave aside all questions about cross-border mobility and to exclusively

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13 See the appendix for the exact search protocol.
14 These remarks are so sparse that it does not make much sense to render them in this introduction. But we shall return to them at a later stage; cf. chapter 6.
15 To appreciate the multifaceted nature of the problem, consider just how many institutionally different questions we would have to address in order to develop a full answer to the above question no.2: To resolve only this one question, we would have to look at closed-border policies, policies which limit the frequency at which nomads are permitted to cross the borders; polices that limit the number of geographic locations in which nomads are allowed to cross the border, and so on.
focus on the *intra-state* and *citizen* aspect of the problem of nomadism – i.e. on the above questions 3, 4, and 5. And I propose, second, to address these three questions with reference to a particular case, namely the nomadic Roma and Travellers of (western) Europe. So the questions that I propose to focus on are then as follows:

A) May a liberal state operate laws, institutions and policies that prohibit or directly burden the intra-state itinerancy of nomadic Roma and Travellers? Or should such a state try to make sure that its policies are not burdensome for nomadic Roma and Travellers?

B) May a state operate laws and institutions that are actively sedentarist and associate Roma and Traveller itinerancy with opportunity costs? Or should the state make sure that its laws and policies are non-partisan and do not associate Roma and Traveller itinerancy with any opportunity costs?

C) Is it permissible for a state to operate laws, policies and institutions that are omission-sedentarist and fail to provide goods that are important for nomadic Roma and Travellers? Or must the state be attuned to these people’s unique needs and provide goods that are essential to Roma and Traveller itinerancy?

To put all this a bit more succinctly, we can say that the dissertation investigates how liberals should approach the problem of Roma and Traveller itinerancy, or that it examines whether it from a liberal perspective is permissible for a state to operate laws and policies that *impede or adversely affect*¹⁶ the (intra-state, citizen) nomadism of Roma and Travellers, or whether the state needs to render its laws and policies *more itinerancy-*

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¹⁶ I shall here use the notions ‘to impede’ and ‘to adversely affect’ interchangeably.
If, however, we employ such an overarching question, we need to keep in mind two related points. First, we must keep in mind that the overarching question is nothing but a label (a linguistic device) that makes it easy for us to simultaneously refer to the questions A, B, and C, and that it does not indicate that the questions A, B and C are derivative of some overarching master-question. And second, we need to bear in mind that we cannot hope to solve the questions A, B and C by solving the overarching master-question, but that we need to consider the questions one-by-one, each in its own right. In brief, we need to keep in mind that A, B and C are conceptually distinct questions that have their own, independent answers.

So the subject matter of this dissertation is then the liberal approach to the problem of Roma and Traveller itinerancy. But what is the rationale for this focus? Why should we concentrate on the intra-state and citizen aspect of nomadism? And what is the rationale for focusing on the case of nomadic Roma and Travellers rather than some other intra-state nomadic group (e.g. the Nenets)? I will shortly address these questions. First though, it is necessary to say a few words about the category of nomadic Roma and Travellers and the people whom it identifies.

4 Nomadic Roma and Travellers

European societies have for centuries known and encompassed people who live in mobile

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17 The overarching question is in this sense analogous the label of ‘the ethics of migration’, which also encompasses or refers to a wide range of different and mutually independent questions such as: Does morality require open borders, or does it allow for state control of immigration? Is selective admission of immigrants permissible, and if so, what are the legitimate criteria for admission/exclusion? What are the obligations of receiving states vis-à-vis immigrants? And what are the duties of immigrants vis-à-vis the receiving states? (cf. Miller 2005; 2008; Carens 1992; Pevnick 2011; Cole 2011)
shelters and pursue a nomadic way of life, who share norms and beliefs – notably strong norms of economic self-reliance and self-employment as well as a system of beliefs concerning spiritual purity and pollution (cf. Okely 1983) – and who, finally, regard themselves as being distinct from the respective mainstream, national societies, whose members they call ‘gorgios’ or ‘gadjé’ (outsiders) (Liégeois 2012). Historically, these people have been thought to belong to one and the same group, and have long been known as ‘Gypsies’, ‘Tsiganes’ ‘Zigeuner’, ‘Zingari’ etc. This labelling, though, is misleading on at least two counts. It elides, for one thing, that ‘Gypsies’ do not think of themselves as members of a homogenous ‘Gypsy’ group, but make numerous distinctions between various sub-groups and identify as, for example, Irish Travellers, as English Romanichals, as Manouches, as Yenisches, and so on. And the ‘Gypsy’ label ignores, for another, that the ‘Gypsies’ are historically and linguistically divided into two main strands.

Let me expand on this. Some of the people who have historically been labelled as ‘Gypsies’ (e.g. the Gitanos in Spain, the Manouches in France, or the English Romanichals) descend from nomadic tribes that were expelled from northern India in the beginning of the 10th century, migrated towards the north-west, arrived in Europe in the 15th century, and subsequently broke up into a multitude of groups that then spread across the entire continent, including the British Isles and Scandinavia. These people have still today very similar beliefs, norms and practices, and they all speak variants of the same language, namely Romani (cf. Bancroft 2005:7-13, Commissioner for Human Rights 2012:31, Kabachnik and Ryder 2010:112, Liégeois 2012, Clark 2006a:15, Laparra and Macías 2009, Robert 2007:45-6). However, it is not all ‘Gypsies’ that have an ancient
connection to India and speak Romani. Some (e.g. the Irish Travellers or the French Yenisches) are instead indigenous in the sense that they have not migrated into Europe, but several centuries ago developed out of the pre-existing, European societies – which explains why they do not have any common language\(^{18}\) (Bancroft 2005:12-13, Commissioner for Human Rights 2012:31, Liégeois 2012, Kabachnik and Ryder 2010:112, Robert 2007:46, Clark 2006b:15-16). So nowadays, it has become standard – at least in academia and public institutions – to speak not of ‘Gypsies’, but of ‘Roma and Travellers’, with ‘Roma’ being the designator for all the Romani-speaking groups that can be traced back to India, and ‘Travellers’ being the designator for all the indigenous, non-Romani-speaking groups.\(^{19}\) It is in this standard sense that I use these terms as well.

But who are then the *nomadic* Roma and Travellers? Are they not the very same people who fall into the category of Roma and Travellers? Not quite. The people who identify as Roma and Travellers have nowadays a very varied mobility pattern (Gilbert 2014:8). Some Roma and Travellers live in caravans and travel regularly within their states of citizenship.\(^{20}\) This practice is especially common among Western European

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\(^{18}\) NB: Some of these groups speak languages that are unique to their particular community. Irish Travellers, for example, speak ‘Cant’ or ‘Shelta’, which is not spoken by any other group.

\(^{19}\) For examples of this terminology see, for instance, Bancroft (2005) Liégeois (2012) and Commissioner for Human Rights (2012).

\(^{20}\) NB: Sociologists and other empirically minded scholars will, no doubt, be unhappy about the way I lump together all intra-state nomads into one single category. They will insist that if we look at the empirical reality, then we are going to see that the mobility patterns of intra-state nomads are very varied: We will see that some Roma and Travellers move on an almost weekly basis, while others move at lower frequencies; we’ll see some Roma and Travellers move all year round, while others prefer to spend the cold and dark parts of the year on a winter base, and only move about during the summer period, and so (cf. Niner 2003:28-9; 2004:144). I am not convinced, though, that such fine-grained distinctions are necessary. This is not because I somehow doubt their existence or wish to challenge their validity. It is rather because I think that (normative) reasoning about laws, policies institutions always requires *some* degree of simplifications and generalisation. And it is also because I doubt that greater sensitivity to the said variations would alter our understanding of the basic issue. Once one has a way of life which involves the absence of a fixed residence and fairly regular geographic mobility, one is going to encounter the same legal and institutional structures and challenges, regardless of whether one moves once a month or every week, all year round or during the summer only.
Roma and Travellers such as the (French) Yenisches or the English Romanichals (Bancroft 2005). Others, by contrast, have entirely abandoned the travelling way of life and have settled down, either in brick-and-mortar-housing or in permanently parked caravans. This is particularly true for the large Roma populations of Eastern Europe who have been settled for centuries (Bancroft 2005:7-8, Commissioner for Human Rights 2012:31, Robert 2007:114), but it is also true for many Roma and Travellers in western European countries, as there also here, in the last few decades, has been a strong trend towards settlement. And finally there are the Roma from Eastern European states – sometimes called ‘migrant Roma’ – who in the last 20 or so years have begun to leave their home countries for Western European destinations, where they often end up in irregular encampments and live in very precarious conditions (cf. Cahn and Guild 2008:13-17, Commissioner for Human Rights 2012:144; 156, Laparra and Macías 2009:237-8, Robert 2007a:50-2, Richardson and Ryder 2012:9). So if we now are interested in the problem of *intra-state nomadism*, then we cannot be concerned with Roma and Travellers in general. The concern must instead be with the Western European ones who still live in caravans and pursue a nomadic way of life within their states of citizenship. And the label ‘*nomadic* Roma and Travellers’ has now the simple, but important, function to pick out this very category and to indicate that our interest is not with settled Roma and Travellers or with the so-called migrant Roma, but always and only with the (Western-European) Roma and Travellers who move about within their

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21 In the UK, for instance, there are an estimated 300,000 Roma and Travellers and about two thirds of them are estimated to live in a fixed residence (Greenfields 2010:66, Richardson 2010:168, Kabachnik and Ryder 2010:112, Richardson and Ryder 2009: 247, Niner 2003:24). In France, there are thought to be about 400,000 Roma and Travellers, out which about half are settled and half maintain a travelling way of life. (Robert 2007a:188; Cossée 2007).
That said, I turn to the rationales for focusing, first, on the intra-state, citizen aspect of the problem of nomadism and, second, on the particular case of nomadic Roma and Travellers.

5 Explaining the Focus

5.A Why Intra-State Itinerancy?
The decision to exclusively focus on the intra-state aspect of the problem of nomadism, and to leave aside all questions of cross-border movement, reflects my own, personal interest or preference. Of course, this is a rather odd justification. But in this particular case, there is not much else to go by. The problem of nomadism has (as already seen) garnered very little theoretical attention and constitutes effectively a blank area on the map. And when one faces such a blank area, there simply is not much to guide decisions about the initial direction of exploration. One just needs to start somewhere. And I simply happen to think that the intra-state aspect of the problem is an interesting place to start.

This arbitrariness, however, is only initial: It applies to the decision to focus on the intra-state aspect of the problem of itinerancy, but it does not extend to the subsequent decision to attend to the specific case of the nomadic Roma and Travellers. This choice is, on the contrary, grounded in three substantial considerations.

5.B Why nomadic Roma and Travellers?

NB: It’s an implication of this focus on the nomadic Roma and Travellers of Western Europe that this dissertation does not deal with the important, but separate question of how Eastern European states ought to deal with their large, settled, and generally destitute and marginalised Roma populations. For a brief discussion of this issue see Kymlicka (2001:74-76) and Barsa (2001); see also the doctoral dissertation of Diana Popescu (forthcoming).
The first reason to focus on nomadic Roma and Travellers is do with the fact that nomadic Roma and Travellers are a representative case. Nomads do not all move for the same reasons. Some nomads – think, for instance, of hobos and other migrant workers – are propelled by economic necessity. For others, the travelling way is a matter of individual choice, as in the case of the New Age Travellers, who mostly during the 1980s took to the roads to escape what they saw as a narrow, conformist way of life and to pursue an alternative life project. In the majority of cases, however, the nomadic practice is more than a matter of personal choice or necessity. Often, it is a cultural practice – i.e. a long-standing, inter-generational practice that is constitutive of the group’s identity – so that most nomads move about because that is the way they live and because that is who they are, at least in part. So if we now want to understand how liberals should approach the problem of nomadism, then we should start by considering this last kind of culturally motivated itinerancy which is most frequent or typical. And the case of nomadic Roma and Travellers allows us to do exactly that. For sociologists and anthropologists unanimously agree that the nomadic way of life is a tradition that Roma and Travellers are deeply attached to and see as an element of their identity, even when they no longer travel themselves (Liégeois 1994, Bancroft 2005, Robert 2007a:171-4, Niner 2003:26-9). So the first reason to concentrate on the case of nomadic Roma and Travellers is, in brief, that they are the kind of typical, culturally nomadic group that it is appropriate to start with.

The second reason to concentrate on the case of nomadic Roma and Travellers is that the question of how the state should respond to Roma and Traveller itinerancy is particularly pressing. Many of the culturally nomadic groups live and travel in areas that

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23 I develop this point in greater detail in chapter 4 section 2.
are remote, sparsely populated, and from which the state is relatively absent (Gilbert 2014:5). And this has to some extent the effect of protecting them against laws and state institutions that adversely affect their itinerancy. Nomadic Roma and Travellers, by contrast, itinerate in the middle of Europe, where state institutions are powerful and where the law is enforced rather strictly. So the phenomenon that we are interested in – nomads being exposed to itinerancy-impeding laws and institutions – is particularly pronounced in their case. And as a result, it is particularly urgent that we think about the problem in relation to this specific case.

The final reason for focusing on the case of nomadic Roma and Travellers is that the case offers rich material that is easy to access and research. As we shall see in chapter 2, European states have (or have had) a remarkably broad range of itinerancy-impeding laws and policies. And these laws and policies are fairly well documented, so the case of nomadic Roma and Travellers offers a particularly convenient and rich material to work with.

6 On Liberalism and the Purposes of the Project

I have now described the practical problem that this dissertation is concerned with, and I have tried to situate the problem in the wider literature. In this process I have tried to always be clear that I intend to approach the problem of Roma and Traveller itinerancy from a liberal perspective and will examine how liberals should think about this problem. This focus on liberalism, however, is in need of justification and some further explanation. So before I close this introductory chapter, I want to say something about liberalism in general and about the particular liberal theories that I intend to work with.

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24 Think, for instance, of the Bedouins in the desert or the Nenets on the Yamal peninsula.
And in this connection, I shall as well say a few words about the project’s overall purpose.

So why are we to approach the problem of Roma and Traveller nomadism from a liberal perspective?

A first explanation is that the project aims to fill a gap in the literature on the rights and claims of minorities, and that this is a primarily liberal literature. Most of the work on the claims of minority groups has been conducted ‘within a broadly liberal tradition’ (Patten 2015:19), so if we now seek to address a lacuna in this very literature, then it is natural, and indeed necessary, that we adopt a generally liberal approach.

But there are also some other reasons to adopt a liberal perspective. One is to do with liberalism’s contemporary predominance. Liberalism is currently one of the most influential approaches to political morality, and thus it seems more pertinent to approach the problem of Roma and Traveller itinerancy from a liberal perspective than, say, from a libertarian or a utilitarian perspective. And the final and, indeed, the most important reason to adopt a liberal framework is that it is genuinely uncertain how liberalism resolves the problem of Roma and Traveller itinerancy. On the one hand, it would seem that Roma and Traveller itinerancy is not per se inconsistent with basic liberal rights and values – in fact, one can envisage an argument to the effect that the travelling way epitomises the liberal commitment to liberty and to freedom of movement in particular – and thus it would appear that liberalism should not support policies that impede Roma and Traveller itinerancy, but should rather advocate for the accommodation of the

25 For work on the entitlements of minority groups that is critical of the liberal framework and purports to be non-liberal, see Taylor (1994), Tully (1995), Parekh (2006) and Deveaux (2006), but notice that most of these accounts involve or support a set of extensive individual rights (cf. Taylor 1994:59; Parekh 2006:208; Deveaux 2006:94) and, therefore, seem to be much less distanced from the liberal tradition than they purport to be (cf. Crowder 2013: chapter 5).
travelling way of life. On the other hand, though, it has been hypothesised by Taylor that liberalism ‘is inhospitable to difference’ and does not constitute ‘a neutral ground on which people of all cultures can meet and coexist’ (Taylor 1994:62), so perhaps it is rash and naïve to assume that a liberal normative theory is going to protect Roma and Traveller itinerancy. And then there is also the sheer fact that generally liberal states such as France and the United Kingdom have operated, and still do operate, a range of policies that impede Roma and Traveller nomadism. Maybe this is just a vestige of prejudice and parochialism. But the fact that generally liberal policy makers have thought, and to some extent continue to think, that a range of itinerancy-impeding policies are justified could potentially indicate that the relationship between liberal principles and the travelling way of life might not be as straightforward as it would at first appear. So there is, in short, a genuine uncertainty as to how liberalism handles the problem of Roma and Traveller itinerancy and there is, hence, a need for a systematic analysis of the issue.

But once the decision has been made to approach the problem of Roma and Traveller itinerancy from a liberal point of view, there remain questions about the particulars. Liberals are unified in thinking that (a) the citizens of a state are equal and free, that (b) socio-economic opportunities and certain basic goods should normally be distributed equally, and that (c) citizens are entitled to a broad range of rights and liberties, notably rights to freedom of religion/conscience, freedom of speech, freedom of

26 Note here, that the question of this claim’s truth has not (yet) been conclusively settled. There are compelling arguments to suggest that liberalism cannot countenance, and is indeed inhospitable to, ways of life that are in direct conflict with basic liberal values and rights, e.g. the practice of female genital mutilation; forms of domestic violence, or denials of religious liberty by Native American bands (cf. Kymlicka 1995:41, chap. 8; Parekh 2006:275-8; Carens 2000:147 Spinner Halev 1994:chap. 4 2000:chap.3). But there are also arguments suggesting that liberalism can tolerate and even support certain other practices, notably the use (private and public) of minority languages (see especially the compelling analyses of Lagerspetz 1998 and Patten 2001). So I am not intending to suggest that Taylor’s claim is true. The point is rather that this hypothesis exists, has not been disproved, and that it therefore could be that liberalism is less accommodating of Roma and Traveller itinerancy than one might at first think.
movement, freedom of association, freedom of assembly, freedom of occupation and active and passive voting rights.  

But liberals disagree on the conceptual foundations of these rights and principles. They also disagree on the interpretation of these rights and principles. And liberals are finally – and this is most important for us – embattled in an unsettled controversy about the claims of cultural and religious minorities. Some liberal thinkers (e.g. Raz 1995; Spinner-Halev 1994; Carens 2000; Levy 2000; Parekh 2006; Song 2007; Patten 2015) – I shall call them liberal multiculturalists – hold that justice requires ‘the protection of basic citizenship rights and the nurturing of the capacities of individuals’, but ‘in certain cases … also … the recognition of traditions and specific ways of life that are unique to members of non-dominant cultural minorities.’ (Shachar 2001a:254) Others however – I shall call these the classic neutrality liberals – deny this and insist that the state should simply grant a common set of rights to all citizens and must indeed refrain from politicising group membership (see, for instance, Glazer 1983:124; 1987:98; 1987:28, 221; Gordon 1975:105-6; Porter 1975). So which specific liberal approach are we to work with? Should we adopt the classic neutrality position? The multiculturalist view? An intermediate view?

One possible answer is that we should adopt the best or the correct liberal theory. We should, so one might think, consider the strengths and weaknesses of the multiculturalist and the classic neutrality strand respectively, try to see which is more persuasive, and then bring that best approach to bear on the problem of Roma and

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27 For this account of the basic liberal-egalitarian position I draw on Waldron and Rawls (cf. Waldron 1993; Rawls 2001:44; Rawls 2005:291).
28 Cf. Rawls (2005:450): ‘there are many liberalisms and related views’.
29 NB: By grouping together these various authors, I do not intend to slight or deny the differences between their respective approaches. The point I wish to make is merely, that there exist a range of theories which converge on the fundamental position that the state has a moral responsibility to not only secure basic liberal rights, but also to accommodate ethnic and religious minority practices. Cf. chapter 3 section 2.B
Traveller itinerancy, thus identifying the ‘proper’ liberal response to the problem of Roma and Traveller itinerancy.

But I do not think it is possible to incontestably establish that some particular liberal framework is superior to others and represents the ‘correct’ liberal theory. Every argument designed to show such a thing is liable to reasonable disagreement and contestation, and any attempt to work out the ‘real’ liberal response to the problem of Roma and Traveller itinerancy will be particularistic and contestable as well: It will reveal how one particular interpretation of liberalism resolves that problem, but it will not show how liberalism in general resolves the issue.

So rather than trying to identify, and to adopt, the best liberal theory, I want to take it as a given that liberalism comes in the form of a classic neutrality strand and in the form of a multiculturalist strand, and I will try to look at the problem from both perspectives, using Will Kymlicka’s (1989; 1995; 2001) and Brian Barry’s (2001) respective frameworks as representatives of the two respective strands.30

But, some might here protest, what is the value of a project that agnostically describes the policy implications of different liberal strands and never endorses one or the other? Is there not something worryingly purposeless about such a non-committal approach?

This is a rather heavy charge. But I do not think it is warranted. For it hinges on the understanding that political theory must seek normative truth and should only seek to identify the normatively correct solutions to a given policy problem. And this is a rather narrow and strange view. Why should we think that the aim of political theory is so narrow? Why should we think that the identification of normative truth is the only

30 The choice of these particular accounts is motivated in chapter 2.
legitimate task of political theory, and that the ‘mere’ interpretation of normative frameworks is not a legitimate project? This is not at all clear to me. And it does not appear to be a generally established view within the discipline either. Indeed, there are numerous peer-reviewed articles (for example, in *Philosophy and Public Affairs*) which are completely agnostic and do nothing else than to show that particular normative principles (e.g. the principle of justificatory neutrality) have particular policy implications for, for example, marriage law, the regulation of recreational drug use, or the regulations that concern the handling and the disposal of dead human bodies (cf. Brake 2010; Husak 2000; Tralau 2012).

Besides, I would argue that my agnostic approach can make (at least) three important contributions. The first contribution is, of course, that it helps liberals. Liberals do not presently know what they should be thinking about, or how they should settle, the problem of Roma and Traveller nomadism. So by examining what different liberal approaches imply for this very problem, we can effectively come to the rescue of liberals and help them to see what they ought to think about an issue that they have not yet addressed. And this helps in turn to shed light on the general character of liberal theory. By working out (some of) the practical ramifications of liberal theory, we are not only helping liberals to make up their mind about a specific policy problem, but we are also helping liberals and others to appreciate what sort of normative theory liberalism actually is. And the final contribution is to do with the division of liberal theory. As this study does not to choose sides between classic neutrality liberalism on the one hand and multiculturalist liberalism on the other, but examines the implications of both approaches, this study has the potential to tell us something about the very nature of this divide. More
specifically, it will be able to indicate whether this distinction is very strong and robust so that the two competing strands consistently generate different and conflicting policy recommendations, or whether the two competing strands can at least sometimes find common ground.

7 Outline of the Dissertation

The dissertation proceeds in three main stages. The first stage (chapter 2) is clarificatory. I argue that we cannot meaningfully address the problem of Roma and Traveller itinerancy unless we understand how the problem manifests itself at the level of concrete law and policy, and accordingly I seek to map out how our general and abstract problems A, B and C manifest themselves in the institutional realm. Drawing on the case of France and the United Kingdom, I identify and describe six different problems or questions which are particularly interesting to attend to. These problems concern the education/schooling of children, the (French) travel permits system, the rules and conditions for GP registration and voter registration, the housing benefits system and, finally, the public provision of halting sites.

In the second stage (chapter 3) I turn to liberalism and to the specific theoretical frameworks that I propose to apply to the six problems that are identified and described in chapter 2. I suggest that contemporary liberalism divides into two rival strands that take different views on the entitlements of cultural and religious minorities (i.e. multiculturalism vs. classic neutrality liberalism), and that we, therefore, in order to understand how liberalism resolves the problem of Roma and Traveller itinerancy, need to work with accounts from both sides of the divide. Furthermore I argue that the
liberalisms of Will Kymlicka (1989; 1995; 2001) and Brian Barry (2001) can be seen as representatives of the two different strands, and that we may use these two accounts as proxies for the multiculturalist strand and the classic neutrality strand respectively. I also provide a detailed outline of these two models, thus preparing the ground for the dissertation’s third and final stage.

The final stage of the dissertation (chapters 4, 5, and 6) pulls the strings together and brings Barry’s and Kymlicka’ respective liberalisms to bear on the questions that were identified in the first stage. Chapter 4 examines how the two accounts resolve the housing benefits question, the halting sites question and the problem of GP registration, and shows that the multiculturalist and the classic neutrality approach generate (slightly) diverging solutions for these three problems. Kymlicka’s multiculturalist liberalism militates invariably for the policy options that accommodate Roma and Traveller itinerancy, while Barry’s classic neutrality liberalism engenders policy prescriptions that are not directly opposed to, but less determinate, than those deriving from Kymlicka’s framework.

Chapter 5 attends to the question of voter registration and demonstrates that Barry’s and Kymlicka’s respective accounts resolve this problem in the very same manner, agreeing, first, that it is impermissible for a state to operate a completely residence-based system of voter registration and, second, that the choice of the specific arrangement of accommodation is context-dependent.

And chapter 6 concentrates on the education question and the travel permits question and shows that there here also is an agreement between the classic neutrality approach and the multiculturalist approach. But these latter two agreements are not in
favour of arrangements that accommodate the travelling way of life, but are rather in favour of education policies and travel permits policies that impede Roma and Traveller itinerancy.

Chapter 7 concludes with a consideration of the study’s broader findings and implications, and suggests that the analyses of chapters 4, 5 and 6 do not only show how liberals should think about voter registration, the public provision of halting sites etc., but also demonstrate two broader take-away points. They suggest, first, that liberalism is potentially, but not necessarily and not intrinsically, inimical to Roma and Traveller nomadism. And they suggest, second, that the disagreement between classic neutrality liberalism and multiculturalist liberalism is rather weak insofar as we look at their public policy implications.
Chapter 2

Six More Determinate Problems

1 Introduction

In the previous chapter I explained that this dissertation is concerned with the problem of Roma and Traveller itinerancy and, more specifically, with the following three problems:

D) May a liberal state operate laws, institutions and policies that prohibit or directly burden Roma and Traveller itinerancy? Or should such a state adopt laws, institutions and policies that are less – or not at all – prohibitive of/burdening for Roma and Traveller nomadism?

E) Can a state justifiably operate actively sedentarist laws, institutions and policies which associate Roma and Traveller itinerancy with opportunity costs? Or should the state try to render its laws and policies less partisan and less opportunity-cost-imposing?

F) Is it permissible for a state to operate laws, policies and institutions that are omission-sedentarist and fail to provide goods that are important for
nomadic Roma and Travellers? Or must the state adopt laws and institutions that are attuned to the needs of nomadic Roma and Travellers and seek to subsidise the travelling way of life?

But what do these questions actually refer to on an institutional or legal level? What, for instance, is the precise institutional question behind the problem C? Is it whether the state may completely abstain from subsidising Roma and Traveller itinerancy, or whether it ought to provide publicly maintained halting sites that can accommodate travelling caravans? Or is the question whether the state should subsidise the travelling way of life both by supplying halting sites and by financing the caravans of nomadic Roma and Travellers? Or is the question maybe an entirely different one?

Until now I have said very little about these specifics. And yet, it is absolutely crucial that we understand how our three problems A, B and C disaggregate, and appreciate which specific institutional questions they actually encompass. For without such an institutional understanding, it is quite impossible to make progress on the problem of Roma and Traveller itinerancy: No theory can resolve this problem as long as it is unclear whether the problem actually concerns, say, the public provision of halting sites, a more extravagant measure such as publicly funded caravans for nomadic Roma and Travellers, or something else entirely.¹ So what we need is, in short, a high-resolution map that details how the problems A, B and C disaggregate, and what specific institutional problems they respectively encompass. And the task of this chapter is to provide such a picture or map. I shall not here try to resolve the problem of Roma and

¹ The need for attention to institutional detail and specificity is also an important theme in the work of Jacob Levy (2000: see especially chapters 5 and 6)
Traveller itinerancy, but instead pursue a completely descriptive objective. I will try to develop the institutional picture that we require, and I shall try to show that the problem of Roma and Traveller itinerancy encompasses (at least!) six institutionally different problems or questions: one question that is to do with ID documents, one question concerning the education of children, one question about eligibility criteria for housing benefits, a question about GP registration and voter registration respectively, and finally a question that is to do with the public provision of halting sites.

The remainder of the chapter divides into eight parts. Section 2 provides a methodological discussion in which I outline the method which is best suited for the disaggregation that I want to undertake. I argue that political theory must engage with the political and social reality in which it is embedded, and that we therefore should try to identify specific variants of our general problem, not by imagining potential problems, but by looking at the actual government practices of western European states and by considering the actual demands and needs of nomadic Roma and Travellers. This contextual approach is then further specified, and I give a number of more technical details so as to render my proceeding as transparent as possible. After this, I go on to present the results or problems that my contextual method identifies. Sections 3 and 4 present two different variants of the problem A, namely the travel permits problem (s.3) and the education problem (s.4). The next three sections are each dedicated to a variant of the problem B, namely the housing benefits question (s.5), the GP registration question (s.6), and the voter registration question (s.7). And section 8 lays out a variant of the problem C, namely the halting sites problem. Section 9 summarises and concludes.
2 Methodological Considerations

To accomplish the task of this chapter and to identify institutionally specific configurations of the problem of Roma and Traveller nomadism we need a reasonably transparent and systematic procedure. ‘Muddling through’ is not an option, for we want our final map or picture to be as reproducible and transparent as possible. But what might this procedure be? By which method can we crack open the problem of Roma and Traveller itinerancy and identify a set of institutionally precise questions?

One option is to approach the task in an ivory tower sort of way and to identify specific variants of the questions A, B and C by following a procedure that is well captured by the following two injunctions:

1) Imagine a set of public policies and legal arrangements that would impede Roma and Traveller itinerancy.
2) Imagine an alternative set of arrangements that would be more itinerancy-friendly.

This procedure does have certain virtues. In particular, it is time and labour efficient. But it is not particularly good at identifying the institutional questions that European societies actually need to confront in their political practice. The above two-step procedure may, of course, discover and describe some of the questions that are practically relevant. But since we are considering a rather marginal group and policy area, the odds are really that

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2 Note that here I continue to follow the practice set out in chapter 1 and continue to use the notion of impediment as a label to simultaneously refer to policies that are actively sedentarist, omission sedentarist, or directly burdensome for Roma and Traveller itinerancy. I also continue to use the notion of accommodation and the notion of itinerancy-friendly policies as labels.
the ivory-tower approach mostly identifies hypothetical problems that have little basis in reality. And that is in my view a problem, for following Avner de-Shalit (2000:chap.1), Dennis Thompson (2002:preface), and Joseph Carens (2000:chap. 1) I think that normative political theory should aim to engage with political and social realities, and should strive to discuss questions that are relevant in a practical policy perspective.³ And so, I shall prefer and employ another method – one that is more contextual and more conducive to the kind of practice-oriented theorising that political theory should aim towards.

The essence of this alternative procedure is probably best captured in the following three instructions:

1. Select a sample state (or a set of sample states).
2. Survey the sample state’s public policies to identify specific laws, institutions, and policies that impede Roma and Traveller itinerancy.
3. Try to identify a set of more accommodating policy alternatives; first by considering the policy reforms that may have taken place within the sample state(s), then by considering the proposals of nomadic Roma and Travellers themselves, and if the first two avenues fail by finally imagining some more accommodating policy alternatives.

This condensed description of my preferred method is not sufficiently detailed, though. If we are concerned about transparency and reproducibility – and I think that we should be – something more needs to be said about (1) the sample state(s) that we shall work with;

³ For reasons of space, I cannot defend this view here.
(2) the ways in which we are to survey the legal and policy structures of these states(s); and (3) the ways we are to identify the claims of nomadic Roma and Travellers. So in the rest of this section, I want to say a little more about each of these three points.

(1) Sample States: As for the sample states, I propose to focus on France and the United Kingdom (UK) and, more specifically the period from the 1950s till today. This is in part due to the fact that these states’ treatment of nomadic Roma and Travellers is relatively well-documented and thus relatively easy to research and to account for. But the focus on France and the UK is also explained by the fact that the problem of Roma and Traveller nomadism is particularly pressing in these two states. France and the UK have larger populations of nomadic Roma and Travellers than most other European countries – both in absolute and relative numbers⁴ – and so it is particularly urgent to attend to and to discuss the institutional questions that arise in these particular jurisdictions.

But why limit the inquiry to the last 60 years or so? Why not work with a broader temporal horizon? Well, if we were to extend our investigation further into the past, we would certainly identify a great number of itinerancy-impeding polices. But these are for the most part so draconian and illiberal, that they are without any theoretical interest: We can straightaway tell that, for example, requiring nomadic Roma and Travellers to

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⁴ In the UK there are thought to be about 300,000 Roma and Travellers, out of which about one third pursues an itinerant way of life (Greenfields 2010:66, Richardson 2010:168, Kabachnik and Ryder 2010:112, Richardson and Ryder 2009: 247, Niner 2003:24). In France, there are estimated to be between 300,000 and 400,000 Roma and Travellers, out which 100,000 to 150,000 are nomadic (Robert 2007a:188, Cossée 2007:223). This is quite much, both in term of absolute numbers and in terms of proportion, as compared to other European countries: In Germany, for instance, there are about 70,000 Roma and Travellers, most of which are sedentarised; Spain has about 600,000 Roma and Travellers, but virtually all of them are sedentary; and Belgium has a total Roma and Traveller population of about 30,000. Only Ireland has a nomadic Roma and Traveller population that is comparable to that of France and the UK: In Ireland there are estimated to be between 32,000 and 43,000 Roma and Traveller, and about half of them pursue a nomadic way of life. (Cahn & Guild 2008:88; Derache 2013:annexe 3)
register with the police *whenever* they move into a new village or settlement\(^5\) is going to be inconsistent with *any* liberal theory. So it is to minimise the number of blatantly illiberal and theoretically trivial policies and problems, that we shall restrict our inquiry to cover the past 60 years only.

(2) *Ways of Surveying Policy:* The best way to survey the French and British laws and policies would presumably be to engage in a first-hand study of the relevant legal texts, directives etc. But since this type of first-hand study is extremely time-consuming, and since I do not aspire to give a systematic and comprehensive account of French and British policy vis-à-vis nomadic Roma and Travellers (let alone the historical development of these policies), I shall not proceed in this fashion. Instead, I want to draw on the secondary literature on the topic – first and foremost the work of sociologists and legal scholars,\(^6\) but also the relevant grey literature (e.g. government reports, reports by international organisations etc.)

(3) *Surveying the Claims of nomadic Roma and Travellers:* Arguably, the best way to investigate the claims of nomadic Roma and Travellers is to interview these people and to directly ask them what kinds of policies and reforms they would like to see implemented. But my aim is not to give a deep and thorough account of the politics of nomadic Roma and Travellers. Rather, I aim to investigate how different liberalisms respond to a number of questions pertaining to nomadic Roma and Travellers, and the survey of their claims is merely a means to this end. So it is important, I think, that this

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\(^5\) Between 1912 and 1969, this was statutory policy in France. See Article 3 in the Law of 16th July 1912 on the Exercise of Ambulant Activities and the Circulation of Nomads (Loi du 16 juillet 1912 sur l’exercice des professions ambulantes et la circulation des nomades).

survey step is kept relatively modest or frugal – which is why I have not resorted to interviewing, but instead opted for a slimmer, textual approach that consists in analysing declarations, statements, and policy recommendations from organisations that engage in Roma-and-Traveller advocacy, namely: the European Roma Rights Centre (ERRC), the European Roma Information Office (ERIO), the European Roma and Travellers Forum (ERTF), the International Romani Union (IRU), and the Council of Europe and its various organs.\footnote{Some readers may find it odd that I describe the international Council of Europe as an organisation that engages in Roma and Traveller advocacy, and place it in the same category as non-governmental organisations like the ERRC and so on. But the Council of Europe pays, as a matter fact, much attention to Roma and Traveller issues and has in the last few decades been a vocal critic of member states’ practices and a constant advocate of reforms (cf. Liégeois 2012).}

Now, with the above clarifications in place, we are ready to turn to the results that are obtained through the contextual method that I have just laid out. But before we so shift our focus, I should like to address a potential worry that some readers might have about my contextual procedure.

The method I have proposed to utilise does not necessarily identify policy options that – from a liberal perspective – are the best, the most preferable, or the most just ones. In fact, it may happen that this method ‘only’ identifies a set of policies that are second-, third-, and fourth-best. And some may now consider this a major drawback and a reason to be wary of this procedure, as – so they will argue – political theory should aim to identify \textit{ideal} policies and institutions.

But this concern is, in my view, somewhat out of place. It \textit{is}, I concede, important and valuable to work out what the ideal policy response to the problem of Roma and Traveller itinerancy would be. But as of yet, political theory has said very little about the problem of Roma and Traveller nomadism, and we know next to nothing about the moral
status of the public policies that are currently in operation, as well as those which are being proposed. And in this situation of radical uncertainty, there is something rather odd – something the wrong-way-around – about insisting that our first priority must to be to identify the ideal policy solutions. Surely, in this type of situation, we want to begin by assessing the policy options that are actually on the table, either because they are in operation or because they figure in the political discourse. After this practice-oriented inquiry we may, of course, still wonder what the absolutely ideal policy responses might be. That is completely reasonable. But that is a chronologically secondary question that needs to be asked after we have assessed the politically relevant options.\textsuperscript{8,9} So while I agree that it is an important task of political theory to identify the public policy solutions that (by a given moral standard) are ideal, I do not think that needs to be our objective here and now.

3 The Travel Permits Question

I have now outlined the method by which I want to develop the high-resolution picture that we require, and I have tried to explain why this approach is particularly appropriate. So I shall now turn to the results of this procedure and lay out the specific institutional problems that this method identifies.

However, I should straightaway underline that I shall not seek to present all the problems that can be identified with my contextual procedure. Rather, I want to focus on six particularly interesting problems or questions – i.e. questions that are non-obvious and

\textsuperscript{8} By holding this view, I may be taking a position in the debate on ideal vs. non-ideal theory. But for reasons of space I shall not enter that debate here.  
\textsuperscript{9} This might well be the object of a follow-up project.
most in need of a normative analysis. Two of these problems are variants of our initial problem A, three are instances of problem B, and the last question is an instance of problem C. I begin with the questions that range under problem A and I shall first of all concentrate on the travel permits question.

The travel permits question springs from the French context. So to introduce this question, I need to begin with a few facts about the French situation. In France there exists a quite peculiar legal statute, namely the ‘Loi no. 69-3 du 3 janvier 1969 relative à l'exercice des activités ambulantes et au régime applicable aux personnes circulant en France sans domicile ni résidence fixe’. For brevity, I shall call it ‘the 1969 Law’. This law creates a special category of citizens, namely the so-called gens du voyage. This category includes persons above the age of 16 who live in a vehicle, a caravan, or some other kind of mobile shelter and who have not had a fixed residence for more than six months.

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10 I should here also underline that I am not trying to offer any of the following: I do not seek to write a comprehensive history of state-nomad relations in France and the UK; nor do I try to provide a comprehensive account of the present conditions of British and French nomadic Roma and Travellers. I am also not engaging in a systematic comparison of French and British policy vis-à-vis nomadic Roma and Travellers. My aim is only to pick out from the British and the French contexts a number of institutional questions which are particularly intriguing and worthwhile to discuss from a liberal point of view.

11 NB: The following account has very recently become outdated. In 2012, the Constitutional Council (Conseil Constitutionnel) censored several provisions in the 1969 Law, judging them to be unconstitutional (cf. decision no 2012-279 QPC). Subsequently, a bill was tabled in the Assemblée Nationale to also repeal the remaining parts of the 1969 Law (cf. proposition de loi n° 1610 relative au statut, à l’accueil et à l’habitat des gens du voyage). But this bill stalled as the Senate refused to put it on its agenda. So a long time it looked as though the parts of the 1969 Law that had not been censored would remain in effect. But at the end of 2016, parliament was to pronounce itself on broad legal reform aiming to promote equality in several different policy areas (cf. projet de loi n° 3679 ‘Égalité et citoyenneté’), and this is where the deputies in favour of repealing the 1969 Law saw their chance: They had the proposals of their original bill (i.e. proposition de loi n° 1610) inserted into the new equality bill (i.e. projet de loi n° 3679), and the bill was adopted on December 2nd, 2016 (cf. Gouvernement français 2017). The constitutionality of these provisions was confirmed on January 26th, 2017 (cf. décision n° 2016-745 DC du 26 janvier 2017), so the legal framework that I describe above has very recently gone out of effect.

12 No other western country has an equivalent to this piece of legislation (Charlemagne cited in Garo 2007:87; cf. Gilbert 2014:73).


14 I am in the following going to use the French term whenever I speak of the legal category that is created by 1969 Law. For its best English rendering – Travellers – fails to convey the fact that the category is constructed without reference to cultural affiliation and identity, and applies to any person that lives in a caravan and has not had a fixed residence for more than 6 months.
months. And the individuals within this category are now subject to some special legal obligations that vary with the individual’s employment status and financial situation. *Gens du voyage* who pursue an itinerant economic activity (e.g. hawkers) must carry a so-called *livret special de circulation*, which is a sort of professional hawker’s card that proves that the holder’s business is licenced and listed on the commercial register. All other *gens du voyage* must have one of two special identification documents\(^{15}\) or, as I shall call them, travel permits:\(^{16}\) The *gens du voyage* who do not pursue an itinerant economic activity but have a regular income (e.g. a salary or unemployment benefits) must have a so-called *livret de circulation*; and the *gens du voyage* who do not have any regular income need to have *carnet de circulation*.

Both the *livret* and the *carnet* are valid for 5 years. But to remain valid, they must regularly be countersigned (i.e. stamped) by police officials. The *livret* needs to be countersigned once a year, while the *carnet de circulation* has to be countersigned on a three-monthly basis. Failure to hold a valid document (of the right sort) can be sanctioned with fines up to 1500€ or imprisonment for up to one year.

Now, how should we think of, or conceptualise, this travel permits system? At first glance, we might think of it as a policy that imposes only negligible conditions on the travelling way of life. We might, that is, consider the obligation to regularly renew the travel permits as virtually costless to meet – just as it’s very easy for vehicle drivers to regularly renew their driving licence – and thus view the travel permits system as a policy which does not condition the travelling way of life in any meaningful sense and,

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\(^{15}\) This duty applies regardless of whether one already holds a normal national identity card. (French citizens have a legal right to obtain a national identity card, but have no obligation to do so (cf. Garo 2007:87).)

\(^{16}\) I here follow the categorisation and terminology used by the Council of Europe Commissioner for Human Rights (cf. Commissioner for Human Rights 2012:194).
therefore, does not fit into the category of policies that directly burden Roma and Traveller itinerancy.

But this negligible-conditions view overlooks two important points: First, it ignores that the *gens du voyage* actually need to set aside time to get their permits countersigned—they must personally visit a police station, wait in line, and sacrifice time that could be used for something else.\(^\text{17}\) And the negligible-conditions view elides, second, that there is something special about the obligation to regularly report to the *police*. In a society where the norm is that people do not need to report to police, and where the police’s central task is to survey criminal activities, it is not insignificant if a person (or a group of persons) is obligated to regularly report at a police station. This carries quite on the contrary a significant symbolic weight in the sense that it is a symbolically unpleasant – or, perhaps better, a staining – activity.

Besides, it is not very clear why the limit separating negligible and non-negligible conditions should be drawn in such a manner that the duty to regularly renew a travel permit falls below this limit.

So on balance, I do not think it is appropriate to take a negligible-conditions view of the French travel permits system. Instead, we need to view this policy as an arrangement that subjects the travelling way of life to serious, non-negligible conditions and directly burdens the travelling way of life of nomadic Roma and Travellers. And this, it seems, is also how the consulted organisations view the matter. For they all concur that the system is objectionable and converge to call for its abolition. The authors of the

\(^{17}\) NB: There are reports (from France) indicating that the time it takes to have a travel permit countersigned can be of the order of several hours (European Roma Rights Centre 2005a:66). But I do not wish put much emphasis on this point. For the reports are only anecdotal, and long processing times are not a necessary corollary of the travel permits system, but can very well be due to ill-will on the part of the police staff, or to the police having insufficient resources.
Frame Statute, for instance, urge that ‘the identity papers demanded from the populations with a mobile lifestyle … (do) not constitute discrimination in comparison to the identity papers of non-mobile populations [sic].’ (Rromani Activists' Network on Legal and Political Issues 2008a:chap.6 §1) The Council of Europe Committee of Ministers recommends similarly that member states, ‘in the case of circulating on the national territory, refrain from requiring of national Travellers documents other than ordinary-law identity papers and/or documents authorising an itinerant economic activity (hawker's professional card) in countries in which such papers are required’ (Council of Europe Committee of Ministers 2004: appendix; section IV.A.14). And the Commissioner for Human Rights suggests in the same vein, that nomadic Roma and Travellers ‘should be subject only to the same requirements as their fellow citizens, … [and that] an [ordinary] identity card should be sufficient.’ (Commissioner for Human Rights 2008:26, cf. Commissioner for Human Rights 2006:87, 100, see also European Roma Rights Centre 2005a:310).

So by studying the actual policy practice of France on the one hand, and, on the other hand, the demands of a certain number of organisations, we can identify two competing policy options: a travel permits policy that directly burdens Roma and Travellers itinerancy and a, let’s say, no-travel-permits policy which (obviously) is less burdensome. And thus, we can infer that our initial problem A has a travel-permits dimension and encompasses a question which asks whether it is permissible for a state to have a travel permits policy of the French kind, or whether it should opt for an abolitionist, no-travel-permits policy.

This travel permits question, however, is not the only manifestation of our initial
problem A. This problem also encompasses another issue or question which is to do with the education or the schooling of children.

4 The Education Question

During the 1960s, French education policy was characterized by two elements. Education was (1) provided in the kind of conventional schools that most of us are personally acquainted with and which operate on the basic assumption that children live permanently in one place and attend the same school throughout the entire academic year. And (2) school attendance was mandatory. (In 1958 French lawmakers made school attendance mandatory up until the age of 16 (Taylor 2015:214-15), and additional decrees insisted that the school attendance really was a universal requirement and that ‘nomadic children had to be sent to school, even if a family was only in a commune for half a day.’ (Taylor 2015:214)). And this – as I shall call it – conventional and compulsory education policy was, of course, directly burdensome for nomadic Roma and Travellers. For the combination of a conventional school system with a general school attendance obligation meant that nomadic Roma and Traveller families had no choice but to limit their mobility, at least during term times.18

Today things are somewhat different, though. School attendance remains a legal requirement, with articles 131-1, 131-1-1 and 131-2 of the French code of education (code de l’éducation) stating that children between the age of 6 and 16 must attend school (or receive a home education that meets minimal standards). And the school system

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18 NB: In a conventional and compulsory system, there may be some latitude for movement during the academic year. But I take it as axiomatic that that latitude is limited, as children have to complete an enrolment process every time they transfer from one school to another, and that this takes time – which is why the system ends up working as a limitation of the travelling way of life.
continues to largely be structured around the assumption that children permanently reside in the same location. But to this conventional school system has been added a distance education agency, the Centre national d’enseignement à distance (CNED), which provides nomadic Roma and Traveller children (as well as other children who for some reason cannot attend an ordinary school) with free of charge, primary and secondary distance education (Repaire 2007:106-7; Gouvernement Francais 2015: 34). This helps of course to facilitate and to enable the mobile life of nomadic Roma and Travellers, and French education policy has thus, as compared to the past, become markedly less burdensome for nomadic Roma and Travellers.

This ambition to accommodate Roma and Traveller itinerancy in the realm of education, however, is not an exclusively French phenomenon. Such attempts have also been made in the United Kingdom, albeit with different means – namely with the help of a legal exemption. In the beginning of the 20th century British lawmakers passed legislation to make school attendance mandatory. But simultaneously, they made provisions to partially exempt the children of nomadic Roma and Travellers from the ordinary school attendance requirements (Taylor 2013:80-1; Greenfields and Smith 2013:52). And this exemption policy has been maintained ever since, with the current Education Act of 1996 stating that all children between 5 and 16 have a right to be educated and that parents are legally obliged to make sure that their children attend school or receive an adequate, alternative education, but that parents who, for professional reasons, travel continuously only need to ensure that their children attend school for 200 half-day sessions per academic year, which is about half of the standard

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19 I am grateful to Elisabeth Clanet-dit-Lamanit from the French Ministry of National Education for having carefully explained this system to me.
requirement (Johnson and Willers 2007:252-6; Cemlyn et al. 2009:88).\textsuperscript{20}

So by looking at the French and British policy practices we can see that there are (at least) three different ways in which the state can deal with nomadic Roma and Travellers in the realm of education. It can have a policy of conventional and compulsory education that is directly burdensome for nomadic Roma and Travellers (as was the case in France in the 1960s); it can exempt itinerant children from the ordinary school attendance requirements (as is the case in the United Kingdom), or it can run a distance education policy of the French kind. And so it follows that our initial problem A does not only assume the form of the travel permits question from section 4, but also comes in the guise of an education question which enquires whether the state may operate a policy of conventional and compulsory education or whether it should seek to accommodate Roma and Traveller itinerancy, either by exempting itinerant children from the ordinary school attendance requirements, or by operating a distance education policy of the French kind.

\textbf{5 The Housing Benefits Problem}

Having described the two questions that make up our initial problem A, I now turn the gaze to problem B and I will try to show that it disaggregates into three distinct questions: a GP registration question (s.6), a voter registration question (s.7) and, first of all, a housing benefits question.

\textsuperscript{20}NB: This is a somewhat simplified or selective account of the British school system. The practical provision of public education is in the UK a responsibility of local government and, more specifically, the so-called Local Education Authorities (LEAs). And some of these LEAs have, in fact, instituted so-called Travellers Education Services (TES) which are supposed to ‘deal’ with nomadic Roma and Traveller families – for example, by arranging for record transfers between schools, by helping travelling families to find a new school in the area which they are moving into, and/or by providing a certain amount of distance education. However, I am here going to leave aside these TES, for the TES are, for one thing, a matter of an LEA’s discretion and do not exist across the entire UK (Foster and Walker 2009:58-9). And the TES are, for another, increasingly being rolled back and becoming increasingly rare. (Walker and Norton 2012:104).
The question of the housing benefits is, just as the travel permits question, a question that comes from the French context.\textsuperscript{21} So to introduce this question, I must once again start with some basic facts about the French system.

The French state uses a number of different means to deliver financial support to low-income households. One of these is the housing benefits system. The French state provides housing benefits \textit{both} for low-income tenants who pay rent and for low-income house-owners who buy their \textit{accommodation} – this term is important! – with the help of a loan and then pay off that loan (cf. Direction de l'information légale et administrative 2014a, 2014b, 2014c). But this housing benefits system does not recognize and cover caravans. The French legal system treats caravans as a so-called ‘habitat’ rather than as a form of ‘accommodation’, and so it is categorically impossible for caravan-dwelling people to claim and to receive housing benefits – regardless of their income level, their rent or mortgage payment amounts (Robert 2007a:198; 2007b:61; cf. European Roma Rights Centre and Númena 2007:48; European Roma Rights Centre 2005a:206-7).

But, some may now wonder, how is this caravan-blind character of the system a problem for nomadic Roma and Travellers, and/or an impediment to their itinerant way of life? Is it not the case – so the question goes – that caravans, as compared to brick-and-mortar housing, are an inexpensive form of accommodation, and that nomadic Roma and Travellers – even if they buy their caravans with the help of loans – have an income/mortgage-payment ratio that is well below the ratio that entitles house-dwellers to housing benefits?

Well, not quite. It is true enough that caravans are inexpensive as compared to a house. A caravan fit to serve as permanent residence costs somewhere between €15.000

\textsuperscript{21} Whether or not this housing benefits question has a British counterpart is something which I ignore.
and €31.000 (European Roma Rights Centre 2005a:206) But often, it is exceedingly difficult for nomadic Roma and Travellers to acquire loans from banks, so they often resort to special credit companies which do grant them loans, but charge ‘a particularly high interest rate of 15-20%’ (European Roma Rights Centre 2005a:207; cf. Robert 2007a:198-9; 2007b:68). As a result, it is relatively common that low-income nomadic Roma and Travellers wind up with monthly housing expenses/mortgage payments that are similar (in amount) to those of low-income house-dwellers\textsuperscript{22} (European Roma Rights Centre 2005a:207; cf. Robert 2007a:198-9; 2007b:68). And thus, it is not all inconsequential, if the housing benefits system is caravan-blind. The system’s caravan-blind nature represents on the contrary a significant difficulty for nomadic Roma and Travellers – not in the sense that the system heavy-handedly prevents them from pursuing a travelling way of life, but in the sense that it associates the travelling lifestyle with an economic opportunity cost and effectively obliges (low-income) nomadic Roma and Travellers to choose between the travelling life on the one hand and receipt of housing benefits on the other.

So the French caravan-blind housing system is, in short, an actively sedentarist system, and there is accordingly a broad consensus among the consulted organisations that the French government should reform this system and should begin, not to distribute housing benefits to all caravan-dwellers, but to recognise (permanently occupied) caravans as a form of ‘accommodation’ that is eligible for housing benefits \textit{insofar} as the occupier has an income/housing-expenditure ratio of the order that would entitle a house-dweller to such benefits. For instance, it is a recommendation of the Council of Europe Council of Ministers that states ‘give Travellers’ mobile homes or, where relevant, the

\textsuperscript{22} I.e. somewhere in the range between €400 and €600.
place of residence to which the Traveller is linked, the same substantial rights as those attached to a fixed abode, particularly in legal and social matters’ (Council of Europe Committee of Ministers 2004: appendix, section III.12, emphasis added). And the ERRC asks in a similar vein that the French government begin to ‘recognise caravans as a form of housing and enable Travellers to access all state subsidies associated with housing.’ (European Roma Rights Center and Númena 2007:82, cf. European Roma Rights Centre 2005a:312-3; European Roma Rights Centre 2005b:recommendation 14; Rromani Activists' Network on Legal and Political Issues 2008:chap.6§3). And against this backdrop, it becomes relatively clear that the first institutionally specific variant of our problem B is related to housing benefits: One variant of the initial problem B asks whether it really is permissible for a state to operate a French-style caravan-blind housing benefits system, or whether the state needs to have a, let’s say, caravan-conscious system that treats caravans as a form of accommodation that is in principle eligible for benefits, and enables caravan-dwellers to seek housing benefits if they have an income/housing-expenditure ratio of the order that would entitle house-dwellers to such benefits.

This housing benefits question is not, however, the only manifestation of our initial problem B. This problem also encompasses a question which arises in the British context and which is about GP registration.

6 The GP Registration Question

The British government provides citizens (and resident aliens) with free-of-charge primary and secondary health care. But primary care is not always accessible to
everyone. For primary health care is delivered by so-called general practitioners (GPs), who require prospective patients to register.\textsuperscript{23} And this registration is not always guaranteed to happen. If a patient can show, first, that she lives within the area that is overseen by the surgery in question\textsuperscript{24} and, second, can produce proof of a permanent address within that area,\textsuperscript{25} then the GP surgery is legally obligated to register (and to subsequently treat) that person (Brighton and Hove LINk 2012; National Health Service 2014), and the individual has in effect a (Hohfeldian\textsuperscript{26}) right to be registered with that surgery.\textsuperscript{27} If, on the other hand, a person cannot meet the said two conditions – for example, because she is visiting a part of the country that she does not usually live in, or because she maintains an itinerant way of life – she has no right to registration. Here, the registration is entirely subject to the surgery’s discretion and the surgery can freely decide whether it (a) wants to register the person, whether it (b) wants to temporarily register that persons (this gives the person access to a restricted set of the surgery’s services), or whether it (c) wants to simply refuse to register the person (Brighton and Hove LINk 2012; National Health Service 2014). So the British GP registration system is, then, entirely residence-based in the sense that it does not give all citizens a (Hohfeldian) claim right to GP registration and to secure primary care access, but

\textsuperscript{23} To be clear: If an individual wants to consult a given GP, then she needs to be registered with \textit{that} particular GP surgery – it is not enough to be registered with \textit{some} GP surgery.

\textsuperscript{24} British health care authorities divide the country into parcels, and match each GP surgery with a particular area.

\textsuperscript{25} Note here, that the second condition, while widespread in practice, has brittle legal foundations. There is no national legislation saying that patients must produce a proof of address; and on the local level there are only, in some places, regulations that recommend, but do not require, that GPs register their patients’ addresses (Brighton and Hove LINk 2012; National Health Service 2014).

\textsuperscript{26} For a useful synthesis of Hohfeld’s legal categories and relations, see Singer (1983)

\textsuperscript{27} There are some exemptions to this duty. In particular it is legal for a surgery to decline requests for new registrations if its waiting list is full (Brighton and Hove LINk 2012). But the general rule is still that GP surgeries have a duty to register patients from within their area of responsibility.
reserves this right for those who ‘posses’\textsuperscript{28} a permanent residence\textsuperscript{29} and leaves residenceless individuals with a (Hohfeldian) no-right so that they may be unable to gain primary care access or may have to spend vast amounts of time searching for a GP surgery that agrees to register them.\textsuperscript{30} And such a residence-based system is of course inimical to Roma and Traveller itinerancy – not because it directly compromises nomads’ ability to move about, but in the sense that it associates the travelling way of life with a rather important opportunity cost and forces nomadic Roma and Travellers to choose between their travelling tradition on the one hand and secure primary care access on the other.

So the British GP registration system is then an actively sedentarist system and accordingly, we would expect organisations such as the ERRC etc. to be strongly opposed to it and to demand some other arrangement. But in fact, this does not happen. The consulted organisations say in general very little about healthcare for nomadic Roma and Travellers. And when they do, it is not to propose alternatives to the British

\textsuperscript{28} NB: I use the notion of ‘possession’ rather loosely to designate the situation of persons who either own or rent a geographically fixed habitation.

\textsuperscript{29} Let me underline here, that a residing individual’s right to GP registration is limited: People who possess a fixed residence have a right to register with their local GP, not with all GP surgeries. A resident individual’s relation to other GPs than her local GP is also a no-right relation.

\textsuperscript{30} Note here, that this is not a hypothetical scenario. British GPs do, as a matter of fact, frequently use their discretionary powers to turn away itinerant Roma and Travellers, who consequently struggle to find GPs who will register them (Feder 1989:427; Parry et al. 2004:8; Cemlyn et al. 2009:53; British-Irish Parliamentary Assembly 2014). Note also, that it is only the primary care sector which nomadic Roma and Travellers struggle to access. British A&E departments do not place any registration requirements on patients, and many nomadic Roma and Travellers appear in fact to exclusively rely on A&E departments for their health care. This access to A&E departments, however, is – given that A&E departments cannot provide the same services as GPs (e.g. monitoring of chronic diseases) – only an imperfect substitute for primary care access (see Feder 1989:427; Parry et al. 2004:8; Cemlyn et al. 2009:53).

It may at this point also be noted that nomadic Roma and Travellers have a generally worse health condition, and a life expectancy that is almost 10 years shorter, than that of the average population (see Cemlyn et al. 2009:48-9; van Cleemput 2012:44-5; Parry et al. 2004: 29-30). The causes for this discrepancy are not fully understood, but it is probably not too bold a guess that nomadic Roma and Traveller’s insecure primary care access is a part of the explanation.
registration system. However, it is quite easy to imagine some alternative arrangements. The British state could maintain the fundamental structure of the existing system, but add to it a generous legal exemption which would specifically target nomadic Roma and Travellers and which, by liberating them from the ordinary registration conditions, would give them a legal right to consult (and to be treated) by any GP surgery in the country. Or it could couple the existing system with a more narrow exemption that would also exempt nomadic Roma and Travellers from the ordinary registration conditions, but which, instead of giving them a right to see any GP, would only give them a right to register with and to be treated by one GP of their choice. And the second instance of problem B is hence as follows: May a state operate a British-style residence-

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31 The consulted material only contains one single remark about health care for nomadic Roma and Travellers: The Council of Europe Committee of Ministers Recommendation Rec(2006)10 says rather vaguely that member states should guarantee ‘access to health care for mobile populations … under the same conditions as for the general population’ (Council of Europe Committee of Ministers 2006: appendix; section IV.1; point ii) A possible explanation for this almost complete silence may be, that the settled Roma of Eastern Europe face extremely severe and widespread discrimination in the health care sector (cf. Commissioner for Human Rights 2012:167-76), and that the consulted organisations therefore focus on this particular health care aspect.

32 Note here, that I, in imaging the following two exemption policies, do not depart from the method laid out in section 2. I am following it to the letter: I first identify a policy arrangement that impedes Roma and Traveller itinerancy; then I go on to see if any alternatives are being proposed; and it’s only after this, and indeed because no alternatives are being proposed, that I turn to imagine a set of possible alternatives.

Note also that the absence of a clear, alternative policy proposal cannot be taken to indicate that nomadic Roma and Travellers endorse the current British system and that it is redundant (for us) to devise alternatives. This is primarily because the absence of complaints about the current system does not necessarily reflect acquiescence to the status quo, but can be the result of ‘adaptive preference formation’ (Elster 1983) and reflect, not a genuine policy preference, but the understanding that demands for change have no realistic prospect of success or that other claims are more pressing. Moreover, it should be born in mind that we are not here working with some kind of raw data that directly represents the demands and aspirations of nomadic Roma and Travellers. We are here looking at declarations and documents that are produced, revised and edited with a view to be politically effective. The consulted organisations want to be influential and may thus prioritise some demands over others, or even completely omit certain claims, if that looks to be expedient. So if the consulted documents do not say much about the British GP registration system, then that does not necessarily mean that nomadic Roma and Travellers accept it and do not desire any modifications.

33 This proposal involves an important practical question: How can GP surgeries distinguish nomadic Roma and Travellers from other patients who are not entitled to the exemption? But I shall leave aside this practical issue and assume that the problem can be solved. For a general discussion of how state authorities might go about identifying the members of groups that are entitled to legal exemptions or other group-specific benefits, see Eisenberg (2009:chap. 5)
based system of GP registration? Or should it provide nomadic Roma and Travellers with a narrow, or maybe even with a generous, GP registration exemption that enables them to bypass the ordinary registration conditions?

7 The Question of Voter Registration

I have now described two of the institutional questions that are encompassed by our problem B, namely the housing benefits question and the GP registration question. So now we can turn to the third and final variant of the problem: the voter registration problem. To introduce this problem we need to begin with a brief account of the British electoral system.

The electoral system in Britain is a single-member, simple-majority system in which the country is carved up into numerous electoral constituencies each of which corresponds to a seat in the House of Commons. Which of the various constituencies an individual citizen votes in, is regulated by law. The British electoral law provides that citizens may only vote in the constituency in which they are registered as voters. And that was until the year 2000 entirely dependent on their residency in the sense that citizens could only register as voters in the constituency in which they had their residence (Khadar 2013:15; Representation of the People Act 1983 s4). So residence was, prior to 2000, a sine qua non for voter registration. Of course, this was not a problem for the settled majority population. But it was one for nomadic Roma and Travellers, for the system meant that they – if they wished to pursue a travelling way of life – had to forego voter registration and participation in the electoral process, as well as the social status and
political influence that come from such registration and participation.\textsuperscript{34} So here again, we have an actively sedentarist system.

Nowadays, however, things are somewhat different. In 2000, lawmakers reformed the Representation of the People Act and introduced the concept of notional residence. This provides a mechanism for residenceless individuals to file a so-called ‘declaration of local connection’ and to be registered on the electoral roll of the district to which they feel (no proof is needed) most attached. (Khadar 2013:15-7; Representation of the People Act 1983, s7B). So the current electoral law and voter registration system provides a workaround mechanism which enables nomadic Roma and Travellers (and other residenceless people) to circumvent the ordinary residence-requirements and to enter the electoral register even though they lack a residence. And this is markedly less opportunity-cost imposing than the pre-2000 system, which was entirely residence-based.

The ambition to accommodate Roma and Traveller itinerancy in the electoral system is not, however, unique to the United Kingdom. The French also have an electoral system that is built on single-member districts (or constituencies) which each send a representative to the Assemblée Nationale. And here, too, it is the geographic location of the individual’s residence that determines where the individual citizen votes. French electoral law stipulates that citizens may only vote in the constituency in which they are registered and that registration can normally only happen in the municipality in which a citizen has resided during the last six months.\textsuperscript{35} But nomadic Roma and Travellers are

\textsuperscript{34} Note here, that the amount of political influence that nomadic Roma and Travellers must forego under a residence-based voting system is small, as the political influence of an individual vote is tiny (cf. Downs 1957:258; Somin 2013:63-4; Waldron 1998:313-16). But notice also that this observation does not invalidate the point that a residence-based regime causes nomadically living Roma and Travellers to lose some political influence or power.

\textsuperscript{35} See article 11 of the Electoral Code (code électoral).
not excluded from the voter registration system. For the 1969 Law\(^{36}\) (which institutes the travel permits system presented in section 4) creates a workaround mechanism that makes it possible for these people (and the gens du voyage more generally) to enter the electoral register. The 1969 Law provides\(^{37}\) that persons within its ambit – i.e. gens du voyage – must choose a so-called commune de rattachement (a municipality of attachment) a choice that is binding for two years.\(^{38}\) This obligation to choose a municipality of attachment is not, however, a requirement to live, or to spend a certain amount of time, in the municipality in question. The municipality of attachment is simply a legal category that serves to tie gens du voyage to a particular municipality so that they can access, or exercise, the rights that people normally exercise in their municipality of residence as, for example, the right to marry under common law or the right to access social services and benefits. And it also enables them to register as voters and to vote.

However, it would be a mistake to think that France and the UK have essentially adopted the same workaround policy. For the French workaround mechanism is combined with two unique provisions or qualifications that have no British counterpart. The 1969 Law requires, for one thing, that gens du voyage need to be attached to a municipality for three consecutively years in order to be eligible for voter registration. And the law stipulates furthermore that the gens to voyage can normally not make up more than three percent of any municipality’s total population. The law requires that municipalities – in the absence of exceptional circumstances – refuse ‘attachment’ to additional gens du voyage, if that group already makes up 3% of the total population.

\(^{36}\) Again, this law has very recently gone out of effect; see note 11, above.
\(^{38}\) So once a gens du voyage has chosen a municipality of attachment, he must wait for two years until he can revise his choice and change municipality of attachment.
So what we have are three alternative systems of voter registration: There is the actively sedentarist, residence-based voter registration system that was in place in the UK prior to 2000; there is the simple, British workaround system, and there is the French-style, qualified workaround system (which combines the workaround with a special 3 year rule and a 3% rule). And thus it follows that our initial problem B does not only have a housing benefits dimension and a GP dimension, but also a voter registration dimension. Our initial problem encompasses a voter registration question which asks whether it is just for a state to have a completely residence-based system of voter registration (as was the case in the United Kingdom prior to 2000), or whether the state needs to render its voter registration system less opportunity-cost imposing – either by developing a French-style, qualified workaround system, or by instituting a simple, British-style workaround system.

8 The Halting Sites Problem

We have thus far focused on the problems A and B, and we have seen that these two problems encompass a range of more precise questions. So I now want to turn our attention to the problem C, which involves at least one institutionally precise question. This is a question that deals with halting sites.

To grasp the nature of the halting sites question, it is useful to first of all notice a basic point about the needs of nomadic Roma and Travellers. Nomadically living Roma and Travellers need a special kind of good, namely plots of land on which they can park their caravans and stay for a while. They need halting sites on which they can settle.

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39 NB: I present the following point as a point about nomadic Roma and Travellers. But the point is not specific to this particular group; it holds true for all people who pursue an itinerant way of life.
temporarily and rest, trade, take up work, spend time with friends and family, and so on. (For no one is capable of uninterrupted mobility, not even the most mobile nomads.)

But nomadic Roma and Travellers do not just need halting sites – they also need these halting sites to be spread out in the form of a decentralised network. For it is only when sites are scattered, that nomadic Roma and Travellers can actually travel. If all sites are concentrated in one spot, there is no onwards destination and it becomes impossible to pursue an itinerant mode of living.

Now, how has this special need been catered for? Historically, it has largely been satisfied through wasteland and the commons. Back in the days, it was fairly common, both in France and the United Kingdom, for there to be unoccupied wastelands and/or common land which was accessible to anyone, and this land would often serve as halting sites for nomadic Roma and Travellers (Taylor 2013:34; 2014:119; Clark 2001:221). But over time, the commons were increasingly privatised, wasteland became rare, and private property rules and the rules governing access to publicly owned land were ratcheted up and made stricter40 (Taylor 2013:36; 2014:141; 193-4; Clark 2001:221; Greenfields and Smith 2013:51-2). So by the 1950s, both the French and the British state were effectively operating an omission-sedentarist policy of non-provision: The traditional halting sites on the commons were gone, privately and publicly owned land was largely inaccessible for halting, and the state failed, or refused, to provide any replacement sites.

By the end of 1960s however, the situation started to change, at least in the United

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40 It may here be noted that such strict rules are still in place today. For the British situation, see Johnson and Willers’s discussion of the Criminal Justice and Public Order Act of 1994 and the Highways Act of 1980 (Johnson and Willers 2007:164-70; 180-7). For the French case, see especially article 322-4-1 of the Penal Code (code penal), and article 9 of the Besson Law (Loi no. 2000-614 du 5 juillet 2000 relative à l'accueil et à l'habitat des gens du voyage).
Kingdom. For the Caravan Sites Act of 1968 placed a statutory duty on all local authorities to construct and manage halting sites on which itinerant Roma and Travellers (as well as other caravan-dwellers) could rent a pitch, stop for some time, and access basic amenities such as running water, sanitation, electricity, and garbage collection. The obligation to provide halting sites, however, has not remained in place. In 1994, it was repealed, so British local authorities are nowadays free, but not required, to provide halting sites for itinerant Roma and Travellers. And a significant number of authorities do so: About sixty percent of the local authorities in England have at least one halting site, meaning that there presently exist 324 publicly operated sites in England (Niner 2003:66, 69). So the British state has moved away from the omission-sedentary policy of the 1950s, and is now providing the kind of halting site network that nomadic Roma and Travellers need. The network is, of course, a rather wide-meshed one, seeing that it is only six out of ten local authorities that maintain such sites and that there on average is only one public site on every 402km². Nonetheless, there is a certain degree of public

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42 Note here, that such halting sites differ from publicly run camping sites that cater for holidaymakers. The most important difference is that halting sites are there for people to live on all year round, while camping sites often close during winter. Another difference is that camping sites are typically located in remote rural areas (that are interesting for tourists); while halting sites tend to be located at the outskirts of towns so that occupants have a relatively easy access to the institutions that are important in everyday life, e.g. schools, shops, GP practices, pharmacies etc.

43 It may at this point also be remarked that the central Government provides special funds for the local authorities that decide to build new halting sites or to refurbish old ones.

44 I am here citing the figure for England rather than the UK as a whole, as there (to my knowledge) do not exist any studies that look the UK-wide public halting site supply. All studies on public halting sites provision focus on specific parts of the UK, and most frequently on England (e.g. Niner 2003; Richardson 2007; Brown, Henning & Niner 2010). It appears, however, that the findings from England can be generalised to the UK as a whole, for nothing in the literature indicates, that there would be large discrepancies in terms of site provision between England, Scotland, Wales and North Ireland.

45 I arrive at this figure by dividing the geographic size of England, 130,279 km², by the number of public halting sites in England, i.e. 324.
provision of a halting sites network.46

Similar developments have also taken place in France. In 1990 French lawmakers passed legislation (Loi no. 90-449 du 31 mai 1990 visant à mettre en oeuvre le droit au logement) which was directly inspired by the British Caravan Sites Act of 1968 and required municipalities to provide halting sites for the gens du voyage (cf. Zentner 2001, Aubin 2001). In 2000, this piece of legislation was replaced with the so-called Besson Law (Loi no. 2000-614 du 5 juillet 2000 relative à l'accueil et à l'habitat des gens du voyage), which is still in effect today and obliges municipalities with a population of more than 5,000 persons to provide at least one halting site (Zentner 2001:75-80, Robert 2007a:137).

46 In connection with this discussion of the present-day British halting site policy, it’s necessary to also say a few words about a related topic, namely the issue of planning permissions. In the UK one cannot freely use one’s own land as a halting site. To park a caravan one’s own private land, one must obtain a planning permission (Johnson and Willers 2007:99). But the rules that govern the distribution of these planning permissions are often claimed to be inherently biased against caravans, so that it effectively is very hard for nomadic Roma and Travellers to use their own land for halting purposes (for examples of this view see Clark 2001:284; Niner 2004:152; Brown, Henning & Niner 2010:19; Richardson 2011:8; Johnson & Willers 2007:91-2). So some readers may wonder why I am completely bypassing the topic of planning permissions, and accordingly I want to say something to explain this omission.

The reason why I leave aside the issue of planning permissions this not that I regard it as an uninteresting policy, but rather that it is not at all clear to me that the British planning permission rules are as biased against caravans as it is alleged. The scholars who claim that it is difficult to obtain planning permission for caravan stationing all cite the same sources. They either cite a recent study by Brown, Henning & Niner (2010), which found that between 2006 and 2009 about 40% of the planning permission applications for caravan stationing in England were rejected. Or they cite a (for me untraceable) study from the late 1990s which reportedly showed that during the mid- and late 1990s as many 90% of the planning permission applications for caravan stationing were rejected (cf. Niner 2004:152, Cemlyn et al. 2009:8 and Johnson and Willers 2007:91-2). These two studies however – which both focus on rejection rates – do not actually show that the planning permission rules are biased against caravans. For high rejection rates do not necessarily reflect a bias in the underlying rules. High rejection rates can also be due to other factors. High rejection rates can, for instance, be a result of high rates illiteracy amongst the applications (the idea being that illiteracy might cause applicants to submit formally inappropriate application documents). Or they can occur if many of the applications concern land in areas where development is a priori restricted; e.g. Green Belt areas. (Apparently, it is quite common for nomadic Roma and Travellers to buy land in the countryside where development is restricted – partly because they want to live in the countryside and partly because this is the only land which they are able to afford (cf. Niner 2004:152).) Besides, it appears that the vast majority of the rejected applications are actually granted upon appeal (see Clark 2001:285; Richardson 2011:26) – which rather undermines the idea that the planning permission rules would be biased against caravans. So at the end of the day, it is not at all clear that the British planning permission system is biased against caravans: The available studies on the matter indicate that this might be the case, but they do not – because of their focus on rejection rates – support, nor falsify, this proposition. And it is this lack of firm, secure knowledge, which explains my decision to leave aside the issue of planning permissions.
It is important to appreciate, however, that there is a significant difference in scope between the French and the British halting site policies: The French policy envisages the creation of about 44,000 public sites (Derache 2013:11)\(^{47}\) – this amounts to there being on average one public site on every 12.5km\(^2\)\(^{48}\) – and the resulting halting site network is thus much more fine-meshed than the British one.

So what we have are three alternative halting site policies: We have the omission-sedentarist no-halting-sites policy that the UK and France were following until 1968 and 1990 respectively; we have a policy that involves the provision of a British-style, wide-meshed halting site network, and we have a policy that involves the public provision of a fine-meshed, French-style network. And thus it follows that problem C has a distinct halting-sites dimension, and encompasses at least one specific question which asks whether it is permissible for a state to run a no-halting-sites policy, or whether it needs to provide either a British-style wide-meshed halting site network or maybe even a fine-meshed, French-style network.

9 Conclusion

To conclude this chapter, I would like to briefly go back to its conceptual starting point. In the beginning of the chapter, I argued that our initial problems A, B and C are general and institutionally indeterminate, and that we in order to solve these problems need a more determinate and institutionally specific account of their content. In keeping with

\(^{47}\) It should be noted here, that the implementation of this ambitious policy has been a spectacular failure. Vast numbers of municipalities have preferred to break the law rather than to put up halting sites. So in 2009, only half of the required sites were actually in existence (see Derache 2013:11; Commissioner for Human Rights 2012:154). But since this imperfect implementation is not the intended outcome, I want to leave it aside and instead focus on the French policy as it is supposed to work.

\(^{48}\) To arrive at this figure, I divide the geographic size of (metropolitan) France, i.e. 551.695 km\(^2\), by 44,000 (the number of public halting sites).
this idea, I have here sought to provide such a determinate account. I have looked into the past and present legal and institutional practices of France and UK; and I have considered the recommendations of organisations that engage in Roma and Traveller advocacy. And by doing so, I have identified six institutionally determinate variants of our initial three problems. These questions are:

- **The Travel Permits Question**: Is it permissible for a state to have a travel permits system of the French kind, or should the state adopt an abolitionist, no-travel-permits policy?

- **The Education Question**: May the state maintain a policy of conventional and compulsory education? Or should it either exempt itinerant children from school attendance requirements, or operate a distance education policy of the French kind?

- **The Housing Benefits Question**: Is it permissible for a state to operate a caravan-blind housing benefits system, or should it opt for a system that is caravan-conscious?

- **The GP Registration Question**: Can a state legitimately operate a British-style residence-based GP registration system? Or must it render the system more itinerancy-friendly, either by complementing the system with a narrow exemption that excepts nomadic Roma and Travellers from the ordinary registration requirements and gives them a legal right to register with one GP of their choice, or by complementing the system with a more generous exemption that gives this group a right to be treated by any GP surgery in the country?

- **The Voter Registration Question**: Is it just for a state to have a residence-based voter
registration system, or should the voter registration system be less opportunity-cost imposing and include, either a French-style, qualified workaround, or a British-style simple workaround?

• **The Halting Sites Question:** Is it permissible for a state to run a no-halting-sites policy? Or should the state provide either a wide-meshed halting site network (as the British state does) or maybe even a fine-meshed network (as is the case in France)?

It is this these six questions that will set the practical agenda for the remainder of this dissertation.
Chapter 3

Liberalism in Two Guises

1. Introduction

We have now dissected the problem of Roma and Traveller itinerancy and seen that this problem encompasses (at least) six institutionally different problems or questions. But to work out how liberals should think about this problem, we also need to have a clear view of the normative framework that is to inform our analysis. So I should now like to tackle the dual task of theory selection and theory description, and identify and describe the specific liberal framework(s) that we in the subsequent chapters shall apply to the halting sites question, the education question, and so forth.

I will proceed in three main steps. The first step (s.2) serves to identify the specific liberal framework that it is appropriate for us to work with. I give a general overview of contemporary liberalism and show that contemporary liberal thought divides into two competing strands: a multiculturalist strand, which maintains that the state has a moral responsibility to support minority cultures and (to that end) should operate so-
called ‘group-differentiated’ rights,¹ and on the other hand a classic neutrality strand, which denies that the state would have any such duties and instead emphasises the value of uniform laws.² And given this division within liberalism I suggest that we cannot hope to work with just one liberal theory or framework, but need to deploy frameworks from both sides of the divide. I also argue that the theoretical frameworks of Brian Barry (2001) and Will Kymlicka (1989; 1995; 2001) are the most influential and sophisticated statements of the two competing currents, and that we therefore ought to build our analysis on these very models. The next step (s.3) provides a detailed outline of Kymlicka’s multiculturalist liberalisms, and the final step (s.4) describes the classic neutrality liberalism of Barry (s.4). In each case, I describe the model’s first-order principles and (some of) those principles’ conceptual foundations, thus laying out all of the elements that we will need in order to work out how Barry’s and Kymlicka’s respective liberalisms resolve the problem of Roma and Traveller itinerancy.

But let’s not get ahead of ourselves – let’s instead begin with the first and most fundamental question: If we aim to understand how liberals should reason about the problem of Roma and Traveller itinerancy, which specific liberal theory(ies) should we use and apply to the problem?

2 Selecting Liberal Models

2.A The Division of Contemporary of Liberal Theory

¹ This phrase is from Kymlicka (1995:6)
² Note that the division between classic neutrality liberalism and liberal multiculturalism is not the only division within liberal thought and that there exist a number of other cleavages as well. For example, there is a much-debated divide between public justification liberalism (e.g. Rawls 2005, Quong 2010) and perfectionist liberalism (e.g. Raz 1986, Chan 2000). But for our purposes it is sufficient to focus on the distinction between classic neutrality liberalism and multiculturalist liberalism.
As we set out to select specific liberal accounts for our investigation, it is important that we note two basic points – the first being that Roma and Traveller itinerancy is a particular kind of practice.

The practice of itinerancy can have several different underpinnings. In some cases, nomads are mobile primarily out of personal choice. This is, for example, the case with the so-called ‘New Age Travellers’ of the 1980s who became disenchanted with the conventions and expectations of modern British life and took to the roads to find a (in their view) more attractive life model. But nomadism can also be a response to economic need, as in the case of frequently moving migrant workers. Nomadic Roma and Travellers, though, do not seem to be propelled either by choice or economic necessity. Their mobility seems instead to spring from the fact that the nomadic way of life is ‘central for this group’ and its identity (van Cleemput et al. 2007:206; cf. Greenfields and Smith 2013:124; Liégeois 1994:83, 86), and that it – as two Roma/Traveller interviewees have put it – is ‘their way’ and ‘who they are’ (Niner 2004: 149; van Cleemput et al. 2007:206; see also Niner 2003:27). So the first point to keep in mind is simply that Roma and Traveller itinerancy is first and foremost a cultural practice that is intergenerational and constitutive of this group’s identity.

The second point to note is that the issue of culture and identity is a theme on which contemporary liberal theorists are divided. In the last forty years or so it has become increasingly common for religious and cultural minority groups to claim special rights and benefits that would help them to maintain their specific values, practices and traditions. For instance, it has been demanded that minority members be exempted from certain generally applicable laws (e.g. uniform rules); that speakers of minority languages
be granted legal rights to use their native tongue in transactions with the state, and that indigenous peoples and national minorities be granted self-government rights and/or be given the power to control certain land areas. And such calls for respect-for-identity policies have over the years come to be supported by a wide range of liberal political philosophers. For example, is has been argued by Bhikhu Parekh that ‘a good society should guarantee [cultural rights] to all its citizens’, so that minority groups have the ‘security … to express their identity’ (Parekh 2006:211). Sarah Song has similarly claimed that ‘there are … certain circumstances under which [cultural minority groups] have a prima facie claim to special treatment’ (Song 2007:45). And Will Kymlicka has famously made the argument that ‘we need to rethink the justice of minority rights claims’ and need to recognise that ‘some self-government rights and polyethnic rights [e.g. exemptions or language rights] are consistent with, and indeed required by, liberal justice’ (Kymlicka 1995:108; see also Raz 1994; Carens 2000; Levy 2000; and Patten 2015). So among contemporary liberals it is a widely held view that the state should not only secure some degree of social justice and the basic individual rights that are at the core of the liberal political agenda (e.g. rights to freedom of speech, religious liberty, or political rights), but should also:

(i) help to ensure that minority cultures can maintain themselves over time,

(ii) and, to that end, institute and operate rights and institutions that are not universal, but target specific groups.

For specific examples and a more fine-grained typology of the different respect-for-identity policies that are typically demanded, see Levy (2000:chap. 5)
This multiculturalist position, as I call it, does not command unanimity, though. Some liberals are in fact directly opposed to this view and maintain instead that ‘it [is] not the place of public agencies to go beyond a benign neutrality toward ethnicity, whether to suppress it or to strengthen it’ (Glazer 1983a:124; cf. 1987:98; 1987:28, 221), and that ‘there should be only one status of citizen … so that everybody enjoys … the same … rights… with no special rights or disabilities accorded to some and not others on the basis of group membership’ (Barry 2001:7; emphasis added; see also Gordon 1975:105-6 and Porter 1975)

So contemporary liberalism is not, then, a homogenous and unified school of thought, but is divided into at least two competing strands. Liberal thought has a multiculturalist strand which holds that minority cultures should be supported by the state, even if that involves the institution and operation of group-differentiated rights. And it has an, as I shall call it, classic neutrality strand which emphasises the value of uniform or universal laws, and maintains that the state has no special (moral) responsibility for keeping minority cultures viable, but only needs to secure basic liberal rights and equal opportunities for all. And this bifurcated nature of liberalism has now implications for how we select our theories or models of liberalism. If liberalism divides

4 The way I name this second strand is, admittedly, awkward. But it really is the best possible label. What I here refer to as the second strand of liberalism is in the literature sometimes described as the traditional or classic liberal view (e.g. Ajzenstat 1984:251; Kymlicka 1995:3-4; Barry 2001:7 Taylor 1994: 56). Alternatively, it is characterised as a view that is committed to, or associated with, a notion of neutrality (e.g. Young 1990;158, 173; Carens 2000:8-9; Kymlicka 1995:111; Gutman 1994:4) But it would be extremely unfortunate to label this second strand as ‘traditional/classic liberalism’ or as ‘neutrality liberalism’. For the label of traditional/classic liberalism invites a confusion between this type of liberalism and the classic liberalism of Locke and Mill, which is first and foremost concerned with the securing of individual, negative liberty; and the label of neutrality liberalism entails the risk that it is mixed up with justificatory liberalism, which, roughly speaking, holds that the justification of public policy must proceed in non-sectarian terms that are acceptable to all (reasonable) citizens (e.g. Dworkin 2000, Rawls 2005, Barry 1995, and Quong 2010). The composite label of classic neutrality liberalism is intended to forestall such confusions.
as I have suggested, and if Roma and Traveller itinerancy is an essentially cultural practice, then it is very likely that there does not exist a single, unified liberal approach and solution to the problem of Roma and Traveller nomadism, but a classic-neutrality solution (which is probably not very favourable towards nomadic Roma and Travellers) and (another) multiculturalist solution (which is likely to be more advantageous to the travelling way of life). And given this probability of there being multiple liberal solutions, we cannot with any certainty determine how liberalism as a whole responds to the problem of Roma and Traveller itinerancy, unless we examine the problem from both perspectives, and try to work with accounts from both sides of the multiculturalism/classic-neutrality divide.

2.B Selecting Particular Models of Liberalism

So the way forward is to select liberal models from both sides of the multiculturalist/classic-neutrality divide and to use both in order to investigate the problem of Roma and Traveller itinerancy. But once we have decided to adopt this basic strategy, we still need to do the actual selection and single out some specific liberal models or frameworks. So which specific accounts should we pick? Which of the many multiculturalist frameworks should we select? And which classic neutrality model should we draw upon?

In the case of the classic neutrality account, there is not much choice. The classic neutrality position is, of course, advocated and defended by a number of theorists, in particular by Gordon (1975), Porter (1975), Glazer (1978; 1983; 1987) and by Barry
(2001). But most of these theorists give a rather sketchy account of their position. They fail to tell whether there any moral principles beyond the requirement that the laws be uniform; if they do articulate some additional principle(s), it is with vague explanations of these additional principles’ content; and in most cases they also fail to elucidate the values and commitments that are at the core of their respective theories. The only exception to this pattern is found in the framework that is outlined in Brian Barry’s *Culture and Equality* (2001). *Culture and Equality* is the only statement of the classic neutrality position, which is reasonably precise and systematic, and has a fairly transparent normative basis. So this last account is by far most suited for the kind of practical-institutional investigation that we here want to engage in. And *Culture and Equality* has, moreover, been at the centre of recent debates about culture and is widely recognised as the archetypical statement of the classic neutrality position.

In the case of the multiculturalist account, however, it is more difficult to choose a particular theory. The multiculturalist position has been given a number of different

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5 Patten (2015:4) has suggested that the classic neutrality position would also be endorsed by Waldron (1992), Blake (2002b), and Scheffler (2009). But this misconstrues the arguments of those three authors. Waldron, Blake and Scheffler do criticise arguments that have been put forwards by advocates of the multiculturalist position, but they do not – as far I can see – come out in favour of the view that the law ought to be uniform, and that the state has no responsibility to protect minority cultures. Some of these theorists actually stress that they accept minority accommodations and group-differentiated rights, and only try to deflate a particular kind of justification for such accommodations and special rights (cf. Scheffler 2009:148 n.24; 137; Blake 2002b:638; 660)

6 This is true for Gordon (1975), Glazer (1978) and Porter (1975).

7 This applies to Glazer (1983 and 1987).

8 For this last point, see especially Glazer (1978:88-9), but also Glazer (1987 and 1983), Gordon (1975), and Porter (1975)

9 Some readers may find it strange that I characterise Barry’s theory as clear and systematic one, seeing that numerous commentators (e.g. Pierik 2002; Kukathas 2002; Levy 2004; On 2006; Lenard 2007) have criticised Barry’s *Culture and Equality* for being unsystematic and ad hoc. So I should like to stress that my claim is comparative, not absolute. The idea is that Barry’s classic neutrality liberalism is more sophisticated and systematic than any other statements of the classic neutrality liberalism (e.g. Glazer, Porter).

10 The idea that applied moral reasoning requires a determinate set of clearly grounded and reasonably specific principles is, I think, fairly intuitive and uncontroversial. So I shall not defend it any further. The idea that it’s important to have a clear understanding of a principle’s foundation is developed in some more detail in the early parts of section 3.B
formulations, notably by Will Kymlicka (1989; 1995; 2001), Joseph Raz (1994), Jacob Levy (2000), Joseph Carens (2000), Bhikhu Parekh (2006), Sarah Song (2007), and Alan Patten (2015). And many of these formulations or models are sophisticated and fully capable of addressing the kind of practical questions that we are interested in. So with which of the many possible models should we then work?

It seems to me that Will Kymlicka’s theory of multiculturalism (Kymlicka 1989; 1995; 2001) is a particularly well-suited candidate. For this model, or framework, is widely recognised to be one of the finest and ‘most … influential’ (Kukathas 2003:9) articulations of the liberal multiculturalist position, and it is even likened to ‘John Rawls’s [work] in current thinking about justice’ in the sense that it has been ‘a central agenda-setter that has inspired or provoked much of the writing in the field’ (Crowder 2013:14; 38; cf. Ivison 2010:9; Parekh 2006:80; Modood 2007:20-1). So this is the framework that I shall use as a proxy for the multiculturalist strand more generally.

The decision to focus on Kymlicka’s work, however, invites a potential objection. The advocates of liberal multiculturalism are united in thinking that the state should not only uphold the ordinary liberal rights and secure social justice, but should also operate a range of group-differentiated rights or respect-for-identity policies. But the specifics of the various theorists’ models vary, especially at the level of justification. Consider, for

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11 NB: The above list does only indicate the most prominent multiculturalist theorists and frameworks. For a broader spectrum of accounts, see Margalit and Raz (1990), Tamir (1993), Margalit and Halbertal (1994), and Spinner-Halev (1994, 2000a). Note also, that the above list only features work that formulates general models and justifications for the multiculturalist position. It does not feature the rich work that focuses on specific respect-for-identity policies and weighs arguments for and against particular kinds of policy arrangements. For references to this latter kind of institutionally specific work, see the references that are cited in chapter 1 section 2.

12 The reason I insisting on selection and do not allow for the possibility of working with multiple multiculturalist models is first and foremost a reason of space – we simply do not have the space here to examine how multiple multiculturalist accounts deal with the problem of Roma and Traveller itinerancy. But the reason is also that such a multi-model approach would be redundant, for reasons that I develop below.
instance, the models of Kymlicka, Parekh (2006), Patten (2015) and Levy (2000). Kymlicka’s theory of multiculturalism is, as we shall see below, organised around the values of equality and personal autonomy, and it justifies group-differentiated rights by appealing to these two values.\(^\text{13}\) This appeal to autonomy and equality, however, is very specific to Kymlicka’s work and does not figure in, for example, the thinking of Parekh.\(^\text{14}\) Parekh’s model is instead organised around the ideal of equal respect, with Parekh arguing that we must acknowledge the ‘demands of diversity’ (Parekh 2006:196) because culture partially ‘structures and shapes the individual’s personality … and gives it a content or identity’ (Parekh 2006:156), and that therefore, ‘the basic respect we owe to our fellow-humans extends to their culture and cultural community as well’ (Parekh 2006:196).\(^\text{15}\) And Patten’s model is different again. For respect-for-identity policies are here justified on the grounds that they ensure that the state ‘extend[s] the same forms of assistance to each [conception of the good and culture] and … impose[s] the same forms of hindrance on each’ (Patten 2015:27; 167) and so help to realise the fundamental ideal of equal concern which holds that ‘the state ought to be equally responsive to the interest of all its citizens’ (Patten 2015:28).\(^\text{16}\) And Levy’s model of multiculturalism is even more different, as it does away both with equality and autonomy, and instead justifies respect-for-identity policies on the grounds that such policies help to avoid the ‘summum malum’

\(^{13}\) Cf. section 3.B
\(^{14}\) NB: Parekh’s refusal to appeal to the value of autonomy has led him, and also some observers (e.g. Crowder) to style his account as a non-liberal model that not does really not fit into the category of liberal multiculturalism (cf. Parekh 2006:13-4). But this is, as Levey (2010:32) and Crowder (2013:118) have remarked, more rhetoric than substance, for Parekh’s model does at the end of day the envisage a ‘constitutionally enshrined system of fundamental rights … (which) affirm the equal dignity and status of all citizens’ (Parekh 2006:208) and it holds, moreover, that minority practices should not be permitted if they clash with the ‘operative public values’ of liberal-democratic society (Parekh 2006:272-3)
\(^{15}\) For another account which also operates with a notion of equal respect, see Song (2007; especially chapter 3)
\(^{16}\) For another account that operates with a similar ideal of evenhandedness, see Carens (2000)
of *cruelty and humiliation*, and help to further the values of ‘non-cruelty and non-humiliation’ (Levy 2000:23; 37). And given this heterogeneity in the liberal multiculturalist literature, it might now be argued that it is problematic to treat Kymlicka’s model as a proxy for liberal multiculturalist theory in general: Kymlicka’s framework – so a critic might say – might be able to resolve the problem of Roma and Traveller itinerancy, but this resolution is going to be an idiosyncratic one that is not necessarily shared and endorsed by, for example, Levy’s multiculturalism of fear or Parekh’s multiculturalism of equal respect.

But this heterogeneity objection is overblown, I think. It is, of course, true that a Levy-style multiculturalism of fear is not going to view and treat the problem of Roma and Traveller itinerancy in the same terms as a Parekh-type, equal-respect model or a Kymlicka-type, autonomy-plus-equality model. But it is unlikely that these different accounts would generate radically different policy recommendations and, for instance, would answer the question of voter registration in very different fashions. For the various models are all – despite their conceptual differences – geared towards the same set of policy arrangements: They all tend to justify the same kind of respect-for-identify policies, notably legal exemptions (cf. Kymlicka 1995:97, 114-5; Song 2007:67, 176; Patten 2015:161; Parekh 2006: 115, 243-4; Carens 2000:12), language rights (Kymlicka 1995:97, 109, 111-13; Song 2007:57, Patten 2015:201,209, 287) and rights of self-government for national and indigenous groups (Kymlicka 1995:109; Song 2007:57;61; Patten 2015:242-5; Levy 2000:138;183;194; Parekh 2006:262; Carens 2000:178; 223); and they rarely make conflicting policy prescriptions.¹⁷ And so, it is quite legitimate to

¹⁷ In fact, I can only discern one single policy disagreement between the above-cited accounts. This is a disagreement over the legal recognition of Islamic family law, with Levy arguing for a partial recognition
treat Kymlicka’s model of multiculturalism as a proxy, or representative, that is likely to generate policy recommendations that are not idiosyncratic to this particular account, but which will be endorsed by other liberal multiculturalist frameworks as well.

3 Kymlicka’s Multiculturalist Liberalism

So the way forward is to focus on Barry’s and Kymlicka’s respective models and to see how these two models bear on the problem of Roma and Traveller itinerancy. But once this has been established, we still need to answer an absolutely vital question: What exactly do these two models amount to? What principles and ideals do these liberalisms actually feature? So I shall now look more closely at our two different liberalisms and try to give a detailed account of their constituent elements. I begin with the multiculturalist liberalism of Kymlicka.

3.A Kymlicka’s Liberalism I: First-Order Principles

So what, then, does Kymlicka’s multiculturalist liberalism amount to? Kymlicka suggests five main principles. The first of these principles is a standard basic rights principle that guarantees ‘basic civil and political rights to all individuals, regardless of their group membership’ (Kymlicka 1995:34; 2001:42; cf. 1989:140), in particular active and passive voting rights (Kymlicka 1995:131) as well as rights to ‘freedom of association, religion, speech, mobility, and political organization’ (Kymlicka 1995:26).

The second principle is that individuals should be ‘without fear of discrimination’ (Kymlicka 1995:80) and that ‘every citizen has the right to full and equal participation in the political, economic and cultural life of the country without regard to race, sex, of Islamic family law and Kymlicka arguing against (cf. Levy 2000:183,194; and Kymlicka 1995:42)
religion, and physical handicap – without regard to the classifications which have traditionally kept people separate and behind’ (Kymlicka 1989:141). So the idea is in other words that citizens’ immutable characteristics and/or religious or cultural affiliation must not undermine or inhibit their access to politics, the economy, and the cultural sphere, and that employers, vendors, schools, universities etc. must not treat citizens differentially on the basis of such characteristics and affiliations. And Kymlicka’s third principle is concerned with the instruction and schooling of children. It reflects the ‘traditional liberal concern with education’ (Kymlicka 1995:81; 1989:13) and requires that children be educated: ‘A liberal society’, Kymlicka insists, ‘not only allows people to pursue their current way of life, but also gives them access to information about other ways of life (through freedom of expression), and indeed requires children to learn about other ways of life (through mandatory education)’ (Kymlicka 1995:82, emphasis added; cf. 92).

But what is it now that gives Kymlicka’s model a distinctively multiculturalist flavour or spin? Where, as it were, do we find its advocacy for respect-for-identity polices? The answer to this lies in the framework’s final two principles, which deal with national and ethnic minorities respectively.¹⁸ National minorities are, on Kymlicka’s definition, ‘historical communities’ that (1) have ‘a distinct language and culture’

¹⁸ NB: Some commentators (e.g. Guérard de Latour 2011:725) have claimed that Kymlicka, since the publication of *Multicultural Citizenship*, has refined his categories and has begun to draw a threefold distinction between immigrant minorities, national minorities (such as the Basques) and indigenous people (like the Inuit). But this is a misinterpretation of Kymlicka’s work. It is true that we in Kymlicka’s more recent work find a distinction between national minorities and indigenous peoples (e.g. Kymlicka 2007; Kymlicka & Banting 2006). But this is a descriptive, not a normative, distinction. Kymlicka observes that states, as a matter of fact, make a distinction between indigenous people and national minorities (cf. Kymlicka 2007:66-71; 77-9), but he does at no point suggest that national minorities and indigenous peoples should have different entitlements. His view is, in fact, that such attempts to grant different rights to indigenous people and to national minorities are both ‘morally inconsistent’ and ‘conceptually unstable’ (Kymlicka 2007:595) So Kymlicka’s normative theory has not changed, but continues to be organised around the distinction between national minorities on the one hand and ethnic minorities on the other.
(Kymlicka 1995:11), that (2) occupy ‘a given territory or homeland’ (Kymlicka 1995:11), that (3) are (or have historically been) ‘more or less institutionally complete’ (Kymlicka 1995:11; cf. 2001:54), and which (4) have been incorporated into a state by the means of ‘conquest, colonization or federation’ (Kymlicka 1995:79). So this category includes, for instance, Native Americans, the Basques, and Scots. Ethnic minorities, on the other hand, are groups that ‘arise from individual and familial immigration’ (Kymlicka 1995:10; 19; Kymlicka 2001:54) and do not have any separate or independent institutions, but merely a particular ‘ethnic heritage’ or ‘ethnocultural identity’ – i.e. particular worldviews, practices, and customs that are ‘manifested primarily in their family lives and in voluntary associations’, like ‘customs regarding food, dress [or] religion’ (Kymlicka 1995:14; 2001:54). And the final two principles of Kymlicka’s liberalism – call them the principle of *national self-government* and the principle of *immigrant multiculturalism* – are now to the effect that national and ethnic minorities have certain group-specific entitlements. National minorities are entitled to self-government or ‘regional autonomy’, ‘land claims’, ‘language rights’, ‘guaranteed representation in central institutions’ and ‘veto powers’ that allow them to block certain decisions taken by the central government (Kymlicka 1995: 109; 2001:54-5). And ethnic minorities can legitimately claim ‘certain polyethnic rights’ (Kymlicka 1995:63) – i.e. rights that ‘help ethnic groups and religious minorities [to] express their cultural particularity and pride without it hampering their success in the economic and political institutions of the dominant society’ (Kymlicka

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19 NB: This is strictly speaking a misnomer, as language rights and land claims are conceptually distinct from self-government rights. (A group can enjoy language rights and/or have certain land claims recognised without being self-governing, as is case the for the Sami people in Sweden.) But I will nevertheless stick to this label – partly because Kymlicka himself subsumes the enumerated claims under the heading of ‘self-government claims or rights’ (e.g. Kymlicka 1995:108), and partly because, in order to avoid confusion, I want to stay as close as possible to Kymlicka’s original terminology. For general taxonomy of respect-for-identity policies, see Levy (2000:chapter 5)
These rights include public ‘funding for ethnic associations, magazines, and festivals’, rights to ‘immigrant language education in schools’, and/or rights to ‘exemptions from laws and regulations that disadvantage [ethnic minorities], given their religious practices’ (Kymlicka 1995:31).

These group-specific entitlements are, however, limited in two significant ways. They are, first, subject to a no-internal-restrictions clause which says that group-specific rights must never take the form of ‘internal restrictions’ that allow groups to ‘restrict the basic civil or political liberties’ (Kymlicka 1995:152; cf. 2001:22; 42) of their members. And these entitlements are, second, subject to an equality proviso which reflects the view that ‘[l]iberal justice cannot accept any … rights which enable one group to oppress or to exploit other groups, as in apartheid’ and which holds that group-specific rights must never compromise ‘equality between the minority and majority groups’ (Kymlicka 1995:152; cf. 2001:22-3; 42; 59-60).


So Kymlicka’s multiculturalist liberalism is, to recap, constituted of five first-order principles: a basic rights principle, a principle of non-discrimination, an education principle, a principle of national self-government and a principle of immigrant multiculturalism. But Kymlicka’s liberalism is not a mere collection of first-order principles. It also involves a number of deeper ideals as well as an argumentative apparatus that shows how the account’s basic ideals generate the various first-order principles. And some of these fundamental ideals must now be elucidated. In particular, it is necessary that we understand the normative basis of the education principle. For at the
point at which we try to bring this highly indeterminate principle to bear on the education question, we will have to interpret and specify this principle’s content. And that process presupposes a grasp of the principle’s normative underpinnings or grounds, for the substantial content of a normative principle is not arbitrarily given, but a function of its underlying justifications. Likewise, we need to elucidate the foundations of the principles of immigrant multiculturalism and national self-government. For these principles are not – as we shall see in chapter 4 – directly applicable to the case of nomadic Roma and Travellers, and we are thus obligated to take a broader perspective and to consider if their underlying ideals might have any implications for our case. And that investigation requires, again, that we know what these principles are predicated upon.

So what are the conceptual foundations of the education principle, and the principles of national self-government and immigrant multiculturalism? In the case of the education principle, the answer is relatively straightforward. Kymlicka suggests that (his) liberalism’s ‘most basic commitment is to the freedom’ (Kymlicka 1995:34, cf. 93; 2001:53) and the view that we (i.e. individual citizens) should, first, ‘lead our life from the inside, in accordance with our beliefs about what gives value to life’ (Kymlicka 1995:81) and should, second, ‘be free to question those beliefs, to examine them in the light of whatever information, examples and arguments our culture can provide’ (Kymlicka 1995:81). And this commitment to individual liberty or autonomy – Kymlicka 20

Cf. chapter 6

21 The idea that it is ‘the justification … which determines our interpretation of [normative] concept[s]’ and principles (Waldron 1993:152; emphasis added) has compellingly been argued by Waldron (1993). It is also endorsed by Jones (1994:141-2). And it appears furthermore to be accepted by Miller (2005), Pevnick (2011) and Hosein (2013). For while these latter three authors do not explicitly discuss how normative principles relate to their underlying justifications, they all try to specify moral rights and principles by looking at those principles’ conceptual grounds and seem hence to presuppose that a principle’s content is predetermined by its conceptual basis.
uses these terms interchangeably – is the immediate conceptual basis of the education principle. For Kymlicka justifies the education of children on the grounds that it gives them ‘an awareness of different views about the good life, and an ability to examine these views intelligently’, and thereby enables them to be (or to become) autonomous agents who are ‘able to rationally assess [their] conceptions of the good … and to revise them if they are not worthy of … continued allegiance’ (Kymlicka 1994:81).

As we move on to understand the normative bases of the principles of national self-government and immigrant multiculturalism, it will be best to consider the two principles separately. Let’s first look at the principle of national self-government.

To elucidate the basis of the principle national self-government, it will be useful to first of all introduce and clarify Kymlicka’s concept of a ‘societal culture’. The term ‘culture’ is often used to designate the ‘shared memories or values’ and/or the ‘distinct customs, perspectives or ethos of a group’ (Kymlicka 1995: 76; 18) (This is why it is possible to identify and speak about, for example, ‘academic culture’, ‘gay culture’, and ‘protestant culture’.) But this small-scale or group sense of culture is not what Kymlicka is talking about; Kymlicka’s notion of a societal culture is more ‘macro’. For it is, first of all, a feature, not of any given group of individuals, but of ‘a nation’ or ‘a people’ – that, is an intergenerational community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and history’ (Kymlicka 1995:18). And a societal culture is, furthermore, much more comprehensive and institutionalised than a mere group culture: Its characteristic values and customs pervade ‘social, educational, religious, recreational and economic life’; they encompass ‘both public and private spheres’; and they are embodied in the form of a ‘shared language’, in ‘schools,
media, economy, government etc.’ (Kymlicka 1995:76 cf. 2001:25; 53; 100; 160) And this notion of a societal culture is now at the basis of Kymlicka’s principle of national self-government. For Kymlicka justifies ‘rights such as territorial autonomy, veto powers, guaranteed representation in central institutions, land claims and language rights’ on the grounds that they ‘help …[to] alleviate the vulnerability of minority cultures’ (Kymlicka 1995:109; cf. 1989:190) and so ensure that ‘national groups have the opportunity to maintain themselves as a distinct [societal] culture’ (Kymlicka 1995:113), and ‘that members of the minority have the … opportunity to live and work in their own [societal] culture’ (Kymlicka 1995:109).

But why is it important that members of national minorities have continued access to, or membership in, their societal culture? Why should we care about minorities’ societal-culture access? This, Kymlicka explains, is in first place for reasons of equality. Liberalism, Kymlicka claims, is not only about personal autonomy, but also involves an ideal which ‘emphasises the importance of rectifying unchosen inequalities’ (Kymlicka 1995:109) and which ‘requires removing or compensating for undeserved or morally arbitrary disadvantages’ (Kymlicka 1995:126). And this ideal of equality requires according to Kymlicka that national minority cultures are supported. For in the absence of such support, it can easily happen the society’s majority group, which automatically has ‘the legislative power to protect its interest in culture-affecting decisions’, has ‘its language and societal culture supported’ (Kymlicka 1995:113) while national minorities are systematically ‘outbid or outvoted on resources and policies that are crucial to the survival of their societal cultures’ (Kymlicka 1995:109), and that there develops a situation of arbitrary inequality where the good of societal-culture membership is
unequally distributed between minority members on the one hand and the majority members on the other.

This equality-explanation is not the end of the story, though. For Kymlicka does not merely posit that it is important for people to have access to their respective societal cultures; he also tries to explain this view and develops an argument to show why it really ‘matters … that people have access to a societal culture’ and that they can ‘live and work in their own culture’ (Kymlicka 1995:109; emphasis added). This argument has two parts. The first part starts with the notion that it is generally difficult for people to move between cultures. Kymlicka thinks that ‘most people, most of the time, have a deep bond to their own culture’ (Kymlicka 1995:90) and thus find it difficult and ‘costly’ to move out of the societal culture that they have originally been socialised into and to integrate into another one (Kymlicka 1995:85). And this means, in Kymlicka’s view, that it is legitimate for people to want to remain within their *own, original* societal culture (cf. Kymlicka 1995:86; 1989:176-7; 2001:55), and that the good of societal-culture membership must be interpreted ‘as referring to the individual’s *own* cultural community’ (Kymlicka 1989:177; emphasis added).

Why, though, is it important that people have membership in a societal culture? Why can’t they live without such membership? This is tackled in the second part of the argument which points to the ‘the foundational liberal commitment to individual freedom’ (Kymlicka 2001:210). According to Kymlicka, ‘freedom involves making choices amongst various options’ (Kymlicka 1995:83) and presupposes hence the availability of options. The ‘availability of meaningful options’, however, is not a given, but ‘depends [critically] on access to a societal culture’ (Kymlicka 2001:210; cf. 1995:76;
which, through its broad-ranging institutional framework, can ‘provide people with a wide range of choices about how to lead their lives’ (Kymlicka 2001:53) and which in addition provides an ideological or symbolic framework that ‘renders vivid to us the point of [a given] activity’ (Kymlicka 2001:209) and enables us to perceive and appreciate the options that we have (Kymlicka 2001:209; cf. 1995:83-4; 1989:165-6). So the ultimate reason why ‘[w]e need to take seriously the importance of membership in societal culture’ is, according to Kymlicka, that ‘membership in a societal culture … is necessary for liberal freedom’ (Kymlicka 2001:53; 54). And thus we can conclude that Kymlicka’s principle of national self-government rests on three conceptual cornerstones: It is partly grounded in an ideal of equality which calls for the rectification of unchosen inequalities and disadvantages; but it is also rooted in the view that people should be autonomous, and in the understanding that people, in order to be autonomous, need to have access to (their own) societal culture.

Having said this, I turn to the foundations of the principle of immigrant multiculturalism. Kymlicka’s primary justification for granting polyethnic rights such as immigrant language education, or exemptions from dress codes, is that such rights ‘make it easier for immigrant groups to participate within the mainstream institutions of the existing society’ (Kymlicka 2001:165; cf. 1995:101), and help to promote their integration into the societal culture which they have immigrated into.²² So what underlies the principle of immigrant multiculturalism is, in first place, the notion that immigrants should be integrated into the mainstream societal culture.

But why is it valuable that immigrants are integrated into the mainstream societal

²² NB: The reason Kymlicka thinks that immigrant language instruction promotes the integration of immigrants into the mainstream, is that he believes that (immigrant) children are better able to acquire the mainstream language if they first master their mother tongue (cf. Kymlicka 1995:97; 2001:166).
culture? This, Kymlicka responds, is for a combination of three reasons. It is, first, because societal-culture membership is important for personal autonomy (see the argument above). It is, second, because immigrants, through the act of migration, have relinquished or ‘waived’ their entitlement to live in their own, original societal culture (Kymlicka 1995:96). And it is, third, because immigrants are generally geographically scattered and so are practically unable to ‘sustain a vibrant societal culture’ of their own (Kymlicka 2001:54; 1995:101) and cannot enjoy the good of societal-culture membership unless they integrate into the culture of the host society. So Kymlicka’s principle of immigrant multiculturalism seems to have the same general basis as the principle of national self-government: This principle, too, appears to be rooted in the notion that societal-culture membership is an important (because autonomy-enhancing) good.

But this is not quite the whole story. For Kymlicka does not only justify polyethnic rights with the argument that they facilitate the integration of immigrants into the mainstream societal culture. He also justifies some of these rights with the argument that they help to ensure that institutions and government decisions ‘do not privilege some groups and disadvantage others’ (Kymlicka 1995:115), but ‘provide the same degree of respect, recognition and accommodation of the identities and practices of immigrants as they traditionally have of the identities and practices of the majority group’ (Kymlicka 2001:30; cf. 1995:114) and so further the ideal of equality or fairness.²³ So the principle of immigrant multiculturalism is not exclusively rooted in the ideals of autonomy and the (ensuing) concern for secure societal-culture membership, but also in an ideal of equality and the understanding that equality requires institutions and government decisions to be equally accommodating of different communities’ ethnocultural identities and practices.

²³ Kymlicka uses these terms interchangeably.
We have now examined Kymlicka’s liberalism in quite some detail. I have outlined its first-order principles of basic rights, education, non-discrimination, immigrant multiculturalism, and national self-government. And I have shown as well how some of these first-order principles – in particular the education principle and the principles of immigrant multiculturalism and national self-government – are grounded. I have demonstrated that they are grounded in the ideal of personal autonomy, in the autonomy-based concern to secure societal-culture membership, and in an ideal of equality which calls for the rectification of unchosen inequalities and, more specifically, requires that the state and its institutions be equally accommodating of different communities’ practices and identities. Of course, there is more that could be explored. For example, we could dive deeper into the underpinnings of Kymlicka’s principle of non-discrimination or basic rights principle. But the above outline is fully sufficient to bring the account to bear on the problem of Roma and Traveller itinerancy and the six specific questions that we identified in chapter 2. So I shall now turn the spotlight towards Barry’s rival, classic neutrality liberalism.

4 Barry’s Classic Neutrality Liberalism

To describe Barry’s classic neutrality liberalism, I shall proceed in the same way as in the previous section. I will begin by outlining and describing Barry’s first-order principles (4.A) and then I shall try to shed light on some of those principles’ conceptual

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24 Some readers might also think that something more could be said on the question of whether Kymlicka’s account is a philosophically attractive account. But those readers should be reminded that my aim is not to directly evaluate Kymlicka’s (or for that matter Barry’s) account, but rather to investigate how it bears on the problem of Roma and Traveller itinerancy. Besides, there already exists an impressive body of critical commentary on Kymlicka’s multiculturalism; see in particular Song (2007), Okin (1998), Levey (1997), Carens (2000), Kukathas (1992), Parekh (2006:106), Patten (2015), Danely (1991), Waldron (1992), Benhabib (2002), Choudhry (2002), Deveaux (2006:36; 38), Spinner-Halev (2000a; 2000b)
foundations (4.B). But prior to any of this, I want to stress an important methodological point.

Barry was a fairly prolific writer who theorised liberalism in a number of different works (notably Barry 1989; 1995; 2001; 2005). But I will not attempt to connect these various works and try to treat them as articulations of a unified, coherent framework. Instead, I shall exclusively focus on the liberalism that Barry develops in *Culture and Equality*, and I am – as have many other commentators on Barry’s work 25 – going to treat this liberalism as a free-standing, self-contained theory that is not necessarily continuous with the ideas Barry developed in earlier and later work (especially Barry 1995 and 2005). One reason for this is that Barry himself never suggests that his various frameworks would form a continuous whole. But it is also, and indeed more importantly, because it is uncertain whether the classic neutrality liberalism of *Culture and Equality* actually can be an extension of the liberalism that Barry theorises in *Justice as Impartiality* (1995). Let me develop this point in a little more detail.

*Justice as Impartiality* is essentially a treatise in favour of justificatory neutrality – a principle, that is, which says that the basic rules of society ought to be justified in terms that cannot reasonably be rejected by anyone (Barry 1995:67-72) and that ‘nobody is to be allowed to assert the superiority of his conception of the good … as a reason for building into the framework for social cooperation special advantages for it’ (Barry 1995:160, emphasis added; cf. 142). Now, it could be that such a principle is perfectly continuous with the classic neutrality liberalism of *Culture and Equality*. But that continuity is by no means self-evident. In fact, it looks to be rather uncertain, as students

25 See especially Shachar (2001a) and Song (2007); but also On (2006), Baumeister (2003) and the contributions in the anthology edited by Paul Kelly (2002)
of justificatory neutrality, notably Quong (2006), have suggested that the principle of justificatory neutrality actually generates and justifies the kind of group-specific exemptions that multiculturalist liberals advocate. And so, we need to be careful here; we need to be wary of stipulating potentially spurious continuities and hence, it is most appropriate to treat Barry’s different liberalisms as independent, separate accounts and to solely focus on the classic neutrality liberalism of *Culture and Equality*.

With this methodological clarification in place, let us now turn to the key question: What does Barry’s classic neutrality liberalism amount to and what, more precisely, are the first-order principles that this liberalism articulates?

4.A Barry’s Liberalism I: First-Order Principles

Barry’s classic neutrality liberalism articulates six first-order principles. The first of these is – just as in Kymlicka’s account – a basic rights principle which says that all citizens should enjoy ‘standard liberal rights’ (Barry 2001:132; 133; 138; 125; 14; 200; 277; 274; 68; 253; 252), in particular the rights to free speech, religious freedom, and associational liberty (Barry 2001:122; 127; 150), but presumably also – Barry does not explicitly specify this – rights to freedom of movement, freedom of occupation, active and passive voting rights, a right to hold private property, rights that protect against arbitrary imprisonment and torture, as well as the right to a fair trial.27

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26 NB: I am not suggesting here that Barry’s different liberalism definitively are non-continuous. The point is rather that we in the absence of a systematic study of the relationship between justificatory neutrality and classic neutrality liberalism should refrain from drawing connections, and should avoid stipulating potentially spurious continuities. Let me also underline here that an examination of the relation between classic neutrality liberalism and justificatory neutrality is a project in its own right that cannot be pursued here.

27 The reason I include these latter rights into the category of standard liberal rights is that they are generally accepted and cherished by prominent liberal theorists (e.g. Waldron 1993; Rawls 2001:44; 2005:291)
Next come a principle of non-discrimination and a principle of education. However, it is important to note that these principles are not formulated in the same way as in Kymlicka’s account. Consider first the principle of non-discrimination. Barry thinks, just like Kymlicka, that citizens should be ‘free from fear of discrimination’ (Kymlicka 1995:80). But Barry does not subscribe to Kymlicka’s negative formulation of this idea, which (remember) states that employers, universities etc. must not discriminate on the grounds of immutable characteristics, religious membership, and so forth. Barry envisages instead a positive formulation of the principle which holds that persons with similar skills and talents should have similar chances of reaching a given positions of socio-economic advantage, so that ‘those who are equally well qualified to do a job have an equal chance of getting the job’ (Barry 2001:55; cf. 97; 92; 122; 271) and that equally qualified school or university applicants have equal chances of getting a place at a given institution (cf. Barry 2001:61-2).

There are also differences in the education principle. For Barry, liberalism does not merely imply that children ought to be educated in some unspecified sense. Rather, he insists that children be provided with a certain kind of education – one that is ‘functional’ and renders them literate (Barry 2001:212), teaches them the ‘prevalent language of the polity and the economy’ (Barry 2001:228), and enables them ‘to make a living by working at some legally permissible occupation, [to] engage in commercial transactions without being exploited as a result of ignorance or incompetence, [to] deal effectively

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28 NB: This type of principle is usually labelled as equality of opportunity or equality of socio-economic opportunity (see for instance Rawls 2001:43). But I am going to refer to it as the principle of non-discrimination, as I wish to forestall confusions between this principle and Barry’s more general principle of equality of opportunity, which I describe below.

29 NB: One could here say more about Barry’s principle of non-discrimination. In particular, one could say more about the ways in which Barry specifies the notion of ‘qualifications’. But I think that the above, general characterisation of the principle suffices for our enterprise. For Barry’s discussion of qualifications and discrimination, see Barry (2001:57-60; 166-7)
with public officials, [to] know enough about the law to be able to stay within it… and [to] possess … enough knowledge of hygiene and public health to be able practice effective contraception and to raise children properly.’ (Barry 2001:212) And children should also, Barry adds, be provided with a good education that fosters their ‘ability to think logically and critically’, and which gives them ‘an understanding of the sciences, a broad knowledge of history and an appreciation of literature and the arts’ (Barry 2001:222).

So those are the first three principles of Barry’s moral framework. But what are now the remaining three precepts – the principles four, five and six?

The fourth one is a principle that attends to the structure and shape of the law. It’s a principle to the effect that ‘the same law should apply to all’ (Barry 2001:24; cf. 7) and that legal classifications must not map onto cultural or religious divides, or track immutable characteristics such as race or gender, so that ‘no special rights or disabilities [are] accorded to some and not others on the basis of group membership’ (Barry 2001:7; emphasis added; cf. 12; 29-30; 71; 92-4; 122; 155; 271; 278).

But is this, now, a general principle or does it only apply under certain conditions? This is a question that has been commented on in the secondary literature, with Sarah Song and Ayelet Shachar claiming that Barry’s principle of legal uniformity is limited and only applies insofar as the law in question serves an important or reasonable purpose – or, as Song puts it, as ‘long as there is a good rationale for the law.’ (Song 2007:48; cf. Shachar 2001a:279). But this interpretation is misguided, I think. It is true that Barry at times seems to suggest that a given law should be universally applicable only if ‘there is a good enough case for having a law’ (Barry 2001:332). But Barry does
not merely suggest that laws need to have a good rationale. He also explicates that he takes democratic ratification to be a sign – and indeed, the only sign – of ‘good rationale’: He explicitly states that ‘the only appropriate forum for casting up the balance [for and against a law] is a publicly accountable one: a process in which the public at large is … consulted and … heeded.’ (2001:321; emphasis added). And this makes the good-rationale condition entirely void – at least in a democracy. For in a democracy there is virtually no law that is not democratically approved. The situation is rather that all laws pass a process of democratic ratification, and Barry’s requirement that laws be uniform turns thus, in a democracy, into a blanket principle that applies to any piece of legislation.

So legal uniformity, understood as a general principle, is the fourth element of Barry’s classic neutrality liberalism. And with this established, we can now turn to the account’s fifth and penultimate principle, namely ‘equality of opportunity’ (Barry 2001:54; 32)

The basic idea behind the principle of equality of opportunity is, of course, that citizens should have the same opportunities in life or that they, as Barry puts it, should have ‘identical choice sets’ (Barry 2001:32). But to fully understand the meaning of this principle, it is necessary to grasp four additional points.

The first two points concern the way Barry defines, or conceives of, opportunities. When liberal-egalitarian theorists speak of opportunities and advocate for equality of opportunity, they typically refer to socio-economic opportunities such as jobs or university places (see, for instance, Rawls 2001:43). Barry, however, does not subscribe to such a restricted use, but also uses the concept to refer to, for example, the option that I have to right now pick up and read a book (cf. Barry 2001:37-8), or the option that a ship
crew has to leave the harbour when wind and tide are favourable (cf. Barry 2001:37-8). So Barry uses the term ‘opportunity’ in a completely generic sense that captures every option and course of action that is open to a given person, and his principle of equality of opportunity is accordingly a broad principle which not only says that people ought to have equal socio-economic opportunities, but that they should have the same generic opportunities.

But Barry’s opportunity concept also features another particularity. Some people think that opportunities are ‘subject-dependent’ (Parekh 2006:241) and are (at least in part) determined by people’s beliefs, their mental dispositions, and the ability they have to envision themselves taking advantage of a given opportunity. (And on this basis it is sometimes suggested that equality of opportunity requires certain group-differentiated rights.) Barry, however, rejects this view and maintains instead that ‘[t]he existence of [an] opportunity [is] an objective state of affairs’ (Barry 2001:37; emphasis added) and that, for example, a person’s ‘opportunity to read a wide range of books’ is not affected by her beliefs and her membership in a sect that ‘teaches the sinfulness of reading any book except the Bible’ (Barry 2001:37-8), but only depends on her being literate and her having access to a library (Barry 2001:37-8). And Barry’s principle of equality of opportunity has as a result a quite particular meaning or content: It means, not that people’s experienced opportunities ought to be equal, but only that their objective opportunities ought to be equal.

The third point to notice is that equality of opportunity is a qualified, not an absolute, principle, and does not require that people are continually able to enjoy the very

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30 Thus, it has been argued by Bhikhu Parekh that we need to exempt Sikhs from school uniform rules that ban turbans to ensure that Sikhs have the same opportunity as everyone else to attend school (cf. Parekh 2006:241)
same opportunities. The idea is rather that people’s eligible options are determined partly by their choices and partly by external factors (e.g. the law, social conditions), and that people’s options only need to be equal insofar as they are due to external factors. The idea is that ‘people should not have fewer … opportunities than others when this inequality has arisen out of circumstances that they had no responsibility for bringing about’ (Barry 2001:13) and that they, by implication, may have unequal options insofar as those inequalities result from choice or voluntary behaviour. So Barry’s principle of equality of opportunity is in other words coupled with a luck-egalitarian qualification so that it as a baseline calls for equal (objective) option sets, but permits inequalities insofar as they issue from choices and/or from voluntary behaviour.31

What, though, should we count as a choice or a voluntary action? And relatedly, what is to be viewed as a voluntarily incurred and thus legitimate option inequality? Barry does not offer a complete, systematic answer to this question. He has no general theory of voluntary action and inequality. But he insists – and this is the fourth point to be noticed – that religious and cultural commitments and beliefs, though unchosen, are not ‘some sort of alien affliction’ or ‘an encumbrance … in … the way in which a physical disability is an encumbrance’ (Barry 2001:36), but are something that people control, ‘own’ (Barry 2001:36) and entertain on a voluntary basis. And he suggests relatedly that ‘the choice some people make … as a result of certain beliefs’ is, well, a choice (Barry 2001:45; cf. 35; 117). So Barry’s overall position seems to be that culturally and/or religiously motivated behaviour counts as voluntary, and that culturally and/or religiously

31 This qualification is not always registered by commentators. For a commentary that does note this qualification, see Shachar (2001a); for commentaries which leave aside or overlook the proviso, see Miller (2002) and Mendus (2002).
rooted inequalities are consistent with equality of opportunity. And Barry’s principle of equality of opportunity can thus be characterised as a principle that (1) as a baseline requires that people have identical (generic and objective) option sets, but (2) permits inequalities insofar as they flow from choices and voluntary behaviour, and which (3) holds that culturally and religiously rooted inequalities fall into the latter category and so are consistent with equality of opportunity.

This brings us to the sixth and final principle of Barry’s liberalism. This last principle holds in essence that ‘justice is incompatible with great inequalities of wealth and income’ (Barry 2001:79; see also 108; 195) and that economic inequalities need to be mitigated. But the principle is not exclusively concerned with income and wealth; it also applies to disadvantages in health care, housing, employment, living conditions, etc. so that it becomes ‘morally necessary’ to ‘help the disabled’ and to provide ‘assistance to [those who are] …disadvantaged by … poor quality housing, lack of a job … poor education, a high probability of being victims of physical violence, an unhealthy environment, and so on.’ (Barry 2001:114) So Barry’s final moral principle can then be characterised as an equal basic goods principle which says that citizens should have equal shares of the above-mentioned goods.

This equal basic goods principle is not, however, an absolute principle that applies all of the time, to every single situation. Barry distinguishes in a luck-egalitarian

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32 This voluntaristic conception has been widely noted in the secondary literature; see for instance Horton (2002); Lenard (2002) and Mendus (2002).

33 NB: The luck egalitarian qualification that I describe here is not the only qualification that attaches to the equal basic goods principle. To this principle is also attached a second proviso, which is to the effect that inequalities which do not spring from choice or voluntary behaviour are permissible ‘if it can be shown that such inequalities benefit everyone’ (Barry 2001:108) But since this second qualification is inconsequential for the problems and questions that we are concerned with, I am here going bracket this second qualification, and leave it out from my account of the equal basic goods principle.

fashion between voluntarily incurred inequalities on the one hand and arbitrary and unchosen inequalities on the other. And he specifies that it is only the latter which require mitigation: It is, he writes, the ‘disadvantage[s] for which the victim is not responsible [that] establish … a prima facie claim to remedy or compensation’ (Barry 2001:114; emphasis added) and he adds that ‘[w]hatever [unequal] outcomes occur as a result of free choices … are the outcomes that should occur’ (Barry 2001:93; emphasis added). So on Barry’s account it is not always necessary that people have equal material shares. Departures from equality are on the contrary permissible\(^{35}\) if they are the result of choices and voluntary behaviour.

But how much material inequality and disadvantage can voluntary behaviour legitimise? Is it acceptable that, for example, people starve to death if they have purposefully gambled away their fortune? Barry insists that people who make uneconomic choices – e.g. people who prioritise ‘their family, their sports club or their garden’ over a well-paid employment – ‘should still finish up with enough income to enable them to enjoy an acceptable standard of living’ (Barry 2001:109; emphasis added). So Barry’s position does not appear to be that all choice-induced inequalities are permissible. His luck-egalitarian qualification seems instead to be limited and to be subject to an acceptable-lives proviso so that inequalities are not permissible whenever they come about as the result of choice or voluntary actions, but also need to comply with

\(^{35}\) NB: I read Barry’s theory as saying that inequalities that flow from voluntary actions and choices are permissible, but not sacrosanct. The account does not, on my understanding, insist that such inequalities should persist or that the distribution of basic goods must invariably reflect people’s respective levels of desert. This is because Barry systematically avoids formulations that would suggest such a strong position, and instead tends to opt for the softer formulation that voluntarily incurred inequalities are ‘not unfair’ (Barry 2001:98; 102; cf. 92), thus indicating that his luck-egalitarian qualification is not a very strong, but a relatively lenient, qualification which allows for choice-induced inequalities, but does not require that the distributive scheme systematically mirrors people’s respective levels of desert. For a useful discussion of the distinction between permissive and desert-focused luck-egalitarianism, see Segall (2010:chap. 1)
an acceptability requirement and must not cause the disadvantaged to have unacceptable lives.  

So Barry’s final equal basic goods principle is then subject to two interrelated qualifications: a luck-egalitarian qualification and an acceptable-lives proviso. This observation, though, does not suffice to fully characterise this final principle. To do so, we also need to appreciate a second point which parallels an observation that we made in relation to the principle of equality of opportunity. In our above treatment of Barry’s equality-of-opportunity principle, we saw that Barry’s framework involves a voluntaristic view of cultural/religious commitments and that culturally and religiously rooted option inequalities are consistent with equality of opportunity. And the point to notice is, now, that something similar is true for the equal basic goods principle as well. Barry’s voluntaristic conception of culture and religious commitments means that material ‘inequalities [that flow] from choices rooted in culturally based preferences’ must be regarded, not as ‘a matter of good or bad luck’ – Barry says that that ‘would be a mistake’ (Barry 2001:108) – but as voluntarily incurred inequalities. And accordingly, it is not, as Barry notes himself, an ‘unfair outcome’ or a violation of the equal basic goods principle if ‘some ways of life and their associated values lead to a relatively low level of occupational [and thus material] achievement, as conventionally measured.’ (2001:108) So the take away point is, in short, that Barry’s equal basic goods principle does not only allow for inequalities that flow from choices (provided, of course, that they are consistent

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36 Another way to put this point is to say that Barry’s equal basic goods principle is not merciless or harsh towards those who make uneconomic choices. For discussions of the potentially harsh or merciless nature of the luck-egalitarian position, see Anderson (1999:298) and Voigt (2007).

37 This view is also given expression in Barry’s discussion of the Sikh minority in Britain: Barry indicates here that traditional Sikh norms predispose male Sikhs to seek work in the construction industry and that they, therefore, tend to cluster in that very sector. And he then goes on to describe this clustering as a ‘choice’ and to thereby imply, that it is not unjust if Sikhs, as a result of their cultural preference for construction work, have comparatively low incomes. (cf. 2001:98)
with the acceptable-lives proviso), but also treats inequalities that have their source in cultural or religious commitments as legitimate inequalities that do not mandate any rectification.

I have now described the six first-order principles that compose Barry’s classic neutrality liberalism. But before I close this section on the account’s first-order principles, I want to underline a final, general point that is implicit in all of the above. In section 3.A we noted that Kymlicka’s liberalism features two first-order principles that directly mandate a relatively wide-range of respect-for-identity policies; namely the principle of national self-government and the principle of immigrant multiculturalism. Barry’s liberalism, however, lacks such a principle. Barry’s classic neutrality framework does not contain any principle suggesting that the state institute respect-for-identity policies, and the rights and protections of minority cultures and/or minority religions are hence limited to the rights and protections that are entailed by the six principles that are described above. Minority cultures and/or religions enjoy, that is, all the rights and protections that come with non-discrimination, freedom of association, freedom of conscience, and so forth – so a minority religion may, for instance, expect to have the same legal liberties and the same legal status as the majority religions (cf. Barry 2001:29) – but minorities do not have any entitlements over and above the rights that flow from the above six principles. And Barry’s liberalism can hence be characterised as a model that effectively tells minority cultures and/or minority religions: You will get all the protections that come with the above six principles and you are most welcome to pursue and express your projects, preferences and commitments within the framework of those protections, but ‘it is not admissible to argue that you should get special treatment in

I have now extensively described the six first-order principles that constitute Barry’s classic neutrality liberalism. But Barry’s liberalism is not just a collection of first-order principles. It also involves a number of deeper notions and ideals that motivate those first-order principles – just as Kymlicka’s liberalism does. And some of these fundamental ideals and principles need elucidation. Because when we in the following chapters try to bring the education principle, the equal basic goods principle and the basic rights principle to bear on the problem of Roma and Traveller itinerancy, we will have to interpret and to specify those principles. And that requires (again) that we understand how those principles are grounded. So I shall now turn to these foundations and try to shed some light, first, on the conceptual grounds of Barry’s education principle and then on the fundamentals of his basic rights principle and equal basic goods principle.

So what are the conceptual bases of Barry’s education principle? Barry makes three explicit arguments for his education principle. The first argument is that the principle – especially the requirement the children be provided with a functional education – ensures that the children are equipped with a range of skills and ‘capacities that are useful ... to the possessor’ (Barry 2001:212; emphasis added) and helps a child to attain ‘[the] competences required for it to be able to function successfully in the world into which it is going to grow up.’ (2001:211) The second argument is that the principle – especially the requirement that children be provided with a good education – gives children the means ‘to appreciate the finest creations of the human mind and spirit’
(Barry 2001:221) and thereby ‘provide[s] people with the opportunity to live better lives’ (Barry 2001:221; emphasis added). And the third argument is that the education principle – again through its emphasis on good education – fosters children’s ‘capacity to think for themselves’ (Barry 2001:224) and so ‘create[s] a capacity for autonomy’ (Barry 2001:224). So Barry’s education principle is, on the face of it, rooted in three main considerations. It seems to be grounded, first, in the notion that children have protection-worthy interests in future survival and welfare; second, in the notion that children have an important interest in living good lives; and, third, in the basic idea that people should have a capacity for autonomy in the sense that they should have an ability to think and reason independently.38

But this is not quite the whole picture. If the state provides good and functional education for all children, that helps to ensure that children develop similar skills and have roughly equal opportunities as they enter into adult life. So it is not only possible to justify Barry’s education principle on the grounds of the above three notions. It can also be motivated on the grounds that it helps to make sure that young adults, who have not yet made any choices of their own, have roughly equal opportunities and so furthers equality of opportunity.39 And that is exactly what Barry does. He suggests that equality of opportunity ‘mean[s] that everybody should have an opportunity … to achieve educational success’ (Barry 2001:107; cf. 122) and implies thus that the requirement of education is a conceptual upshot, or implication, of the principle of equality of education.

38 Note here, that the idea is really just that people should be capable of autonomy. The stronger claim that people should realise autonomy, and actually ‘devote a great deal of time and effort to … questioning their basic beliefs and probing the rationale of the institutions and practices within which they live’ (Barry 2001:121) is one that Barry objects to (cf. Barry 2001:120-1).
39 The connection between equality of opportunity and education is discussed in greater detail in chapter 6 section 4
opportunity. So in the end, we need to see the education principle as a maxim that has a fourfold basis and which simultaneously rests on the notions that (1) people should be capable of autonomy; that children have protection-worthy interests in (2) future welfare and (3) in living good lives; and (4) on the principle of equality of opportunity.

Having said this, I turn to the foundations of the other two principles that we need to look at, namely the equal basic goods principle and the basic rights principle. So what is the conceptual basis of these latter two principles? On the face of it, it would seem that it is the idea of fairness, for Barry explicitly states that his liberal principles of ‘civic equality, freedom of speech and religion, non-discrimination, equal opportunity and so on’ are not predicated on an (Lockean) invocation of ‘God and Nature’, but rest on the more mundane understanding ‘that [these] liberal principles are the fairest way of adjudicating the disputes that inevitably arise as a result of conflicting interests and incompatible beliefs about the social conditions of the good life.’ (Barry 2001:122; emphasis added) And the idea of fairness is in turn specified as the idea that the benefits and burdens of social co-operation should be equally distributed between the cooperating parties; it is the idea ‘that when a number of persons engage in a mutually advantageous cooperative venture according to certain rules and thus voluntarily restrict their liberty, those who have submitted to these restrictions have a right to a similar acquiescence on the part of those who have benefited from their submission’ (Barry 1995:33).40

But this construction does not strike me as particularly plausible, for the idea of fairness cannot, for one thing, justify the various liberty rights that are part of the basic rights principle. Fairness can explain why all citizens ought to be granted a uniform,

40 The reference is here to Barry’s earlier book Justice as Impartiality because Culture and Equality does not explicate the idea of fairness, but refers back to Justice as Impartiality (see Barry 2001:122 n.18)
standard package of basic rights, and fairness can also explain why that standard should include a *right to vote*. For this particular right (and the associated democratic system) helps, after all, to ensure that political power is not permanently concentrated in the hands of a few elites, but is regularly equalised and spread out to *all* citizens, and it represents hence a ‘natural concomitant’\(^{41}\) to the ideal of fairness. But the ideal of fairness cannot readily explain why, for example, there should be a basic right to religious liberty. For while it *is* fair to grant all citizens a right to religious liberty, it would – as Clare Chambers (2002) has pointed out – be equally fair (because equally burdensome) to deny such a right and to instead require that all citizens to adopt some entirely new religion, e.g. a religion saying that people ‘must wear orange and worship traffic lights’ (Chambers 2002:168). And the ideal of fairness is also unable to fully account for the equal basic goods principle. The idea that the benefits and burdens of social cooperation should be equally distributed can, I think, explain why basic goods should normally be distributed equally among the members of society. For most basic goods are, after all, the product of social cooperation. And fairness can also explain why it is permissible for people to have unequal material shares insofar as that is the result of choice or voluntary behaviour. For the ideal of fairness is unconcerned with benefits and burdens that do not directly result from social cooperation, but are the product of individual choices, and it does not make any prescriptions for the distribution of such benefits and burdens. But the ideal of fairness cannot justify a proviso to the effect that choice-generated inequalities must always be consistent with people having acceptable lives. For fairness is not interested in the *effects* that a given distribution might have: Fairness does not inquire into *how* a given distribution affects people’s lives, or ask that people reach a certain

\(^{41}\) This phrase is from Song (2007:46)
level of well-being, preference satisfaction, or some such. And therefore, it cannot justify the acceptable-lives proviso that is attached to Barry’s equal basic goods principle.

But it is not only implausible to suggest that the equal basic goods principle and the basic rights principle would only be rooted in the ideal of fairness. This is also a claim that Barry can actually eschew or refrain from. For Barry is, as our discussion of the education principle has shown, committed to the understanding that personal autonomy is an important value or ideal. And such an ideal is quite capable of justifying both the acceptable-lives proviso and the liberty rights that figure in the basic rights principle: If one construes the ideal of autonomy so that it does not only refer to the idea that people should be able to reason independently, but also to two further notions which are widely accepted as components or conditions of autonomy – namely the notion that people ought to be free from coercion and the idea that they should have their vital needs satisfied (cf. Raz 1896:373; Blake 2002:272; Mendus 1986:108) – then it is perfectly possible for this ideal to motivate both the liberty rights that figure in the basic rights principle and the acceptable-lives proviso. For the rights to freedom of association, to conscientious liberty, to freedom of movement, and so forth have all the effect of limiting to the ways the state may exercise its coercive power and help to protect citizens from coercion; and the acceptable-lives proviso ensures that people always enjoy a minimal material standard and do not suffer from, for example, hunger, thirst, cold weather, dire poverty, etc. So I do not think that we should take Barry’s talk of fairness at face value and accept the claim that his basic rights principle and equal basic goods principle are solely

42 Let me immediately preclude a misunderstanding here: I do not mean to suggest that coercion is a dichotomous matter, and that people, in order to be autonomous, ought to be completely free from coercion. The idea is rather that coercion is a matter of degree and that the ideal of autonomy continually pushes for the minimisation of coercion.
grounded in the ideal of fairness. Instead, we should take his normative model to be structured along the lines that I have just indicated. We should assume, that is, that Barry’s fundamental ideal of autonomy does not only refer to the idea that people ought be able to reason independently, but also to the notion that people ought to be free from coercion and should have their vital needs satisfied.43 And we should furthermore assume that this broad ideal of autonomy forms a part of the foundations of the equal basic goods principle and the basic rights principle, so that fairness explains why citizens should have a right to vote and why basic goods should normally be distributed equally, while the ideal of autonomy stands as the justification of Barry’s various liberty rights and of the acceptable-lives proviso.44

5 Conclusion

In this chapter I have sought to tackle the double task of theory selection and description, and to identify and describe the specific liberal frameworks that we shall deploy in order to work out how liberalism resolves the problem of Roma and Traveller itinerancy. To this end, I have first discussed contemporary liberalism and argued that liberalism is divided into two currents that take distinct views on the (moral) claims of cultural and religious minorities and that we, therefore, cannot work with just some liberal framework,

43 Note here, that this conception of autonomy does not treat the availability of options as a precondition for autonomy and so is more narrow than the influential conception of Raz (1986:369-78). One reason for this is that we need not insist on the availability of options in order to motivate Barry’s liberty rights and his acceptable-lives proviso. But it is also because the insistence on the availability of options opens the door for a Kymlicka-type argument about the importance of culture and so can hazard the very classic-neutrality character of Barry’s liberalism.

44 At this point it might be noted that the above interpretation is largely in line with the position that Barry takes when discussing the institution of legal exemptions. In these discussions, Barry suggests that the value of individual liberty can sometimes counterindicate a given law (cf. Barry 2001:41; 47; 50). So he seems to accept the value of individual liberty, and the above interpretation is largely in line with that very position. But I do not wish to put too much emphasis on this point, for the said discussions are, in my view, somewhat ambiguous in that it is not entirely clear if Barry here intends to subscribe and to commit to the value of liberty, or if he merely means to make a conceptual observation.
but need to examine the problem of Roma and Traveller itinerancy with reference to accounts from both sides of the divide. I have also argued that Barry’s and Kymlicka’s respective frameworks are particularly well-suited for this enterprise, as they are the most influential statements of the two respective currents or positions.

After this initial identification of the appropriate frameworks, I have endeavoured to shed more light on the two models. In particular, I have tried to show that Kymlicka’s theory involves a basic rights principle, a non-discrimination principle and an education principle, as well as a principle of national self-government and a principle of immigrant multiculturalism, both of which mandate the institution of a range of respect-for-identity policies. Furthermore we have seen that Kymlicka’s education principle is rooted in an ideal of personal autonomy, while the principles of national self-government and immigrant multiculturalism are predicated partly on the ideal of personal autonomy and the associated notion that societal-culture membership is a valuable good, and partly on an ideal of equality which holds that unchosen inequalities ought to be compensated for and that government decisions must be equally accommodating of different communities’ practices and lifestyles. Likewise, I have shown that Barry’s liberalism involves six moral principles, namely a basic rights principle, an education principle, a principle of non-discrimination, principles of legal uniformity and equality of opportunity, and, finally, an equal basic goods principle. And I here, too, I have looked at some of those principles’ conceptual grounds. In particular, I have demonstrated that the education principle is rooted in a whole battery of ideals and normative notions – including an ideal of personal autonomy and the principle of equality of opportunity – and I have argued that the basic rights principle and the equal basic goods principle are based, partly on an ideal of
fairness which holds that the benefits and burdens of social cooperation ought to be distributed equally among the cooperating parties, and partly on an ideal of autonomy which holds that people should be able to reason independently, ought to be free from coercion and should have their vital needs satisfied.
Chapter 4

Liberal Disagreements: Housing Benefits, Halting Sites and GP Registration

1 Introduction

We have now fixed our ideas regarding liberalism on the one hand, and the institutional nature of the problem of Roma and Traveller itinerancy on the other. We have discussed, that is, how the problem of Roma and Traveller nomadism disaggregates into at least six specific problems; we have seen that liberalism divides into a multiculturalist and a classic neutrality strand; and we have finally seen what these two strands – as exemplified by Barry’s and Kymlicka’s respective models – amount to.

But how do these two liberalisms now resolve the six questions that we have identified? How, for example, do they propose to resolve the halting sites problem? And how do the accounts’ respective recommendations add up? For instance, does Barry’s classic neutrality liberalism invariably advocate for policies that impede Roma and Traveller itinerancy? And finally, how do the respective accounts’ recommendations compare to each other? Do the two competing liberalisms systematically disagree with
each other or is there, maybe, some common ground between them?

These questions remain unanswered because even though we have completed the groundwork, we have not yet carried out the interpretative-evaluative work that is needed in order to answer these questions. So I shall now turn to this final step of our investigation, and in the course of the following three chapters I shall demonstrate three main points. I will argue that Barry’s and Kymlicka’s respective liberalisms, despite their different perspectives on the entitlements of minority cultures, converge on the question of voter registration and agree that the state must institute rules for voter enrolment that accommodate the travelling way of life (chap. 5). I will similarly demonstrate that Barry’s and Kymlicka’s respective accounts converge over the travel permits issue and on the education question, but that they here object to accommodations and instead support policy arrangements that impede the itinerant way of life (chap. 6). But prior to any of this, I want to look at the issue of housing benefits, the issue of halting sites, and the question of GP registration and show that these are divisive questions over which Barry’s and Kymlicka’s respective liberalisms disagree (chap. 4).

My analysis proceeds in three main steps. I begin by looking at the issue of housing benefits and by examining how the question is resolved by Kymlicka’s (s.2) and Barry’s (s.3) respective liberalism. Then I turn to investigate the issue of public halting sites (s.4 and s.5). And in the final step, I consider how our two different liberalisms handle the issue of GP registration (s.6 and s.7).

2 Kymlicka’s Multiculturalist Approach to Housing Benefits

So, to begin with, how does Kymlicka’s multiculturalist liberalism view and resolve the
housing benefits question? Can this framework accept that the state operates a caravan-blind housing benefits system in which caravans are by default ineligible for housing benefits? Or does it instead advocate for a caravan-conscious housing benefits system that treats caravans as a form of accommodation that is in principle eligible for benefits and enables caravan-dwellers to receive housing benefits if they have an income/housing-expenditure ratio of the order that entitles house-dwellers to such benefits?

To answer this question, we can start by noting that some of Kymlicka’s first-order principles simply do not have any bearing on the question. This is particularly obvious for the education principle, which deals with the education of children. But it is true for the basic rights principle as well, for Kymlicka’s basic rights principle does not, as I understand it, encompass any socio-economic rights but is more narrowly concerned with rights such as the right to freedom of association, freedom of religion etc. And Kymlicka’s principle of non-discrimination is, while applicable, quite inconclusive. For this principle does only rule out forms of discrimination that are based on religious or cultural membership, or personal features, and neither of our two competing housing benefits systems make discriminations of this prohibited kind.

These first and rapid observations, however, do not suffice to conclusively determine how Kymlicka’s liberalism resolves the housing benefits question. To do so, we also need to consider if Kymlicka’s last two principles – i.e. the principles of national self-government and immigrant multiculturalism – are applicable to the problem (2.A). And if they are not – if they, as I shall argue, have just as little bearing on the housing

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1 Cf. chapter 3 section 3.A
2 Cf. chapter 3 section 3.A
3 At most, there will be a differential treatment of different housing types (i.e. caravans vs. brick-and-mortar housing) For a more extensive discussion of this point, see section 3.A
benefits question as the account’s first three principles – then we must also examine whether the account’s deeper and more fundamental ideals\(^4\) might have any implications for the issue of housing benefits (2.B and 2.C). So let us now focus these very questions, and let us first look at the principles of national self-government and immigrant multiculturalism.

2.A On the Principles of National Self-Government and Immigrant Multiculturalism

So, how should we envision the principles of national self-government and immigrant multiculturalism? Can at least one of these principles be brought to bear on the housing benefits question?

To work this out, let’s begin by considering the principle of national self-government, and let us first of all remember that this principle is not a general one. Kymlicka’s principle of national self-government is not to the effect that any minority can claim self-government rights and so forth, but holds, more specifically, that such rights ought to be granted to national minorities. So we cannot take it for granted that the principle is applicable to the housing benefits question and the case of nomadic Roma and Travellers: This will only be the case if these people actually constitute a national group and fall into the group category that the principle is tailored for. This, however, does not seem to be the case.

Kymlicka maintains, as we have seen,\(^5\) that national minorities have two main features. They are institutionally complete in the sense that they form (or used to form) independent, functioning societies that own, or control, the institutions that govern their

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\(^4\) I.e. the ideals we identified in chapter 3 section 3.B

\(^5\) Cf. chapter 3 section 3.A
members’ lives. And national groups are, furthermore, concentrated in distinct homelands.

Now, what exactly this notion of a homeland refers to, is not entirely clear. Kymlicka does not explain whether he uses the term to designate something like a group’s preferred territory – which the group may, or may not, share with other groups – or whether he uses the term in a stricter sense to designate a territory that is predominantly or solely occupied by a given group. But since Kymlicka systematically describes national minorities as groups that are ‘potentially self-governing’ and as groups that ‘might have retained or established their own sovereign governments’ (Kymlicka 1995:19 and 12; cf. 27; 116-9), I believe we should proceed on the understanding that Kymlicka uses the notion of a homeland in the latter, stricter sense and envisions national groups as groups that (1) live (or used to live) in their own territories and which (2) are (or used to be) institutionally complete and in control of the institutions that govern their members’ lives.

These two features, however, are not present in the case of nomadic Roma and Travellers. They do not, for one thing, live in any distinct homeland of their own, but have always lived and moved in a territory that is densely populated by a sedentary majority population. And they are not in a position of institutional control either. Nomadic Roma and Travellers may, of course, have control over some of the institutions that govern their lives – e.g. norms and mechanisms for the resolution of intra-group conflicts. But the really influential, legal and political institutions of the state have never

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6 Remember: Nomadic Roma and Travellers are not a vestige of some group that once upon a time was territorially concentrated, but are descendants of groups that migrated into a previously populated area (i.e. Europe) and/or groups that emerged out of the pre-existing European societies. Cf. chapter 1 section 3.
7 See Okely (1983) for an overview of a several such institutions.
been within their reach. The very predicament of nomadic Roma and Travellers is, in fact, that they from the very beginning have been subject to the political and legal institutions of the majoritarian society (which has frequently used these institutions to make life difficult for them, or even to eradicate them\(^8\)). And something similar is also true on the economic level. Nomadic Roma and Travellers have never entertained a closed and independent economy, but have always – and this is still true today – made a living by filling in niches in the mainstream economic system and by producing goods and services that are demanded by the majoritarian society; e.g. kettles or baskets, seasonal labour, repair works, entertainment etc. (cf. Clark 2001:124-133; Robert 2007a; Okely 1983: chap. 4).

So there has never been anything like a distinct nomadic-Roma-and-Traveller economy, government, or homeland,\(^9\) and we cannot, therefore, view this population as a

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\(^8\) Think, for example, of the British case. Itinerant Roma and Traveller groups first appeared on the British Isles around 1500 (Clark 2001:118), and mainstream political and legal institutions were very quick to impose themselves on this new group: In 1530 Parliament passed a law which required the newly arrived Roma to leave the country, and by 1554 legislation made it illegal to be a ‘Gypsy’ – punishable by death! (Clark 2001:109; Okely 1983:chap. 1; for the case of France, see Robert 2007a:117-20 and FNASAT 2013)

\(^9\) By arguing that nomadic Roma and Travellers do not have a homeland and therefore cannot be considered a national group, I take a position that is close to the positions of Chiara Testino and Sophie Guérard de Latour who both examine how Roma and Travellers fit into Kymlicka’s group typology, and both argue that Roma and Travellers ‘do not have any territorial base’ and therefore ‘do clearly not constitute a national minority’ (Guérard de Latour 2011:729, 732-3; my translation; cf. Testino 2010:99). But our positions are not completely identical. This is, first of all, because the scope of our claims and analyses is not the same. I am (as I explicated in chapter 1) exclusively concerned with the Roma and Travellers who pursue an itinerant lifestyle within their own states, and my arguments and claims are only meant to apply to this particular population. But that is not case for the arguments and claims of Testino and Guérard de Latour, who both look at Roma and Travellers more broadly and also consider the Roma and Travellers who move across borders and those who lead a settled life. Our positions are also different in the sense that we do not use the same arguments to reach the conclusion that nomadic Roma and Travellers/ Roma and Travellers (more broadly) do not form a national group. My argument for this conclusion is, as I have tried to make clear, that they lack a homeland and do not have the institutional control that is characteristic of national groups. Testino and Guérard de Latour, however, make a somewhat different argument. They present the same homeland argument that I do, but they do not address the issue of institutional control. Furthermore, they try to present an argument that I do not. That argument is to the effect that Roma and Travellers cannot form a national minority as they are internally diverse and divide into a number of different sub-groups that have different historical origins, different norms and customs, and who speak different languages (cf. Testino 2010:99; Guérard de Latour 2011:726-7). But this last argument is, in my view, a non-starter. For the fact of internal diversity does not show that Roma and Travellers do not enter
national minority as Kymlicka defines it. And this means in turn that Kymlicka’s principle of national self-government has no bearing on the case of nomadic Roma and Travellers: This principle is designed to deal with another type of minority, or another type of social situation, and it cannot therefore be applied to the housing benefits question, nor to any other of our six institutional problems.

But is this also true for the other principle that we want to consider here – i.e. the principle of immigrant multiculturalism? Is this last principle of Kymlicka’s also inapplicable to the housing benefits question? Or is it, perhaps, more relevant?

Well, Kymlicka’s principle of immigrant multiculturalism is – just as the principle of national self-government – tailored towards a particular group type, namely ethnic minorities. And Kymlicka defines\(^{10}\) ethnic groups as groups that (1) have a distinct ‘ethnocultural identity’ (i.e. distinct practices, customs and worldviews), and (2) whose distinctiveness results from (individual or familial) international migration.\(^{11}\) Nomadic Roma and Travellers, however, do not meet this definition. They do, of course, have worldviews and practices – notably the travelling way of life – and, in some cases, languages that set them apart from the European majority populations (i.e. the French, the English etc.). But this distinctiveness is hardly the result of immigration. In the case of

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10 Cf. chapter 3 section 3.A
11 Some readers might here want to interject that this particular construction or definition of an ethnic minority is too narrow, and ought to be revised so that the category comes to include groups that are culturally distinct, but are not necessarily immigrants. But this interjection, or proposal is beside the point. For what we are trying to do here, is not to critically assess Kymlicka’s framework from the outside. The aim is instead to see what this account implies for the problem of Roma and Traveller nomadism. And so, we cannot begin to revise the substance of Kymlicka’s first-order principles. Besides, I do not think that a definitional change would change anything to the overall analysis. If we revise the notion of an ethnic minority so that it comes to include nomadic Roma and Travellers, then we will still have to decide whether or not the various accommodations of their travelling lifestyle – e.g. the institution of a caravan-conscious housing benefits system – are the kind of accommodations that ethnic minorities are entitled to. And that requires us to consider how those accommodations square with the ideals and notions that ground the principle of immigrant multiculturalism – which is exactly what my subsequent analysis does.
nomadic *Travellers*, this is blindingly obvious. For these communities have not *come* to Europe, but have developed out of the indigenous, European mainstream societies.\(^{12}\) And the nomadic *Roma* groups, which can be traced back to populations that left northern India around the 10\(^{th}\) century and arrived in Europe during the fifteen hundreds,\(^ {13}\) can hardly be said to be culturally distinct today, because they are immigrants who have come from elsewhere. Their distinctiveness is much rather due to systematic cultural reproduction. Nomadic Roma are (nowadays) culturally distinct, not because they have recently come from elsewhere, but because they systematically cultivate their particular language and way of life, and transmit these from one generation to another.

So what we observe is essentially that nomadic Roma and Travellers do not fit the bill. They do not have the features that on Kymlicka’s view are definitive of an ethnic minority,\(^ {14}\) and Kymlicka’s principle of immigrant multiculturalism is consequently just as inapplicable to their case as his principle of national self-government: This principle, too, is meant to apply to a different kind of group or social situation, and has therefore no bearing on the housing benefits question, nor on any other of the six institutional

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\(^{12}\) Cf. chapter 1 section 3  
\(^{13}\) Cf. chapter 1 section 3  
\(^{14}\) In making the claim that nomadic Roma and Travellers do not form an ethnic group, I am once again taking a position that is similar to that of Testino and Guérard de Latour, who argue that Roma and Travellers ‘do clearly not constitute a national minority …, but do not form an ethnic minority either’ (Guérard de Latour 2011:732-3; my translation; cf. Testino 2010:99). But our positions are not completely congruent. For the scope of our arguments and claims are, as I have explained earlier, somewhat different (see note 9, above). And we also use very different arguments to explain why (nomadic) Roma and Traveller do not form an ethnic group. I argue that they do not form such a group because they are not immigrants. Testino and Guérard de Latour on the other hand disregarded this fact, and seek instead to claim that Roma and Travellers cannot be regarded as an ethnic group since they (1) are internally divided (cf. Testino 2010:99; Guérard de Latour 2011:726-7; 732) and since they (2) do not seek any kind of special treatment from the state, but make ‘universalist demands’ and insist on being treated in the same way as all other citizens (Guérard de Latour 2011:733). But both these explanations are non-starters: The diversity argument does not, as far as I can see, establish that Roma and Travellers do not form an ethnic minority, but only that it may be hard to view them as one, single group. And the 'universalist-demands' argument is entirely beside point, given that Kymlicka does not define ethnic groups in terms of their demands and claims.
problems that we want to look at.

But where does all this now leave us? What should we make of the observation that Kymlicka’s first-order principles are either completely inapplicable to the case of nomadic Roma and Travellers, or that they, less broadly, are inapplicable to, or inconclusive for, the housing benefits issue?

One option is to conclude that we have now come to the end of the road, and that Kymlicka’s liberalism is simply unable to rule and to decide on the housing benefits question. But I think this is inappropriate. We have earlier seen that Kymlicka’s principles of national self-government and immigrant multiculturalism are not grounded in a commitment to protect national and immigrant minorities *per se*, but are underwritten by a couple of deeper and more general ideals and notions. They are, first, underpinned by a concern to ensure that citizens have access to the good of societal-culture membership (which is ultimately conducive to the realisation of personal autonomy). And they are, second, based on a notion to the effect that institutions and government decisions should ‘not privilege some groups and disadvantage others’ (Kymlicka 1995:115), but should offer the same degree of recognition or accommodation to different communities’ identities and practices.\(^{15}\) So if we now find that nomadic Roma and Travellers do not fit into Kymlicka’s group-typology, and that his first-order principles have no direct bearing on the housing benefits question, then it is inappropriate (or lazy) to simply stop at that observation. What we need to do is, instead, to give the issue a second thought and try to see if the question can be resolved with the help of the account’s more fundamental ideals and commitments. So let’s now do that – let’s try to see what Kymlicka’s fundamental concern for societal-culture membership (2.B) and his

\(^{15}\) Cf. chapter 3 section 3.B
ideal of equal recognition/accommodation (2.C) imply for the housing benefits question.

2.B Housing Benefits and Societal-Culture Membership

So what are, first of all, the implications of Kymlicka’s concern for societal-culture membership? Does this concern imply a preference for any particular housing benefits system?

This is in a sense a straightforward question that directly depends on the two systems’ respective performance and ability to secure the good of societal-culture membership for nomadic Roma and Travellers. But to determine the two systems’ respective performances, we need to have a sense of what the relevant societal culture actually is. We need to know which specific societal culture it is, that nomadic Roma and Travellers should have access to. So before I discuss anything else, I want to establish a basic, but important, point about the relevant societal culture.

We have in section 2.A seen that nomadic Roma and Travellers have norms, traditions, and – which is most important for us – a distinct, itinerant way of life that set them apart from the majoritarian, settled society. But we also remarked that there is nothing like a nomadic-Roma-and-Traveller economy or government, and that this population lacks, and has always lacked, the kind of comprehensive, institutional framework that is characteristic of a societal culture.\(^{16}\) So if we now ask which specific societal culture it is, that nomadic Roma and Travellers should have access to, there is only one possible answer: Nomadic Roma and Travellers cannot possibly have access to their own societal culture in the way that, for example, the members of the Scottish nation should have access to theirs. Nomadic Roma and Travellers can only aspire to

\(^{16}\) For the idea of a societal culture, see chapter 3 section 3.B
membership in the societal culture of the majoritarian society that they live within. For this is quite simply the only societal culture that is practically available to them. And working off this conclusion, we might now say that nomadic Roma and Travellers are in a similar position as immigrants, who also (on Kymlicka’s view) have distinct identities and practices, but for whom the good of societal-culture membership also needs to be understood in relation to the mainstream societal culture.

If, however, we choose to draw such an analogy between immigrants and nomadic Roma and Travellers, then we should be aware that the analogy has limits. Kymlicka offers two explanations as to why immigrants can only aspire to membership in the societal culture of their host society. This is first, he argues, because immigrants are practically unable to sustain a societal culture of their own. And it is second, because the act of international migration extinguishes the migrant’s (moral) entitlement to live in his or her original societal culture (i.e. the societal culture that the migrant leaves behind). The second, moral argument, however, is not applicable to the case of nomadic Roma and Travellers, for this is not – as we remarked earlier – an immigrant population. So we need to keep in mind, then, that the analogy between immigrants and nomadic Roma and Travellers is an imperfect one: both groups can only aspire to membership in the mainstream societal culture. But in the latter case, this is for purely practical, not moral, reasons.

In any event, the point is that nomadic Roma and Travellers can only aspire to membership in the mainstream societal culture, and the question for us becomes, therefore, how well our two competing housing benefit systems perform in terms of securing mainstream-societal-culture membership for nomadic Roma and Travellers. The

17 Cf. chapter 3 section 3.B
question to ask is whether it is the caravan-blind or the caravan-conscious housing benefits system that better secures mainstream-societal-culture access for nomadic Roma and Travellers. And the answer to this question is now, that it is the caravan-conscious system that does better. To appreciate this, consider for a start the caravan-blind system.

Under a caravan-blind housing benefits system, it is categorically impossible for caravan-dwellers to receive housing benefits – not because they will not have the required income/housing expenditure ratio, but because they, by virtue of living in a caravan, are legally ineligible for housing benefits. So nomadic Roma and Travellers – all of whom live in caravans – are under this system going to be precluded from accessing a branch of the public welfare system or, more precisely, the institutional mechanism through which the wider society aims to help financially weak households with their housing costs. This, however, is not the case if the housing benefits system is caravan-conscious. For a system of this latter type does not categorically exclude caravan-dwellers from the housing benefits system, but treats them as potential beneficiaries who can receive housing benefits if they have an income/housing-expenditure ratio of the order that entitles house-dwellers to such benefits. And in this way, it is possible for financially vulnerable nomadic Roma and Travellers to access the institutional mechanism through which the wider society seeks to support financially weak households.

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18 Some readers may find this analysis strange, and object that nomadic Roma and Travellers’ inability to access the housing benefits system is not a result of the system’s caravan-blind character, but a result of the system being geared towards people who pay rent, which caravan-dwelling, nomadic Roma and Travellers do not. These readers, however, should be reminded of two points. First, I am analysing a housing benefits system that is modelled on the French housing benefits system which does not only grant benefits to (financially weak) tenants who pay rent, but also to financially weak home-owners who have bought their home with a mortgage and are paying off debt. Second, nomadic Roma and Travellers often purchase their caravans with the help of loans that are obtained from credit companies that charge exorbitant interest rates; cf. chapter 2 section 5.
But, some might now ask, what has all this to do with societal-culture membership? If one housing benefits system is better at including financially weak nomadic Roma and Travellers into a particular branch of the public welfare system than another, is that really – so the question goes – a matter of societal-culture membership? Is it not an observation that pertains to the domain of social justice?

This is a legitimate question, I think. But we need to keep mind here that Kymlicka’s notion of a societal culture is a special one. Kymlicka emphasises throughout his work that groups with a distinct societal culture (i.e. national groups) are more or less ‘institutionally complete’, and that these form (or used to form) independent, functioning societies that are ‘potentially self-governing’ (Kymlicka 1995:19; cf. 2001:25, 53, 160), thus indicating that the concept of a societal culture does not only refer to a group’s practices and values, but also to institutions and, perhaps especially, to governmental institutions. So if we now observe that the caravan-conscious housing benefits system is better than the caravan-blind system at integrating nomadic Roma and Travellers into a branch of the public welfare system, then we cannot regard this as an observation that is exclusively about social justice. This is also an observation about access to government institutions and, thus, about societal-culture membership; and the observation we are making is therefore not only that the two different housing benefit systems are unequally successful at integrating nomadic Roma and Travellers into the welfare system. We are also observing that the caravan-blind housing benefits system is less capable of protecting the societal-culture membership of nomadic Roma and Travellers than the caravan-conscious system. And once this conclusion has been reached, it directly follows that Kymlicka’s concern for societal-culture membership counsels against the caravan-blind
system and instead supports the caravan-conscious system.

But what, now, about Kymlicka’s other fundamental ideal – i.e. the ideal of equal accommodation? Does this second ideal have the same implications as Kymlicka’s concern for societal-culture membership, or does it pull in some other direction? This is the question I now want to address and to this end, I want to begin with a brief contemplation of the status or nature of Roma and Traveller itinerancy.

2.C Housing Benefits and the Ideal of Equal Accommodation

Sedentary observers have often, as Jeremie Gilbert (2014:2) has remarked, a strangely ambivalent view of the travelling way of life. On one hand, they tend to romanticise this mode of living as a fascinating life of freedom and independence (cf. Okely 1983: chap.1). But at the very same time, they also tend to view it with deep suspicion and/or with an air of superiority, describing it either as a sign of barbarism and moral depravity (cf. Gilbert 2014: 154-160; Scott 2009; Turner 2002; Kabachnik 2009; Brody 2000) or as an anachronistic, primitive subsistence strategy that some people may have been compelled to adopt, but which they would happily part with if they only had the material possibility to do so (cf. Kulchyski 2005; Okely 1983:24). However, this is not exactly how nomadic Roma and Travellers think of their mobile way of life. They do, of course, recognise that the travelling way of life has an economic aspect to it, and that it is part of an economic strategy (see, for instance, van Cleemput et al. 2007:206). They are also acutely aware that it has inconveniences and downsides (cf. van Cleemput et al. 2007:206). But nomadic Roma and Travellers do not seem to view the travelling way of life as a necessary evil that they would leave behind if it were materially possible do so.
Rather, they seem to view it as a practice that is constitutive of their identity. It is, so they say, ‘our own way’ (Niner 2004: 149) and ‘who we are’ (van Cleemput et al. 2007:206; cf. Niner 2003:27). And they seem, relatedly, to see the nomadic way of life as a practice that is essential to the good life, as is nicely captured in the following two exchanges between an interviewer (I) and some Roma and Traveller interviewees (F and M) who all used to travel, but have had to settle down:

Interview Excerpt I:

I: ‘What’s the appeal of travelling?’

... 
F: ‘I’ll tell you what, when we lived along the roads – ’
F: ‘We were all happier’
F: ‘Much happier and better off than we are today anyway – because we was [sic] free. We was [sic] free’
I: ‘You don’t feel free here?’
F: ‘No, we don’t feel free now’
F: ‘Prisoner of war camps’

(Niner 2003:27)

Interview Excerpt II:

I: ‘So you’d rather have gone on travelling if it hadn’t been made so difficult?’
M: ‘Yes definitely, yeah, yeah. Course we would, because we could keep ourself [sic], we could live our own way. They’ve took [sic] that right away from us, they’ve ruined our life.’

(Niner 2004: 149)

So the nomadic way of life looks, in short, to be a tradition or practice that is ‘central for this group’ (van Cleemput et al. 2007:206; cf. Greenfields and Smith 2013:124; Liégeois 1994:83, 86) and to which nomadic Roma and Travellers are deeply attached. And thus, it is certainly the kind of practice or identity which Kymlicka’s ideal
of equal accommodation applies to: If there is an ideal to the effect that institutions and
government decisions should provide as much accommodation to the identities and
practices of minorities as to the identities and practices of the majority, then there is no
doubt that Roma and Traveller itinerancy is amongst the practices which the ideal targets,
and which the state – according to the ideal of equal accommodation – should support
about as much as it supports the majoritarian, settled way of life. And this objective
seems now to better be realised through a caravan-conscious housing benefits system
than through a caravan-blind arrangement.

Why? Well, why might a state operate a caravan-blind housing benefits system in
which it is only brick-and-mortar accommodations that are eligible for benefits? One
possible answer is that the state views conventional, brick-and-mortar housing as a means
to some ulterior objective, and promotes conventional housing in order to achieve this
ulterior objective. Another possibility is that the state seeks to subsidise the construction
industry. But neither of these explanations strike me as particularly plausible. I cannot see
which ulterior objective housing in the literal, brick-and-mortar sense would further; and
I do not think that a state intent on subsidising the construction industry would institute a
housing benefits scheme – it would rather opt for a build-anew subsidy or some such.

So the only remaining explanation is, I think, that the system is first and foremost
motivated by a desire to ensure that even financially weak households can afford a decent
shelter and have their own home, and that the system’s tilt in favour of brick-and-mortar
housing is nothing but a reflection of the contingent, social fact that the most citizens live
in brick-and-mortar housing. And if that is the case, it would seem that the system does
not do very well in terms of extending equal accommodation to the settled and to the
travelling ways of life respectively. On the contrary, it would seem that the system is highly attuned to the majoritarian, settled way of life, but is completely oblivious to the minoritarian, travelling (and caravan-based) way of life.

This, by contrast, is not true for the caravan-conscious alternative. For such a caravan-conscious system is sensitive both to the dominant brick-and-mortar norm and to the minoritarian caravan-mode of dwelling and enables (financially weak) adherents of both lifestyles to receive housing benefits. And so it follows that Kymlicka’s ideal of equal accommodation pulls in the same direction as Kymlicka’s concern for societal-culture membership: This ideal, too, has a strong preference for a caravan-conscious system that treats caravans as a form of housing that is in principle eligible for housing benefits.

2.D A Last Reservation

We have now established that Kymlicka’s ideal of equal accommodation and his concern for societal-culture membership support a caravan-conscious housing benefits system and imply that such an itinerancy-friendly system is to be favoured over a caravan-blind system. But before we conclude that Kymlicka’s liberalism has an unequivocal preference for the caravan-conscious system, I need to address a view – it is not quite a full-fledged objection – that is sceptical of this conclusion. This sceptical view runs as follows. In chapter 3 (section 3.A) we noted that Kymlicka’s principles of national self-government and immigrant multiculturalism are qualified and coupled, first, with a no-internal-restrictions proviso saying that self-government rights and polyethnic rights must never compromise basic political and civil rights and, second, with an equality proviso
saying that group-differentiated rights must not jeopardize inter-group equality. These two provisos could now be interpreted as constraints that exclusively apply to the two said principles. But that does not look very plausible; surely – so the argument goes – these are general constraints that apply to public policy more broadly; e.g. polices that are justified by the account’s basic ideal of equal accommodation and/or its concern for societal-culture membership. And this – so the sceptical view suggests – is where the caravan-conscious housing benefits system runs into (theoretical) difficulties.

But once this point in the argument has been reached, it is very hard to carry it any further. For it does not seem plausible to claim that a caravan-conscious housing benefits system would undermine anyone’s basic political and civil rights. And it is difficult to see why the caravan-conscious housing benefits system would violate the equality proviso. Of course, some people might be concerned that a caravan-conscious housing benefits system involves an unfair allocation of benefits to people ‘who do not actually need them’ – to people who, because they live in caravans, do not have the kind of large, housing-related expenses that housing benefits are meant to mitigate. But this concern overlooks (or misunderstands) the nature of the caravan-conscious system that we are considering. The system under consideration does not propose to hand out housing benefits to all caravan-dwellers; the proposal is instead that caravan-dwellers should be able to receive housing benefits if they have an income/housing-expenditure ratio of the order that entitles house-dwellers to such benefits. In other words, it’s a system that involves a means-test, and as a result it is very hard to argue that the system is unfair.

So upon consideration, there is not much to say for the sceptical view – even if it is plausible enough to view the equality proviso and the no-internal-restrictions proviso
as general constraints that apply to all public policies. And hence, we are entitled – indeed required – to conclude that Kymlicka’s liberalism, because of its commitment to the ideal of equal accommodation, and because of its concern for societal-culture membership – regards a French-style, caravan-blind housing benefits system as an unjustifiable policy, and instead supports a caravan-conscious system that treats caravans as a form of housing that is in principle eligible for housing benefits.

But Kymlicka’s liberalism is not the only theoretical perspective that matters. We also want to see how the competing, classic neutrality account of Barry views and answers the problem. So let us now change the theoretical lens and examine how this second perspective proposes to resolve the housing benefits question.

3 The Classic Neutrality Approach to Housing Benefits

Barry’s classic neutrality liberalism does not feature any of the elements that lead Kymlicka’s liberalism to support the caravan-conscious housing benefits system. Barry’s liberalism is, that is, indifferent to people’s societal-culture membership and it does not claim that public policy ought to treat different ways of life or identities in some particular way. So this account is completely insensitive to the argument that the caravan-blind housing benefits system undermines the societal-culture membership of nomadic Roma and Travellers; and it is equally insensitive to the claim that the caravan-blind housing benefit system is objectionable because it associates the travelling way of life with an opportunity cost.

That said, however, we need to remember that Barry’s classic neutrality liberalism does implicate a range of substantial commitments and principles, e.g. equality
of opportunity, standard liberal rights etc. So the above observations do not warrant the inference that Barry’s framework has no particular view on the housing benefits question. What we need to do is instead to take serious the account’s various principles and systematically investigate what each of them implies for the issue of housing benefits.

So, what do Barry’s various principles imply for the housing benefits question? In some cases, this is obvious. Take, for instance, the education principle. This principle deals with the education of children and has accordingly no bearing whatsoever on the issue at hand. In other words, the principle is simply inapplicable to the question. And this is true as well for Barry’s basic rights principle and for his principle of non-discrimination which (remember) is not concerned with the distribution of material goods, but with the distribution of positions of socio-economic advantage.

But it is not so clear what Barry’s remaining three principles imply. It is not self-evident what the equal basic goods principle and the principles of legal uniformity and equality of opportunity suggest with regards to the housing benefits question. So in the following I want to focus on these latter three principles, and demonstrate that they are all inconclusive – which leads to the conclusion that Barry’s liberalism, unlike Kymlicka’s, does not support any particular housing benefits scheme, but can countenance either. I begin with the principle of legal uniformity (3.A), leaving the other two principles for the subsequent subsections (3.B and 3.C).

3.A Legal Uniformity: An Inconclusive Principle

Barry’s principle of legal uniformity is, we have seen, to the effect that the law must not
make any distinctions that track immutable characteristics or group membership. So as we now look at this principle’s implications for the housing benefits question, it is quite easy to see that the principle does not object to the caravan-conscious system. This system makes no legal distinctions, but treats caravans and caravan-dwellers in the very same way as house-dwellers and brick-and-mortar accommodations, giving both the very same entitlements to economic benefits. And so, it is clearly in keeping with the principle of legal uniformity.

This consistency, however, is not a unique feature of the caravan-conscious system. It is also observable in the case of the rival, caravan-blind system, for a caravan-blind housing benefits system does not, for one thing, make any distinctions that directly or explicitly track personal or group features. It only distinguishes between different types of accommodation, i.e. brick-and-mortar housing on the one hand and caravans on the other. And this distinction between caravans and brick-and-mortar housing cannot, for another, be treated as an indirect way of distinguishing between different groups.

Let me explain. Faced with the caravan-blind housing benefits system, some people might accept that the system does not make any direct group-based distinctions, but still think that it violates legal uniformity as – so the argument goes – it’s only nomadic Roma and Travellers who permanently live in caravans and the distinction between brick-and-mortar housing and caravans is an implicit (or indirect) way of distinguishing between different groups. But this argument’s central premise is untrue. It is, of course, true that caravan-dwelling is essential to the travelling lifestyle of nomadic Roma and Travellers. (Indeed, it is very hard to see how the nomadic way of life might

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19 Cf. chapter 3 section 4.A
20 To be clear: This entitlement is not a raw entitlement, but subject to conditions. In particular, it is necessary to have a certain income/housing expenditure ratio.
work out if its practitioners did not live in caravans or some other mobile structure.) But nomadic Roma and Travellers are not the only people who permanently live in caravans. Show-people and circus folk do so as well, and some migrant workers do so, too (cf. Ory vs. France §5.6). And there are also people who live in caravans because they are unable to afford any other type of accommodation (cf. Cloke et al. 2000; Porcher 2001; Meert & Bourgeois 2005). So the distinction between house-dwellers and caravan-dwellers does not, in fact, coincide with group boundaries. This is rather a distinction that cuts across such boundaries. And the caravan-blind housing benefits system is, therefore, as much in keeping with Barry’s principle of legal uniformity as the caravan-conscious system. And this means, of course, that the principle does not advocate for any particular housing benefits scheme, but can countenance both a caravan-blind and a caravan-conscious housing benefits system. So what we see is, in brief, that the principle of legal uniformity is inconclusive for the housing benefits question.

This inconclusiveness, however, is not a unique feature of the principle of legal uniformity. It is also a feature of the next principle on our list, namely equality of opportunity.


A caravan-conscious housing benefits system provides people with an opportunity, namely the option to receive a cash subsidy from the government. Now, it is of course true that this opportunity is qualified: To take advantage of it, one needs to have a certain income/housing-expenditure ratio; one needs to file an application with the relevant government agency; and one must finally live either in a conventional, brick-and-mortar
accommodation or in a caravan. So the opportunity in question is not immediately accessible to everyone.

However, it is in principle possible for anyone to meet the conditions that give access to the opportunity in question. Anyone can, as it were, hit the right income/expenditure ratio, file an application and live either in a caravan or a brick-and-mortar home. So the opportunity that is created by the caravan-conscious housing benefits system is, in the end, a universally available opportunity that is in principle open to everyone. And the system is therefore perfectly in keeping with Barry’s principle of equality of opportunity – which (remember) as a baseline demands that people have the same opportunities, but accepts inequalities insofar as they flow from choices or voluntary actions.

This compatibility, though, is not a special feature of the caravan-conscious housing benefits system. On the contrary, it is also a feature of the alternative, caravan-blind system. For this system, too, creates an opportunity that in principle is open to anyone. The caravan-blind housing benefits system creates an opportunity to receive a cash benefit, and the enjoyment of this opportunity is subject to conditions that can be met by anyone: Anyone can, so to speak, hit the right income/expenditure ratio; anyone can file an application; and anyone can live in a brick-and-mortar home.

Of course, some might here try to argue that nomadic Roma and Travellers, because of their deep attachment to the travelling way of life,21 will find it psychologically difficult to move into brick-and-mortar housing and that they in effect are unable – or almost unable – to meet the brick-and-mortar condition and to access the opportunity that the caravan-blind housing benefits system creates. But we need to

21 Cf. section 2.C
remember here that Barry’s equality-of-opportunity principle is not formulated with reference to the opportunities that people believe themselves to have. The principle is instead construed with reference to people’s objective options.\textsuperscript{22} And from an objective perspective, it is perfectly possible for nomadic Roma and Travellers to move into conventional, brick-and-mortar housing and to gain access to the opportunity that is created by the caravan-blind housing benefits system.\textsuperscript{23} Such a move may, granted, be psychologically difficult and at odds with nomadic Roma and Travellers’ sense of identity. But the move is not precluded by any objective hurdles as, for example, a law saying that nomadic Roma and Travellers must not live in brick-and-mortar accommodation. So the caravan-blind housing benefits system must then be regarded as an arrangement that gives people the very same objective opportunities, and which therefore is perfectly in keeping with equality of opportunity. And if we now observe that Barry’s principle of equality of opportunity is compatible both with the caravan-blind and the caravan-conscious housing benefits system, then we must (once again) conclude that the principle in question is inconclusive.


This brings us to our last principle, i.e. the equal basic goods principle. To analyse this principle’s implications for the housing benefits question, I want to start by looking at the

\textsuperscript{22} Cf. chapter 3 section 4.A
\textsuperscript{23} One might here note that there actually is one condition under which nomadic Roma and Travellers are objectively unable to move into brick-and-mortar housing. That is if there is a general shortage of brick-and-mortar housing. But this observation does not warrant the conclusion that the caravan-blind system is generally inconsistent with equality of opportunity. For a shortage of brick-and-mortar housing is not a necessary corollary of the caravan-blind system, but a completely contingent condition.
caravan-blind housing benefits system.

Under a caravan-blind housing benefits system it is possible for low-income house-dwellers to receive housing benefits. But this possibility does not exist for caravan-dwelling people such as the nomadic Roma and Travellers – not even if their income is low and they have housing expenses that are of the same order as a house-dwelling person. So this system is inevitably going to engender a certain economic inequality. It is bound to produce a situation where (low-income) house-dwellers have a gross income\textsuperscript{24} that is composed of their (low) original income\textsuperscript{25} plus their housing benefits, while (low-income) nomadic Roma and Travellers have a gross income that only consists of their (low) original income.

But this is not quite the whole picture, for house-dwellers who receive housing benefits have a certain choice as to how they want to use those benefits: They can use these benefits to purchase additional or higher-quality housing, but they can also use the benefits to increase their discretionary income\textsuperscript{26} and to cover expenses that are not related to their housing, e.g. expenses for clothing, food or leisure. (Housing benefits are cash benefits, not in-kind benefits). So the operation of a caravan-blind housing benefits system will eventually produce two different kinds of inequality: it will produce a \textit{housing inequality} in the sense that some low-income house-dwellers are going to have larger or better quality\textsuperscript{27} housing than nomadic Roma and Travellers; and it will give rise

\textsuperscript{24} I am here using the term ‘gross income’ to refer to the income that results from the addition of original income and government (cash) benefits.

\textsuperscript{25} I am here using the term ‘original income’ to designate the income that stems from private sources such as employment, investments, private pensions, alimony etc.

\textsuperscript{26} Note here, that I am using the notion ‘discretionary income’ in a somewhat unorthodox fashion. Conventionally, this term used to designate the income that a person disposes of after the expenses for all necessary goods (e.g. electricity, clothing, food etc.) have been subtracted. I, however, use the term to designate the income that remains after the subtraction of \textit{housing costs only}.

\textsuperscript{27} NB: To compare the housing of house-dwellers and caravan-dwellers we need some general and
to a *discretionary income inequality* in the sense that some low-income house-dwellers are going to have a greater discretionary income than low-income nomadic Roma and Travellers.

These inequalities, however, do not by themselves establish that the caravan-blind housing benefits system conflicts with the equal basic goods principle. For this principle does not hold that people’s material resources must always be equal. The principle has attached to it a luck-egalitarian qualification which says that inequalities and disadvantages are permissible insofar as they result from choice and voluntary actions. So once we have established that the caravan-blind housing benefits system goes hand in hand with some material inequalities, we still need to ask whether (or not) these inequalities are voluntary. And the answer to this question seems now to be that they are voluntary.

Let me explain. Faced with the observation that the operation of a caravan-blind housing benefits system engenders inequalities in housing and discretionary income, some people may want to argue that these inequalities are involuntary, as they stem from the fact that nomadic Roma and Travellers live in caravans, which is ultimately a requirement of their travelling lifestyle, which is not merely a personal preference, but indeed a key part of their identity.\(^{28}\) But this is precisely the kind of argument that Barry’s framework precludes. Barry’s liberalism comes, we have seen,\(^{29}\) with a conception of cultural and religious commitments that is voluntaristic and asserts that

\(^{28}\) Cf. section 2.C

\(^{29}\) Cf. chapter 3 section 4.A
cultural and religious commitments are voluntary and that the effects of such commitments are voluntary as well. So if we now observe that low-income nomadic Roma and Travellers – because of their itinerant identity or culture – live in caravans and consequently miss out on housing benefits and become disadvantaged by comparison to low-income house-dwellers, then we need to view this, not as an unavoidable disadvantage, but as a disadvantage that is voluntarily incurred and which is therefore warranted by, or consistent with, the luck-egalitarian proviso.

But is there not a potential objection here? Could one not argue that the above argument is fair enough, but that the caravan-blind system causes nomadic Roma and Travellers to have unacceptable lives and so conflicts with the caveat saying that people’s lives must always be minimally acceptable? I think this view has some basic plausibility. Barry’s equal basic goods principle does not just say that inequalities are permissible insofar as they flow from choices; it is also, we have seen, coupled with an acceptable-lives proviso stating that inequalities must never become so stark that those who are disadvantaged come to have unacceptable lives. So if we observe that the caravan-blind housing benefits system goes hand in hand with a voluntary inequality, then it does not automatically follow that such a system is in keeping with the equal basic goods principle. Quite on the contrary, there will still be a conflict if the inequalities that are concomitant to the system lead nomadic Roma and Travellers to have unacceptable lives. However, I do not think that this condition obtains. To understand this, consider the notion of an acceptable life.

Barry’s classic neutrality account does not specify the hallmarks of an acceptable and/or an unacceptable life. But we know that the acceptable-lives proviso is grounded in

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30 Cf. chapter 3 section 4.A
the idea that people should be capable of personal autonomy, and that they, to this end, should have their vital needs satisfied.\textsuperscript{31} We also know that people, as a matter of vital need, require a minimal amount of discretionary income and some minimal housing conditions.\textsuperscript{32} So even if Barry’s account does not specify this, it is possible for us to infer that an acceptable life involves a minimum amount of discretionary income as well as some minimal quantity and quality of housing. And the question for us becomes thus how the housing and income inequalities that come with a caravan-blind housing benefits system relate to these minimal thresholds: Are the inequalities so stark that nomadic Roma and Travellers wind up with less discretionary income and/or worse housing conditions than the acceptable life presupposes?

This is not at all impossible. It may well be that the disadvantages that come with a caravan-blind housing benefits system are inconsistent with the acceptable-life. But there is nothing constant or certain about this. It is not an iron law of nature that a caravan-blind housing benefits system leads nomadic Roma and Travellers to have an unacceptably small discretionary income and/or unacceptable housing conditions. That is only going to be the case if the caravan-blind system operates in tandem with an economic and institutional environment that makes it so that the original income of nomadic Roma and Travellers is very small.\textsuperscript{33} So it is not plausible to claim that a caravan-blind housing benefits system is generally inconsistent with the acceptable-lives proviso. It may in particular institutional contexts be true that a caravan-blind housing benefits system leads nomadic Roma and Travellers to have an unacceptably small

\textsuperscript{31} Cf. chapter 3 section 4.B
\textsuperscript{32} NB: I take this point to be uncontroversial, so I shall not defend it any further.
\textsuperscript{33} One situation in which this would be the case, is if the minimal legal income and/or income support is low or inexistent.
discretionary income and/or unacceptable housing conditions. But that is not inherently true; a caravan-blind housing benefits system is not per se conducive to a situation where people have unacceptable living conditions. And so, we can draw the intermediary conclusion that the caravan-blind housing benefits system is in principle consistent with the acceptable-lives proviso and the equal basic goods principle more broadly.

Once this conclusion has been reached, however, we also need to see that the same can be said about the rival caravan-conscious housing benefits system – and that for a very simple reason. The caravan-conscious housing benefits system does not make any difference between house-dwellers and caravan-dwellers, but is instead designed to make housing benefits available for anyone who has a particular income/housing-expenditure ratio. So the caravan-conscious housing benefits system is not conducive to material inequalities, but helps instead to bring about an equal distribution of the good of ‘housing’ and/or ‘discretionary income’. And in doing so, it is doing precisely what the equal basic goods principle calls for.

But, some might here protest, is there not also another way to see the matter? Is it not possible to make an argument that runs like this? A caravan-conscious housing benefits system does indeed promote the equal distribution of resources (income or housing). But when the system ensures that (low-income) nomadic Roma and Travellers can access housing benefits while they maintain a caravan-based and travelling way of life, it is not only equalising resources and doing what the equal basic goods principle calls for. It also rectifies a disadvantage that nomadic Roma and Travellers can be said to have chosen.\(^{34}\) And in this way, it comes into conflict with the principle’s luck-egalitarian

\(^{34}\) Remember: Barry’s liberalism is imbued with a voluntaristic conception of culture which holds that the pursuit of cultural practices (such as Roma and Traveller itinerancy) counts as voluntary behaviour.
proviso, which says that people should bear the costs of their voluntary choices.

This counter-argument, however, is a non-starter, for the luck-egalitarian proviso of Barry’s equal basic goods principle does not have the structure of an injunction. The proviso does not say that inequalities that flow from choices are sacrosanct and that public policy must systematically ensure that such inequalities persist. The idea is rather that basic goods may be distributed unequally insofar as the unequal distribution flows from voluntary choices.\textsuperscript{35} So if a public policy interferes with a voluntarily incurred inequality and rectifies a disadvantage that the bearer has chosen, then that is not inconsistent with the proviso. It is, for sure, superfluous in the sense that it is not (morally) necessary. But the policy is not contrary to the proviso – which, again, is only a permissive proviso.

So the conclusion we arrive at is, then, that the caravan-conscious system is as consistent with the equal basic goods principle as the caravan-blind system. And this means of course that Barry’s equal basic goods principle is just as inconclusive as the previously discussed principles of equality of opportunity and legal uniformity.

But where does all this now leave us? What should we make of the findings that (a) three of Barry’s principles (education, non-discrimination and basic rights) are inapplicable to the housing benefits question, and that (b) the equal basic goods principle as well as the principles of legal uniformity and equality of opportunity are inconclusive and can countenance both a caravan-blind and a caravan-conscious housing benefits system?

One option is to treat this finding as an indication of the inadequacy of Barry’s classic neutrality liberalism – to view this account’s indeterminacy as a sign that it is a

\textsuperscript{35} Cf. chapter 3 section 4.A
poor normative theory. But this view rests on the rather implausible understanding that normative theories – which deal in abstract ideals and fairly general principles – should stand in a one-to-one relationship with public policy and should always only admit and advocate for one, and only one, scheme of public policy. And more fundamentally, my aim here is not to establish whether Barry’s liberalism is an adequate or attractive normative theory. My aim is to see how liberalism, as exemplified by Kymlicka’s and Barry’s respective frameworks, handles and resolves the problem of Roma and Traveller itinerancy. So if we now find that Barry’s liberalism views the caravan-blind and the caravan-conscious housing benefits systems as equally acceptable policy options, then we should not view this as a (theoretical) failure of some sort. Instead, we should contrast this finding with our earlier observation that Kymlicka’s liberalism clearly favours the caravan-conscious system, and we should conclude that the housing benefits question is a divisive problem over which Barry’s classic neutrality liberalism and Kymlicka’s multiculturalist liberalism disagree and which they propose to resolve in different fashions.

Once this conclusion has been reached, though, there immediately arises a follow-up question: If Barry’s and Kymlicka’s respective liberalisms disagree on the issue of housing benefits, is that an exceptional and isolated disagreement or does it rather reflect a broader pattern of divergence? So I would now like to turn to the next problem on our list, and try to see whether our two different liberalisms also disagree on the halting sites questions. And to this end, I will first examine how the question is resolved by Kymlicka’s multiculturalist framework.
4 The Halting Sites Problem from the Multiculturalist Perspective

The halting sites question asks, recall, whether it is permissible for a state to have a simple no-halting-sites policy or whether there needs to be some public provision of halting sites, either in the form of a British-style wide-meshed halting site network or in the form of a French-style, fine-meshed network. And to work out how Kymlicka’s multiculturalist liberalism answers this question, we can first note that none of this account’s first-order principles are applicable to this issue. The principles of immigrant multiculturalism and national self-government are – as seen in section 2.A – generally inapplicable to the case of nomadic Roma and Travellers. And the basic rights principle, the education principle and the principle of non-discrimination have all very little to say about questions of housing or halting sites. So the key question becomes what the account’s deeper ideals – i.e. its ideal of equal accommodation and its concern for societal-culture membership – imply for the problem at hand. And my analysis will accordingly unfold in two main steps: I will first look at the implications of Kymlicka’s concern for societal-culture membership (4.B), and then I will turn to the ramifications of the ideal of equal accommodation (4.C). But prior to any of this, I need to draw attention to, and clarify, three basic points (4.A).

4.A Three Preliminary Points

The first point concerns the French-style, fine-mesh policy. I have earlier described this policy as an arrangement that involves the public provision of a relatively dense halting site network. But this characterisation is somewhat ambiguous. So for the purpose of the subsequent analysis, I will make the assumption that the fine-mesh policy does not only
involve the provision of a dense public halting site network, but also the provision of a very capacious halting sites network in which the total number of pitches vastly exceeds the number of caravans that resort to and use the public network.

The second point concerns the wide-mesh policy and the form it currently takes in the UK. The wide-meshed halting site network that currently exists in the UK is, essentially, an under-dimensional system in which the number of public pitches is inferior to the number of caravans that need a public pitch.\textsuperscript{36} This type of system, however, has the very same normative flaws, and is amenable to the very same arguments, as the no-halting-sites policy. So for the purpose of the subsequent analysis, I am not going to consider the wide-mesh policy as it currently exists in the UK. Rather, I want to ‘upgrade’ the policy and assume that the public halting site network is so generous (or extensive) that the number of the publicly provided pitches equals the number of caravans that rely on the public network. In other words, I want to assume that the wide-mesh policy involves the public provision of a halting site system that is perfectly tailored to the number of caravan-dwelling households that have recourse to the public system.\textsuperscript{37} This has, granted, the drawback that I will be discussing a halting sites system that has no counterpart in reality. And it means furthermore that I will be

\textsuperscript{36} In July 2016, there were, according to the bi-annual caravan count, 21,419 caravan-dwelling households in England. Of these, 11,646 were halting on a private pitch; 6,292 were halting on a public pitch; and 3,481 were halting in a variety of unauthorised locations (cf. Department for Communities and Local Government 2016). So the British public halting site system seems unable to accommodate all the caravans that need a public pitch – at least if we assume that unauthorised halting is the option of last resort. This picture is also confirmed by more systematic studies of the matter, e.g. Niner (2003) and Brown, Henning and Niner (2010)

\textsuperscript{37} NB: In practice it is impossible to achieve a perfect match between the number of public pitches and the number of caravans that need a public pitch. For the latter figure will always fluctuate and any attempt to make adjustments to the number of pitches will lag behind the actual developments and fluctuations. So what I am considering here is an ideal-type – i.e. a ‘mental construct [that] can never be found empirically in reality’, but which is ‘achieved by the one-sided accentuation of one or more points of view and by the synthesis of many diffuse, discrete, more or less present and occasionally absent individual phenomena’ (Weber cited in Morris 2015:9)
discussing a system in which it is difficult to move around, and which may not be to the full satisfaction of nomadic Roma and Travellers. But again, it would be repetitive and redundant to consider the wide-mesh policy as it currently exists in the UK, as that system is amenable to the very same arguments as the no-halting-sites policy. At the same time, however, it is worthwhile to consider a halting sites policy that occupies a distinct, intermediary position in between the no-halting-sites policy on the one hand and the fine-mesh policy on the other. And my proposal allows us to do precisely that.

The final point concerns the policy context, or the background, that our three different halting site policies operate against. The no-halting-sites policy, the wide-mesh policy and the fine-mesh policy can all operate against a variety of different backgrounds. They can, for instance, work in tandem with a publicly run (brick-and-mortar) social housing system; but they can also operate in a context where there is no (public) social housing at all. But these background conditions can significantly affect the way our two different liberalisms assess and evaluate the different halting site policies. So it is important that we fix our thoughts regarding these background conditions, and I will therefore be making the assumption that our three different halting site policies all operate in tandem with a capacious social housing system that can absorb every household that needs social housing. Of course, this is an unrealistic assumption that does not reflect an empirical reality. But I still think it is justified, partly because European states do aspire to have such capacious social housing systems, and partly because such a

38 Cf. section 4.C
39 NB: The point here is not a simple ceteris-paribus point. The point is not simply that we cannot assess and compare the different halting site policies with each other unless we keep the background conditions constant. The point is rather that, for instance, Kymlicka’s liberalism may assess the wide-mesh policy differently depending on whether it operates in conjunction with a capacious social housing system, or whether it operates in a, let’s say, no-social-housing context.
capacious social housing system seems to be a requirement of Kymlicka’s and Barry’s respective liberalisms. (I don’t think, that is, that Barry’s or Kymlicka’s respective liberalism will find it acceptable if a state fails to provide a sufficient amount of social housing and leaves some people homeless.)

So those were the three points that needed clarification and with those points in place, we can now turn to our substantial questions and first of all examine the halting site implications of Kymlicka’s concern for societal-culture membership.

4.B The Inconclusive Concern for Societal-Culture Membership

To see what Kymlicka’s fundamental concern for societal-culture membership implies for the halting sites question, it is useful to first of all note that neither the wide-mesh nor the fine-mesh policy will prevent nomadic Roma and Travellers from accessing mainstream institutions such as schools, universities, mainstream media, the job market, the legal justice system, and so forth. These institutions, or branches of the mainstream societal culture are, as it were, unaffected by the state’s operation of a wide-mesh or a fine-mesh policy. So both these policies are perfectly consistent with the objective that nomadic Roma and Travellers should have full access to the mainstream societal culture, and Kymlicka’s concern for societal-culture membership does not, therefore, object to, or counter-indicate, the wide-mesh and/or the fine-mesh policy.

This acceptance or consistency, however, is by no means unique to the two policies that involve some public provision of halting sites – it is also a feature of the no-halting-sites policy. For while this latter policy does jeopardize the travelling way of life, it does not – as far as I can see – undermine the societal-culture membership of nomadic
Roma and Travellers. Let me develop this point in some more detail.

If the state operates a no-halting-sites policy and flatly refuses to provide halting sites, that does not necessarily impact all nomadic Roma and Travellers. Entrepreneurial individuals and investors may well see that nomadic Roma and Travellers have a special need for halting sites and institute private sites that cater for this particular clientele. But the private market mechanism will almost certainly fail to provide sites for all nomadic Roma and Travellers; some nomads will certainly be left out, either because they cannot afford the market prices, or because the private market does not provide a sufficient number of pitches, or because of some other reason. So some nomadic Roma and Travellers will eventually be unable to access any legal halting sites, and so come under heavy practical pressure to give up the travelling way of life and to settle down. But this development does not undermine these individuals’ ability to access, for example, mainstream schools, media, the job market or other branches of the mainstream societal culture. So the objective of securing societal-culture access for nomadic Roma and Travellers looks to be as well served by a no-halting-sites policy as by a wide-mesh or a fine-mesh policy, and Kymlicka’s fundamental concern for societal-culture membership is therefore inconclusive for the halting sites question: This concern is compatible with any one of our three different halting site policies, and does not advocate for any one in particular.

But what about Kymlicka’s other fundamental commitment? Can we perhaps get some determinate guidance from Kymlicka’s ideal of equal accommodation, which holds

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40 To be clear: If the state operates a no-halting-sites policy and some nomadic Roma and Travellers are pressured to settle, they are no longer nomadic. And this is – as I shall argue in 4.C – a problem from the point of view of equal accommodation. But the claim I am trying to make here is a different one: The claim is that if nomadic Roma and Travellers are pressured to settle, that does not undermine the objective that they should have access to the mainstream societal culture.
that institutions and government institutions should extend equal degrees of support to minoritarian and majoritarian ways of life respectively?


To settle this question, it will be helpful to proceed in two steps so that we first examine whether Kymlicka’s ideal of equal accommodation favours the no-halting-sites policy or the fine-mesh policy, and then confront the option that is selected in the first step with the wide-mesh policy.

So first off, what does the ideal of equal accommodation imply for the choice between the fine-mesh policy on the one hand and the no-halting-sites policy on the other? Which, if any, does this ideal advocate for? Well, a state that operates a fine-mesh policy is effectively providing the kind of halting facilities that nomadic Roma and Travellers need in order to maintain a travelling way of life, and it provides these facilities in surplus (i.e. in a greater number than there are caravans). So the state extends, here, a great deal of material support to the travelling way of life of nomadic Roma and Travellers. But the fine-mesh policy does not, we assume, operate in an institutional vacuum. It works together with a capacious, social housing system that can provide brick-and-mortar housing for all those who are in need. And this social housing system is clearly organised around the majoritarian practice of settlement – both in the sense that the system’s material structures are built and laid out for permanent occupation and in the sense that the occupants of social housing units are not expected to rotate between different units, but are entitled – indeed expected – to permanently stay in one and the same unit (either indefinitely or until they no longer meet the eligibility criteria for social
housing). So everything considered it is quite clear that the fine-mesh policy does exactly what the ideal of accommodation requires: It caters both to the minoritarian, travelling way of life and to the majoritarian, settled way of life, extending a fairly large degree of support to both.

But this ceases to be the case as we turn away from the fine-mesh policy and instead consider the case of the no-halting-sites policy. For under this second policy, there just aren’t any public halting sites. There exists a social housing scheme which is adapted to the sedentary way of life of the majority population, but there is not a single public halting site. So the settled and the itinerant ways of life are supported in radically unequal measures: the former receives ample public support, while the latter receives none. And Kymlicka’s ideal of equal accommodation will hence counsel against the no-halting-sites policy and instead back the fine-mesh policy, which (again) caters both to the predominant, settled way of life and to the minoritarian, travelling way of life.

But what happens if we now change one of the items in the comparison and compare the fine-mesh policy, not with a no-halting-sites policy, but with a wide-mesh policy? Is the ideal of accommodation then still in favour of the fine-mesh policy? I think so. A state that operates a wide-mesh policy provides the kind of infrastructure that nomadic Roma and Travellers require to park their caravans. So the state is clearly extending some support to the caravan-based, travelling way of life. But if the public halting site network does not have any significant surplus capacities and only provides as many pitches as there are caravans – see the assumption spelt out in section 4.A – there is a serious risk that the users of the system find themselves lacking an ‘onward destination’ (Niner 2004:154) and effectively become locked onto the particular site they occupy. So
the support that nomadic Roma and Travellers receive from a wide-mesh policy is, in fact, quite limited. What is being supported and enabled is not a nomadic, mobile way of life, but caravan-dwelling, and the wide-mesh policy fails, therefore, to extend equal measures of support to the nomadic way of life on the one hand and the settled way of life on the other. And this means eventually that Kymlicka’s ideal of equal accommodation regards the wide-mesh policy as a less attractive policy option than the fine-mesh policy, and favours this latter option (which, to reiterate, comes quite close to realise the ideal of equal accommodation). 41

We have now seen two things. We have seen that Kymlicka’s concern for societal-culture membership is inconclusive for the halting site question, and we have seen as well that his ideal of equal accommodation favours the fine-mesh policy. And so, it’s looking very much as though Kymlicka’s liberalism has an overall preference for the French-style, fine-mesh policy. But some people might be unhappy with this conclusion, and put forward an objection that runs as follows. We have earlier seen that Kymlicka’s liberalism does not merely say that public policy should aim to realise the ideal of equal accommodation and to secure societal-culture membership, but also insists that public

41 In connection with this finding it is worthwhile to note two additional and interrelated points. First, the equal-accommodation argument for the fine-mesh policy is critically dependent on the existence of a public social housing system. So if the state disinvests itself from the housing sector and leaves the provision of (brick-and-mortar) housing to the private market, it is no longer the case that equal accommodation requires the institution of a fine-mesh policy, or indeed, a public halting site system at all. Equal accommodation will instead require that the state takes a hands-off approach to the provision of halting sites as well. Relatedly, and this is the second point, equal accommodation does not press for a fine-mesh policy if the state maintains an under-dimensional social housing system that cannot absorb everyone who is need of social housing. In this case, equal accommodation will only justify the institution of a modest halting sites system that supports the travelling way of life, but only for a part of the nomadic Roma and Traveller population. However, it is important to note that this will be second-best solution: Kymlicka’s liberalism does not, I think, find it acceptable that a state’s social housing system is under-dimensional and leaves some people homeless. So if the account is brought to bear on a situation where the social housing system is under-dimensional, it will not in first place suggest that the public halting site system be downsized, but rather that the state expands its social housing capacity.
policy must not jeopardize inter-group equality. This, however, is precisely what the fine-mesh policy does, for it presupposes massive public expenditures and involves the allocation of a large amount of taxpayer money to nomadic Roma and Travellers.

But this is not a compelling objection, I think. It is of course true that the provision of halting sites involves expenditures for the public. The agency in charge may have to purchase the land for the halting sites, and in order to turn the various plots of land into functioning halting sites it is always necessary to install some equipment, notably sanitation, electricity, garbage collection facilities, and solid pavements that support the weight of caravans and ensure that the site is functional all year round, even during the wet winter season.) But it’s not as if the state only spends money for the benefit of its nomadic citizens – it’s also, we assume, spending on the social housing system, which benefits the members of the sedentary majority. And the above equality argument is therefore a non-starter.

But the story does not end here, for the critic can still refine his objection so that it is not simply a complaint about the state spending money for the benefit of nomadic Roma and Travellers, but a complaint about the comparative levels of the expenditure. The critic might, that is, concede that the state spends both for the benefit of nomads and for the benefit of settled people, but still be concerned that the fine-mesh policy, because of its extensive character, is very expensive and leads the state to expend more, per capita, for its nomadic citizens than for those who use the social housing system. But I think this concern is overblown, for it is, as a matter of fact, cheaper to build halting sites than brick-and-mortar social housing. Data from France indicates that it on average is five times less expensive to build a halting site unit (i.e. a single pitch on a site) than to

42 Cf. section 2.D
build a social housing unit of brick and mortar (i.e. a flat). So it is perfectly possible for a state to provide a quite extensive halting site system that has significant surplus capacities – e.g. a system in which there are three times as many pitches as there are caravan-dwelling households – and to spend, not more, but less per capita for its nomadic citizens than for the users of the social housing system. There are, of course, some very expansive forms of the fine-mesh policy that do involve a greater per capita expenditure for nomadic citizens than for the users of the social housing system (e.g. a halting site system that has, say, ten times as many pitches as there are caravan-dwelling households). But this is not a general truth that applies to all versions of the fine-mesh policy – it is only valid for some variants of this policy. And so, it is not possible to generally object to the fine-mesh policy on the grounds of inter-group equality. Such an objection can be made against the most expansive forms of the policy, but not against its moderate variants. And thus we may – in fact, we must – conclude that Kymlicka’s liberalism, because of its fundamental commitment to the ideal of equal accommodation, has a (qualified) preference for the (French-style) fine-mesh policy and counsels against the no-halting-sites policy and the wide-mesh policy.

Once this conclusion is reached, however, there is still the question of how Barry’s classic neutrality liberalism resolves the halting sites question. So let’s now change the theoretical perspective and try to see how the liberalism of Barry handles the issue.

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43 During the period 2008 to 2011 the average cost for building a single pitch on a halting site was 34,398€. (cf. Cour des Comptes 2012:59). The average cost for building a social housing unit, on the other hand, was, in 2012, 188,333€ (cf. AORIF 2014:30) So if we take into account that the inflation between 2011 and 2012 was 2% (cf. INSEE 2016), that means that the average cost of building a halting site pitch was 5.3 times less than the average cost of building a social housing unit.
5 The Classic Neutrality Approach to Halting Sites

To see what Barry’s classic neutrality liberalism implies for the halting sites question, we can first of all note that some principles of this framework are inapplicable to the question. The principles of non-discrimination, legal uniformity and education, as well the basic rights principle, are all without bearing for this particular problem. But these observations do not, of course, suffice. Barry’s liberalism is also committed to equality of opportunity and to the equal basic goods principle, and these two principles are applicable to the problem at hand. For our three different halting site policies do affect the distribution of material resources and opportunities. So in the following, I want to focus on these last two principles and demonstrate, first, that the equal basic goods principle supports the public provision of halting sites (5.A) and, second, that the principle of equality of opportunity does not object to the institution of a wide-mesh or a fine-mesh policy (5.B).

5.A The Equal Basic Goods Principle and Public Halting Sites

To understand the halting-site implications of the equal basic goods principle, it can be useful to first focus on the no-halting-sites policy and, more specifically, on its practical consequences.

Under a no-halting-sites policy there will probably – as I have already indicated – emerge a number of halting sites that are privately organised and treat nomadic Roma and Travellers as a particular clientele with particular needs. But these private sites will in all likelihood be unable to accommodate all nomadic Roma and Travellers, and some members of this population will almost certainly be left without a place to halt. And some
of these ‘left-over’ nomads will probably end up in a very precarious situation. For while it is possible for them to resort to the social housing system that we assume to be in place,\textsuperscript{44} it is likely that some of them – because of their deep attachment to the practice of itinerancy\textsuperscript{45} – refuse to move into social, brick-and-mortar housing and instead try to maintain a travelling life by halting in more or less unauthorised locations (e.g. by the roadside, on public parking lots, on other people’s private land etc.). So a no-halting-sites policy is ultimately likely to bring about a housing- or accommodation-related inequality. It is conducive to a situation where the members of the mainstream population and a part of the nomadic Roma and Traveller community have (or enjoy) a legally secure home\textsuperscript{46} – a place, that is, where they are legally entitled to be and from which they cannot be evicted at any given time – but where some nomadic Roma and Travellers lack such a legally secure home.

But is this inequality now a problem? Is it somehow at odds with Barry’s equal basic goods principle? In one sense, it is not. Barry’s equal basic goods principle is combined with a luck-egalitarian qualification saying that goods may be unequally distributed insofar as the inequality reflects choices or voluntary behaviour.\textsuperscript{47} And the account involves a voluntaristic understanding of culturally motivated behaviour. So if we now observe that some nomadic Roma and Travellers, as a result of their travelling identity or culture, refuse to move into social housing and so come to be disadvantaged in terms of housing, then that seems to be the kind of disadvantage that Barry’s equal basic

\textsuperscript{44} Cf. section 4.A
\textsuperscript{45} Cf. section 2
\textsuperscript{46} The notion that a home is not just a material construction that protects against wind and weather, but also has a legal aspect and involves some sort of legal security, is an idea that I borrow from Waldron’s discussion of homelessness. (1993:chap 13)
\textsuperscript{47} Cf. chapter 3 section 4.A
goods principle is meant to allow for. It appears, in fact, to be exactly the kind of outcome that the principle is designed to permit.

But the story does not end here, for Barry’s equal basic goods principle is not just coupled with a luck-egalitarian proviso. The principle is also equipped with an acceptable-lives proviso that requires that people always have minimally acceptable lives. And this caveat looks to be violated if (some) people lack a legally secure home. Let me develop this point in some more detail.

Barry’s liberalism does not – as we have remarked earlier – specify the idea of an acceptable life. But we know that the acceptable-lives proviso rests on the idea that people should be capable of personal autonomy and that they, to that end, should have certain mental abilities, should be free from coercion, and should have their vital needs satisfied. So we can make some inferences about the content of the acceptable life and the said proviso: We can infer that the acceptable life requires the satisfaction of vital needs, and that the acceptable-lives proviso rules out polices that leave individuals with unsatisfied vital needs. This, however, is exactly what happens if the state operates a no-halting-sites policy and some nomadic Roma and Travellers come to lack a legally secure home. Because if people lack a legally secure home, they are effectively – as Waldron (1993:333-335) has pointed out – without a place in which they can legally exist: They are without a location in which they can legally go about such existential activities as, for example, sleeping, and their very existence is thus in jeopardy.

So eventually, it turns out that the no-halting-sites policy does not merely put (some) nomadic Roma and Travellers into a situation of disadvantage, but places them in

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48 Cf. chapter 3 section 4.A
49 Cf. chapter 3 section 4.B
a very precarious situation that does not square well with the acceptable-lives standard that Barry’s account treats as an absolute. And it seems therefore that such a policy arrangement cannot be countenanced by Barry’s equal basic goods principle. That said however, there is still the question of whether the rival wide-mesh and fine-mesh policies are any better. So let’s now turn to these rival two arrangements, and let’s first concentrate on the wide-mesh policy.

Under a wide-mesh policy there does not only exist a social housing system, but also a public halting site system that – so we assume – can offer a place to all those who permanently live in caravans and cannot access a private halting solution. So under this policy we should not expect to see the kind of problematic situation that arises under a no-halting-sites policy. The nomads who, so to speak, fall out of the private halting sites market can here access and benefit from a public halting sites system and they should not, therefore, end up without a legally secure home. So the wide-mesh policy has, in short, the merit that it remedies the problem of nomadic Roma and Travellers not having a legally secure home. But that is not all. The wide-mesh policy also guarantees that the good of a legally secure home is available to everyone within the state – either in the form of a brick-and-mortar accommodation (private or social housing) or in the form of a halting site (private or public). And so, it is doing what the equal basic goods principle calls for. The wide-mesh policy ensures that a particular kind of basic good is equally distributed and thus, it is perfectly in keeping with the equal basic goods principle.50 And

50 NB: Some people may want to object here that that the wide-mesh policy does not only equalise the distribution of a good, but also remedies a disadvantage that nomadic Roma and Travellers can be said to have chosen and so violates the equal basic goods principle’s luck-egalitarian proviso. But these critics should be reminded that the luck-egalitarian qualification has the structure of a permission, not a requirement. Barry’s luck-egalitarian proviso does not hold that inequalities that flow from choices are sacrosanct, but rather that such unequal distributions are permitted. So if the wide-mesh policy now remedies a voluntarily-incurred inequality, then we should not view this as a violation of the proviso, but as
this, I think, is true for the fine-mesh policy as well. Let me develop this point in a little more detail.

Under the fine-mesh policy the state is providing an extensive halting site network that has a large number of empty, unoccupied pitches. So it may seem that such a policy does not merely ensure that nomadic Roma and Travellers have a legally secure home and that the basic good ‘housing’ is relatively evenly distributed. Rather, it may look as though the policy accords a greater share of ‘housing’ to caravan-dwellers than to other citizens. To put it crudely, it may look as though the fine-mesh policy treats caravan-dwellers especially favourably and does not merely ensure that they have a legally secure home, but also equips them with the equivalent of a summer residence. And as a result, it is easy to think that the fine-mesh policy does not square well with Barry’s equal basic goods principle.

But it is important here to understand that the pitches on a public halting site are not the equivalent of a brick-and-mortar accommodation and do not continue to belong to specific persons or households when they are unoccupied. Unoccupied pitches are instead open and accessible for any household that comes along and needs a place. (That is the whole point of the system.) So each household within the public halting sites system will always – even though the system as a whole has an important surplus capacity – only dispose of the one pitch that it presently occupies. In other words, it is not the case that the fine-mesh policy causes caravan-dwelling households to have multiple homes (or pitches), while other (settled) households only have one. The outcome of the fine-mesh policy is instead that caravan-dwellers – while they do have the possibility to choose and to move between different pitches – always only dispose of the one pitch which they

an interference that the proviso allows for. (cf. the discussion in section 3.C)
presently occupy and only have one legally secure home at a time. And the fine-mesh policy is therefore as consistent with the equal basic goods principle as the wide-mesh policy. And once this is clear, it directly follows that Barry’s equal basic goods principle is both conclusive and inconclusive for the halting site question. It is conclusive in the sense that the principle clearly rejects the no-halting-sites policy (which runs counter to the principle’s acceptable-lives proviso) and instead favours the institution of a wide-mesh or a fine-mesh policy. But the principle is inconclusive in that it can countenance both a wide-mesh policy and a fine-mesh policy and does not imply any preference for either.

I have now established two main points. First, I have suggested that most of Barry’s first order-principles are inapplicable to the halting site question. And I have, second, argued that Barry’s equal basic goods principle counsels against the no-halting-sites policy and instead favours the wide-mesh and the fine-mesh alternative. And thus, it looks as though Barry’s liberalism advocates for these latter two policy options. But some people may still be sceptical of this conclusion and doubt that the public provision of halting sites can be squared with equality of opportunity. So I will now turn to this last principle of Barry’s.

5.B Public Halting Sites and Equality of Opportunity

Imagine that a state puts in place a wide-meshed or fine-meshed halting site network, and then reserves this network for ‘certified’ Roma and Travellers – i.e. for people who can (somehow) prove\textsuperscript{51} that they belong to a Roma or Traveller community. This policy would create an opportunity, namely the opportunity to park (and live in) one’s caravan

\textsuperscript{51} I shall not specify the exact modalities of this proof, as nothing in the subsequent argument hinges on it.
on a publicly provided site. This opportunity, though, would not be available to citizens in general, but only to the members of a particular cultural group. And so, there would be a conflict between the public halting sites system on the one hand and, on the other, the principle of equality of opportunity, which holds that citizens, as a baseline, should have the very same options.

However, it is not a necessary feature of the wide-mesh or the fine-mesh policy that access to the public halting sites is reserved for ‘certified’ Roma and Travellers. Public halting site systems can also be configured in such a way that access to the system is subject to group-neutral conditions that make no reference to group membership. For instance, access can be subject to the condition that one permanently lives in a caravan. And in this case, there is – as far as I can see – no tension between the principle of equality of opportunity and the public halting site system. The presence of a condition means, of course, that the option of living on a public site and of moving around within the system is not going to be immediately available to everyone. But a group-neutral condition (such as permanent caravan-dwelling) can, in principle, be met by anyone, and the opportunity to live on a public site is, therefore, in a general sense, going to be available for all citizens.52

So the wide-mesh and the fine-mesh policies are not generally incompatible with equality of opportunity. On the contrary, they are quite compatible with this principle – at least insofar as the access to the public halting sites is subject to group-neutral conditions.

52 Members of the settled majority may naturally feel that they cannot permanently live in a caravan, and that the opportunity to move onto a public site is not actually available to them. But this does not matter: Barry’s equality-of-opportunity principle is not – as discussed earlier – phrased in terms of the opportunities that people believe themselves to have. The principle is instead phrased in terms of objective opportunities. And objectively speaking, it is surely possible for settled mainstream citizens to permanently live in a caravan: They may not like it, but they are certainly able to do so. Cf. section 3.B
And thus, we arrive at two interlocking conclusions. First, we can conclude that equality of opportunity does not object to the recommendations that issue from Barry’s equal basic goods principle, and that Barry’s classic neutrality liberalism indeed does support the institution of a wide-meshed or a fine-meshed public halting site network. And this suggests in turn that it is not only the housing benefits question over which Kymlicka’s and Barry’s respective liberalisms disagree, but that they also diverge on the question of halting sites, with the former implying that the fine-mesh policy is the only acceptable option, while the latter takes a less determinate line, suggesting that the fine-mesh policy is preferable to the no-halting-sites policy, but in no way superior to the wide-mesh policy.

6 GP Registration from the Multiculturalist Vantage Point

This brings us to the third question of the chapter: the issue of GP registration. The institutional question is here whether the state may operate a British-style, residence-based GP registration system which makes the possession of a permanent residence a condition for GP registration and secure primary care access, or whether it needs to render the system more itinerancy-friendly, either by complementing the system with a narrow exemption that excepts nomadic Roma and Travellers from the ordinary registration requirements and gives them a legally entrenched right to register with one GP of their choice, or by complementing the system with a more generous exemption that gives these people a (legal) right to be treated by any GP surgery in the country. And here again, I shall first try to see how the problem is handled by Kymlicka’s multiculturalist liberalism.
My analysis proceeds in three broad steps. I begin by lumping together the two different exemption policies, and by examining whether Kymlicka’s liberalism has any preferences if it needs to choose between a residence-based system of GP registration on the one hand and some exemption policy on the other. I argue that it does, and that both the concern for societal-culture membership and the ideal of equal accommodation support the institution of an exemption (6.A). Then I go on to distinguish between the two different exemption policies, and I demonstrate that Kymlicka’s ideal of equal accommodation militates for the generous exemption (6.B). The generous exemption, however, can be challenged on the grounds of equality. It might be argued, that is, that the exemption does not square well with Kymlicka’s commitment to inter-group equality and that it therefore cannot actually be endorsed by Kymlicka’s multiculturalist liberalism. So the final step of the analysis examines this fairness objection and shows that it rests on a misconception (6.C). But that, of course, is the very endpoint of my analysis and in order to arrive there, we must begin with the first and most basic question: Does Kymlicka’s liberalism have any preference if the choice is between a residence-based system of GP registration on the one hand and some exemption policy on the other?

6.A The Basic Case for an Exemption

Under a residence-based GP registration system one normally needs a permanent residence/address in order to register with a GP and to have access to the institution by which the mainstream society provides people with primary care. But this residence condition is not an absolute condition, as GP surgeries retain a discretionary power to
register people who lack a residence. So it would be incorrect to claim that the residence-based registration system has the effect to exclude nomadic Roma and Travellers (and other residenceless individuals) from the GP system and makes it impossible for these people to access this particular branch of the mainstream societal culture.

But if the GP registration of nomadic Roma and Travellers (and other residenceless citizens) depends on the discretion of individual GP surgeries, there is a real risk\(^5\) that these people are systematically turned down by GP surgeries and so wind up in a situation of non-registration and cannot access the primary care system.\(^4\) So while it would be an overstatement to say that the residence-based system of GP registration excludes nomadic Roma and Travellers, it is quite accurate to say that such a system compromises or threatens their ability to access the primary care system and the mainstream societal culture.\(^5\)

This, by contrast, cannot be said if the state couples the residence-based system with some exemption arrangement. For such an arrangement makes sure that nomadic Roma and Travellers have a legally guaranteed access to at least one GP surgery, and are protected from the mechanism of decentralised (or incremental) exclusion that may occur under the residence-based system of GP registration.

So the exemption arrangement is then better able to secure the societal-culture membership of nomadic Roma and Travellers than the residence-based system of GP registration.

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\(^5\) NB: This risk is very difficult to quantify. But we can note that it in the UK seems to be sizable and that a number of itinerants actually go without GP registration; see Feder (1989:427), Parry et al. (2004:8), Cemlyn et al. (2009:53) and British-Irish Parliamentary Assembly (2014).

\(^4\) Let it be emphasised here that the potential non-registration is not centrally decided, but is the aggregate outcome of a series of decentralised (or incremental) non-registration decisions on the part of different GP surgeries.

\(^5\) NB: It is an implicit assumption in this argument that Kymlicka’s societal-culture concept does not only refer to customs and traditions, but also to institutions of government. I have discussed and explained this assumption in section 2.B
registration. And Kymlicka’s fundamental concern for societal-culture membership counsels hence against a British-style, residence-based system of GP registration and implies that the state should instead institute an exemption arrangement. And this recommendation is also supported by Kymlicka’s ideal of equal accommodation. For the residence-based system of GP registration will, in contradistinction to an exemption arrangement, associate the travelling way of life, but not the settled way of life, with a significant opportunity cost and so fail to extend equal measures of support to the two different lifestyles.

But once it is clear that Kymlicka’s fundamental commitments counsel against the residence-based system of GP registration and instead support the institution of an exemption arrangement, there is still the question of whether it is the narrow or the generous exemption policy that is the most preferable policy choice. So let us now look more closely at these two options.

6.B A Narrow or Generous Exemption?

To see whether Kymlicka’s liberalism favours the narrow or the generous exemption policy, we may at first try to reason in terms of societal-culture membership and try to see if one or the other alternative does a better job at protecting this good (for nomadic Roma and Travellers). But this approach is quite inconclusive. For both the narrow and the generous exemption make it possible for nomadic Roma and Travellers to access some GP surgery and the primary care system. And in this way, they both help to protect

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56 The opportunity cost is, to be more precise, this: Nomadic Roma and Travellers will have to choose between their itinerant tradition on the one hand, and secure primary care access on the other. Members of the settled majority on the other hand, are not confronted with such a choice, but can easily enjoy the benefit of secure primary care access all while they maintain a settled lifestyle.
the societal-culture membership of nomadic Roma and Travellers.

So the way forward is instead to focus on Kymlicka’s ideal of equal accommodation. And this ideal seems to imply that the generous exemption is the more preferable policy option. To appreciate this, it is helpful to consider what a narrow exemption means in practice.

If nomadic Roma and Travellers are given a legal right to register with one GP, they will always be able to access primary care. But it may not always be easy for them to exercise, or to utilise, this access. On the contrary, they may have to travel many miles in order to consult their GP. Members of the settled majority, on the other hand, will not face such difficulties, but will generally be able to access primary care in a place that is convenient – i.e. close to their permanent residence. So the narrow exemption does not extend completely equal degrees of support to the travelling and to the settled ways of life respectively. It does, of course, perform better than the residence-based system of GP registration, but the narrow exemption is nevertheless more advantageous to the members of the settled majority than to the members of the travelling minority.

This, by contrast, cannot be said about the generous exemption, for this arrangement makes sure that nomadic Roma and Travellers can always consult a GP that is close to their current location and need not travel any long distances. And by achieving this facility of the access, the generous exemption policy is about equally favourable to the travelling and to the settled ways of life respectively.

6.C The Objection from Fairness

So Kymlicka’s concern for societal-culture membership and his ideal of equal
accommodation imply in conjunction that the exemption policy is preferable to the 
residence-based system of GP registration and that the generous exemption is to be 
favoured over the narrow exemption. But we cannot yet conclude that Kymlicka’s 
liberalism has an unequivocal preference for the generous exemption policy. For there 
still seems to exist a potential objection to this policy. To appreciate this, consider what 
the institution of a generous exemption policy means for people’s opportunities.

If the law explicitly targets nomadic Roma and Travellers and only gives this 
particular group of people a right to be treated by any GP in the country, there will 
inevitably be a certain inequality in people’s opportunity sets. Nomadic Roma and 
Travellers will have a legally secured option to freely choose their GP, but all other 
citizens will continue to be subject to the ordinary requirements and conditions and so 
lack the opportunity that is afforded to nomads. (And this, we might add, might well be 
resented by, for example, inter-city commuters or frequently travelling retirees, who 
might also like to have a guaranteed opportunity to be treated anywhere, or at least in a 
few different locations.) Kymlicka’s liberalism, however, seems to potentially object to 
such inequalities, for it insists – as we have seen earlier\footnote{Cf. section 2.D} – that public policies must not 
compromise inter-group equality.\footnote{It also insists that public policy must never compromise basic individual liberties, but this issue does not arise in connection with the exemption policy.} So it seems possible to agree with everything I have 
said so far, and yet doubt that Kymlicka’s liberalism is able to countenance the generous 
exemption policy. In other words, it might be agreed that the generous exemption policy 
helps to realise the ideal of equal-accommodation and helps to secure the societal-culture 
membership of nomadic Roma and Travellers, and yet be maintained that such an 
exemption runs counter to Kymlicka’s equality proviso.
But I think that some further analysis shows this objection to be unwarranted. It is, of course, true that the generous exemption policy involves a legal inequality and an unequal distribution of opportunities – there is no denying this. But the objection misinterprets Kymlicka’s equality proviso, making it out to be more stringent than it actually is. Let me develop this point by briefly referring back to Kymlicka’s *Multicultural Citizenship*. Kymlicka argues here that ethnic minorities should be granted polyethnic rights, so that, for example, Jews and Muslims are exempt from Sunday closing legislation (Kymlicka 1995:114). And he also argues that national minorities are entitled to a variety of legal rights that he lumps together under the heading of self-government rights; for example ‘land claims’ and special rights to use certain resources (Kymlicka 1995:109; 2001:54-5). 59 Many of these polyethnic rights and policies of self-government involve inequalities. Take, for instance, the policy of exempting Jews and Muslims from Sunday closing regulations: This policy means that Jewish and Muslim entrepreneurs will have an opportunity that others lack (i.e. the option of keeping their businesses open seven days a week, or the option of choosing their resting day). 60 But Kymlicka is nevertheless of the view that these polyethnic and self-government rights are ‘consistent with liberal principles of equality’ (Kymlicka 1995:126), and he explains this with the arguments that a) ethnic groups who demand exemptions are ‘simply asking that

59 Cf. chapter 3 section 3.A

60 Something similar can also be said about policies that give indigenous people control over certain land areas or resources: If indigenous people have rights, say, to hunt in areas that are closed off to other citizens, that is clearly a legal and opportunity-related inequality. And Kymlicka is well-aware of this: ‘These group-differentiated rights’, he writes, ‘allocate individual rights and political powers differentially on the basis of group membership’ and may thus ‘seem discriminatory’ (Kymlicka 1995:126).

Note though, that it is not all group-differentiated rights that involve such inequalities. The redrawing of political boundaries within a federal state to ensure that boundaries reflect the geographic distribution of national groups, for instance, can hardly be said to violate the norm of equality. Similarly, there is no inequality involved, if the state recognises several different languages as the official language. (cf. Levy 2000:135)
their religious needs be taken into consideration in the same way that the needs of the Christians have always been taken into account’, and b) that the absence of self-government rights for national groups would mean that ‘members of minority cultures would not have the same ability to live and work in their own language and [societal] culture that the members of majority cultures take for granted.’ (Kymlicka 1995:114; 126). So Kymlicka’s equality proviso cannot be an absolute and very stringent constraint that disallows all forms of group inequality.  

The idea must rather be that the proviso accepts inequalities that help to secure the good of societal-culture membership and/or the ideal of equal accommodation, and that the equality proviso only ‘kicks in’ and censors inequalities that do not advance these values. The thought seems to be that the equality constraint only objects to group-differentiated rights when giving ‘increased powers or resources [to a national minority] will not be necessary to ensure … [that its members have the] opportunity to live and work in [their societal] culture’, but ‘will simply be attempts to gain benefits denied to others’ (Kymlicka 1995:110; emphasis added), or when giving special rights to an ethnic group does not further the ideal of equal accommodation, but is ‘simply an attempt by one group to dominate another.’ (Kymlicka 1995:109-10). And thus, it is not enough to merely point out that the generous exemption policy entails an unequal distribution of opportunities – this does not by itself show that the policy runs counter to Kymlicka’s equality proviso. What has to be demonstrated is, rather, that the policy institutes an inequality but does nothing to

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61 If this were so, Kymlicka would not be able to claim that rights of self-government and exemption for ethnic policies are consistent with principles of equality. Instead, he would have to say that such policies raise a dilemma and require us to choose between the protection of societal-culture membership on the one hand and inter-group equality on the other. Of course, Kymlicka could then still arrive at the final conclusion that rights of self-government and exemptions are justified, notably by arguing that the protection of societal-culture membership and equal accommodation is of greater moral importance than adherence to the norm of inter-group equality. But this is quite different from saying that rights of self-government and exemptions are ‘consistent with principles of equality’.
advance equal accommodation and/or the good of societal-culture membership.

This, however, is hard to do, as we have already established that the generous exemption both helps to secure the societal-culture membership of nomadic Roma and Travellers and furthers the ideal of equal accommodation.\textsuperscript{62}

So the fairness objection is then unwarranted – not because the generous exemption does not institute an inequality, but rather because this inequality is not the \textit{kind} of inequality that Kymlicka’s equality proviso rules out. And the conclusion we reach is therefore that Kymlicka’s multiculturalist framework objects to a British-style, residence-based GP registration system, and instead advocates for the institution of a generous exemption policy that gives nomadic Roma and Travellers a legally entrenched right to be treated by any GP surgery in the country.

This, however, is not the recommendation that flows from Barry’s classic neutrality liberalism.

7 The Classic Neutrality Take on GP Registration

Barry’s liberalism does not feature any of the normative elements that lead Kymlicka’s liberalism to advocate for the generous exemption policy. But Barry’s commitments to equality of opportunity, to equal basic goods etc. can, as seen in sections 3 and 5, bring his liberalism to accept, and even to support, some accommodations of Roma and Traveller itinerancy. And something similar is also true as we look at the issue of GP registration – here again, there is acceptance and even support for the accommodation of Roma and Traveller itinerancy. But Barry’s classic neutrality liberalism does not, as I will try to demonstrate, support the generous, but the narrow exemption policy.

\textsuperscript{62} Cf. sections 6.A and 6.B
My argument proceeds in four main steps. I will first demonstrate that Barry’s principles of equality of opportunity and legal uniformity favour the residence-based system of GP registration (7.A). Then I will argue that Barry’s equal basic goods principle pulls in the opposite direction and favours the institution of an exemption arrangement (7.B). The third step develops an argument to the effect that Barry’s liberalism accords greater priority to the equal basic goods principle than to equality of opportunity and legal uniformity, and that the account therefore must favour the institution of an exemption arrangement – even if that violates equality of opportunity and legal uniformity (7.C). In the final step I take a closer look at the two different exemption policies, and I suggest that Barry’s liberalism must prefer the narrow exemption to the generous one, as the former deviates less from equality of opportunity than the latter (7.D).[^63]

7.A GP Registration and Equality of Opportunity and Legal Uniformity

We have at the end of the previous section (6.C) seen that the institution of an exemption arrangement involves an opportunity-related inequality. We have seen that the institution of an exemption leads to a situation where nomadic Roma and Travellers enjoy an opportunity that other citizens lack. So as we approach this arrangement from the point of view of Barry’s classic neutrality liberalism, it is easy to see that the arrangement does not square well with Barry’s principle of equality of opportunity: It institutes an opportunity-related inequality, and since people do not choose to belong to a nomadic Roma or Traveller community, it can hardly be argued that the inequality is a legitimate

[^63]: As for the other principles of Barry’s liberalism – i.e. the education principle, the basic rights principle and the principle of non-discrimination – I take it that they are all inapplicable to the issue of GP registration.
result of people’s choices. Rather, it needs to be regarded as an illegitimate inequality that is at odds with the equality-of-opportunity principle.

Likewise, it is relatively easy to see that a system of GP registration that is residence-based is quite consistent with equality of opportunity. A residence-based GP registration system has the effect of creating an opportunity, namely the opportunity to have secure GP and primary care access. This opportunity, however, is a conditional one: To take advantage of it, one needs to have a fixed residence. So it is not necessarily going to be the case that all citizens, all of the time, enjoy the opportunity of having secure primary care access. Nomadic Roma and Travellers will, in fact, lack a fixed residence and so be unable to seize this opportunity. But this is not for objective reasons or because of objective barriers. From an objective point of view – and this, recall, is the perspective that matters to Barry – it is perfectly possible for nomadic Roma and Travellers to move into a fixed residence and to enjoy secure primary care access. So the opportunity to enjoy secure primary care access is, objectively speaking, available to everyone and, thus, equally distributed – which means that the residence-based system of GP registration is perfectly in keeping with equality of opportunity.

So the finding we arrive at is, to summarise, that the exemption arrangement is inconsistent with equality of opportunity while the residence-based system of GP registration system is quite in keeping with this principle. And Barry’s principle of equality of opportunity has thus an unequivocal preference for the residence-based system of GP registration. And this is also true for Barry’s principle of legal uniformity.

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64 Remember, Barry’s principle of equality of opportunity is coupled with a luck-egalitarian qualification saying that it is permissible for people to have unequal opportunities insofar as that is a result of their voluntary choices. So if it can be shown that a given inequality is a result of people’s choices, then it is not inconsistent with Barry’s principle of equality of opportunity.

65 Cf. the discussion of equality of opportunity in chapter 3 section 4.A
For an arrangement that explicitly singles out nomadic Roma and Travellers for a special legal right does (unlike the residence-based system) institute a legal distinction that tracks group-membership. And that is precisely what legal uniformity prohibits.

7.B The Equal Basic Goods Principle

We have now seen that Barry’s principles of legal uniformity and equality of opportunity support the residence-based system of GP registration and reject the institution of an exemption arrangement. But Barry’s liberalism cannot be reduced to these two principles alone; it also involves a number of other elements and principles, notably an equal basic goods principle. And this principle has implications that are different from those of equality of opportunity and legal uniformity. To appreciate this, consider for a start what a residence-based system of GP registration means in practice.

A residence-based GP registration system does not directly bar nomadic Roma and Travellers (and other residenceless people) from accessing the primary care system, but since the system authorises individual GP surgeries to deny registration to residenceless people, it can (as noted in section 6) lead to a situation where some nomadic Roma and Travellers are systematically turned down and come to lack the primary care that is readily available to others. And this, I think, runs counter to the equal basic goods principle.

Let me explain. In chapter 3 we have seen that Barry’s equal basic goods principle is coupled with a luck-egalitarian qualification saying that inequalities and disadvantages are permissible if they flow from voluntary behaviour. We have also seen that Barry’s liberalism comes with a voluntaristic understanding of culture according to
which culturally motivated behaviour should count as voluntary. So if we now find that nomadic Roma and Travellers, as a result of their travelling culture, lack a fixed residence, cannot register with a GP, and are ultimately unable to access primary care, then there is an important sense in which this disadvantage is perfectly in keeping with Barry’s equal basic goods principle. This looks to be precisely the kind of inequality that Barry’s framework means to allow for.  

But Barry’s equal basic goods principle is not only coupled with a luck-egalitarian qualification. It also has a caveat to the effect that disadvantages and inequalities must never be so stark that people come to have unacceptable lives. And this acceptable-lives proviso looks to be violated if (some) nomadic Roma and Travellers do not have access to primary care. Let me develop this point in some more detail, and let me, to that end, begin by saying a few words about the notion of an ‘acceptable life’.

Barry’s theoretical framework does not specify the hallmarks of an acceptable life. But we know that the acceptable-lives qualification is rooted in the notion that people should have a capacity to be autonomous and that they, to this end, should have their vital needs satisfied. So we can make the inference that the acceptable life involves the satisfaction of vital needs and, furthermore, that the acceptable-lives proviso objects to, and disallows, policies that cause vital needs to be unsatisfied. This, however, is precisely what the residence-based system of GP registration brings about. For access to primary care is, at least in some situations, a key precondition for the satisfaction of

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66 At this point, readers might want to interject that health care access is a special sort of basic good and that it is fundamentally improper to distribute this good according to luck-egalitarian calculations. (For such a view, see Daniels 2008:74-77.) This, however, is an external critique of Barry’s account, which is beyond the scope of the present project. My aim, here, is only to take the account as it is, and to see what it implies for the problem of Roma and Traveller nomadism. I am not trying to subject the account to an external critique.  

67 Cf. chapter 3 section 4.A  
68 Cf. chapter 3 section 4.B
vital needs. Of course, there are many vital needs that have nothing to do with primary care access. (Think, for example, of the need for food and/or clean water.) And there are also many medical conditions that create a vital need for medical care, but not for primary care as such. (A high fever, for instance, does not create a need for primary care, but just a need for some medical treatment.) But there is a range of medical conditions that do not just require some sort of medical care, but primary care in particular. Severe forms of psoriasis, for instance, require continual monitoring and continuous treatment adjustments, and they can in the absence of such continuous primary care attendance be extremely painful and debilitating. So in a range of situations it really is the case that access to primary care is the key to the satisfaction of vital needs, notably the need to be free from pain and suffering. And the residence-based system of GP registration, which can cause some people to lack primary care access, is thus inconsistent with the acceptable-lives proviso and Barry’s equal basic goods principle. This system does not, granted, engender any undeserved inequalities or disadvantages, but it still represents a departure from the equal basic goods principle, as it produces a situation where vital needs are left unsatisfied, and where the acceptable-lives proviso is not respected.

But, some might here wonder, is the rival exemption arrangement really any better? Does it not feature the very same shortcomings as the residence-based system of GP registration? In a sense, this is true. If the law explicitly targets nomadic Roma and Travellers and only excepts this particular group from the ordinary GP registration requirements, then it will only protect this particular group of people. The policy will, that is, make sure that nomadic Roma and Travellers are protected against the phenomenon of decentralised primary care denial, but the arrangement will not improve
the lot of other individuals who might also lack a fixed residence; e.g. destitute and homeless persons. And so it appears that the exemption policy suffers from the very same flaw as the residence-based system of GP registration – this arrangement, too, seems to generate a situation where some people lack primary care access and suffer unacceptable living conditions.

But since the exemption arrangement at least ensures that nomadic Roma and Travellers are protected from decentralised exclusion and primary care denial, it is fair to say that such an arrangement does more to realise the equal basic goods principle (and, more precisely, the acceptable-lives proviso) than the residence-based registration system. And it seems therefore that Barry’s equal basic goods principle does not pull in the same direction as the previously discussed principles, but favours the institution of an exemption arrangement – even if such an arrangement is not entirely in keeping with the principle.

But if the issue of GP registration is so divisive and leads Barry’s various principles to pull in different directions, is there a way the account can settle the issue? Or is it rather the case that Barry’s liberalism views the problem of GP registration as an intractable problem that does not lend itself to a clean and satisfactory resolution?

7.C The Priority of the Equal Basic Goods Principle

In Culture and Equality, Barry is making an emphatic case for legal uniformity. At the same time, however, he acknowledges that legal uniformity is a partially negotiable principle that sometimes can be set aside, notably if such a move serves to realise the equal basic goods principle: The idea, Barry writes, is not that ‘classical … liberalism

69 Cf. chapter 3 section 4.A
cannot countenance any deviation from universal rights’, but rather that classic neutrality liberalism is by default sceptical of group-based rights, but finds them ‘justifiable’ if they are ‘a way of helping to meet the egalitarian liberal demand that people should not have fewer resources … than others when this inequality has arisen out of circumstance they had no responsibility for bringing about’ (Barry 2001:13; emphasis added). And Barry also accepts welfare policies that explicitly reserve and allocate resources to inner-city black ghettos. Such policies, Barry notes, are under-inclusive and do not help everyone who is disadvantaged, but he is nevertheless of the view that such policies ‘would be a major move towards social justice’ and that they are not ‘to be condemned out of hand’ (Barry 2001:114-15). A policy that focuses resources on the black ghetto will, however, involve opportunity-related inequalities. It will inevitably mean that black persons (from the ghetto) have access to resources and opportunities that are not available to others (e.g. disadvantaged, white persons). So Barry’s position cannot be that equality of opportunity is an absolute and non-negotiable principle; his view must rather be that equality of opportunity may be compromised in the name of material justice, and that, by implication, the equal basic goods principle has priority over equality of opportunity. So if we now find that Barry’s principles of equality of opportunity and legal uniformity support the residence-based system of GP registration while the equal basic goods principle supports the institution of an exemption arrangement, then we should not conclude that Barry’s liberalism views the issue of GP registration as an intractable problem that it cannot resolve. The conclusion to be drawn is rather that Barry’s account prioritises the realisation of the equal basic goods principle and so must favour the

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70 If that were the case, Barry would not be able to say that welfare policies that target specific groups are a way to further justice and endorse such policies.
institution of an exemption arrangement, which, to reiterate, is most in keeping with the equal basic goods principle.

That said, though, it is important to see that Barry’s liberalism is not indifferent as to whether the state opts for a narrow or a generous exemption arrangement.

7.D The Preference for the Narrow Exemption

We have previously established that the institution of an exemption arrangement helps to realise the equal basic goods principle, but violates equality of opportunity. But the narrow and the generous exemption policies do not violate equality of opportunity to the same degree. On the contrary, there seems to be an important difference in the degree to which these policies depart from equality of opportunity. To appreciate this, we can first consider first the case of the narrow exemption.

The narrow exemption gives nomadic Roma and Travellers a legal right to choose the one GP surgery they are going to be registered with, while all other citizens are denied this opportunity and only have a right to register with the GP that caters for the area in which they reside. So the option sets of the two groups are going to differ, but the difference will be relatively minor: The opportunity set of nomadic Roma and Travellers will only be slightly larger than that of other citizens.

With the generous exemption, however, the situation is different. Here, it is legally possible for nomadic Roma and Travellers to claim treatment from any GP surgery in the country, and their opportunity set is therefore much broader than that of other citizens: Nomadic Roma and Travellers have a legally secured option to consult an extremely broad range of GP surgeries, while all other citizens only have a legally
protected right to consult the GP that caters for the area in which they live. So the generous exemption seems to deviate more strongly from equality of opportunity than the narrow exemption. And it seems therefore that Barry’s liberalism cannot be indifferent as to whether a state opts for the narrow or the generous exemption policy, but will recommend and favour the narrow exemption, which – to be sure – is inconsistent with equality of opportunity, but which is less so than the generous exemption. And in making this recommendation, Barry’s liberalism is taking a somewhat different line than Kymlicka’s multiculturalist liberalism, which (recall) militates for the generous exemption.

8 Conclusion

This chapter has been the first in a series of three that seek to apply Barry’s and Kymlicka’s respective liberalisms to the six specific questions that make up the problem of Roma and Traveller itinerancy. It has looked at the housing benefits question, the halting sites question, and the issue of GP registration, and it has demonstrated that these are divisive problems over which Barry’s and Kymlicka’s respective liberalisms disagree. In the case of the housing benefits question, the disagreement is about whether (or not) the institution of a caravan-conscious housing benefits system is a requirement. Kymlicka’s liberalism suggests that it is, both for reasons of equal accommodation and for reasons of societal-culture membership, and it suggests that the caravan-blind system (which is currently in place in France) is unjustifiable. Barry’s liberalism, on the other hand, generates a more relaxed, or agnostic, response and suggests that the caravan-conscious and the caravan-blind housing benefits systems are equally justifiable policies,
and that there is no principled reason to prefer one to the other. And this type of disagreement resurfaces in the case of the halting sites problem. Kymlicka’s framework supports here, for reasons of equal accommodation, the institution of a French-style, fine-meshed public halting sites network, while Barry’s classic neutrality account, because of its concern for the acceptable life, implies that the state needs to provide *some* kind of halting sites system, but is indifferent as to whether that system is fine-meshed or wide-meshed.

In the case of GP registration, however, the disagreement is starker. For Kymlicka’s liberalism implies here, that the state has to institute a generous exemption that gives nomadic Roma and Travellers a right to be treated by any GP. But this is a solution that Barry’s classic neutrality liberalism cannot accept. This liberalism does, because of its concern for the acceptable life, support the institution of an exemption arrangement, but its strong commitment to equality of opportunity leads it to support the narrow, not the generous, exemption.

But if we now see that Barry’s and Kymlicka’s respective liberalisms disagree over the issue of halting sites, the issue of GP registration, and the housing benefits question, what happens if we now turn the gaze and look at the other three components of the problem of Roma and Traveller itinerancy? Does the disagreement between the two accounts extend to those problems as well? Or is the disagreement that we have observed so far a limited one?
Chapter 5

Liberal Agreements I: Voter Registration

1 Introduction

We have in the previous chapter seen that Barry’s and Kymlicka’s respective liberalisms differ on the halting sites question, the housing benefits question and the problem of GP registration. But several important questions are still open. For one thing, it is still unclear our two competing liberalisms resolve the question of voter registration. And it is also uncertain how they deal with the issue of the travel permits and with the problem of education. So in this chapter and the next I will continue the task that I began in the previous chapter and go on to examine the practical policy implications of Kymlicka’s and Barry’s respective frameworks. This chapter looks at the question of voter registration, which asks whether a state can justifiably maintain a completely residence-based voter registration system in which the possession of a permanent residence is an absolute condition for voter registration or whether the state needs to render its voter registration system more itinerancy-friendly, either by instituting a British-style, simple workaround system that allows residenceless citizens to register via a so-called
declaration of local connection, or by instituting a French-style, qualified workaround
system that permits the *gens du voyage* to register in their municipality of attachment, but
which also says (1) that the *gens du voyage* who are attached to a given municipality
must not make up more than 3% of that municipality’s population, and (2) that they must
have been attached to a municipality for 3 consecutive years before they can register as
voters. And what I shall try to demonstrate is that Kymlicka’s and Barry’s respective
accounts actually agree on this problem and both imply that some workaround system is
called for.

The argument of the chapter proceeds as follows. I start by adopting the classic
neutrality perspective of Barry and by demonstrating that Barry’s account, because of its
commitment to the right to vote,¹ cannot countenance a voter registration system that is
entirely residence-based (s.2). I then turn to the two workaround systems and show that
Barry’s account will support one or the other depending on whether or not nomadic
Roma and Travellers are prone to congregate for electoral purposes (s.3). After this, I
change the theoretical perspective and show that Kymlicka’s multiculturalist liberalism,
with its distinctive concern for societal-culture membership and its ideal of equal
accommodation, has the very same policy implications as Barry’s account (s.4). Section 5
concludes and articulates some general questions that are raised by the convergence that
this chapter demonstrates.

But before I develop this in any further detail, I should make an important,
institutional clarification. Modern democracies hold elections for a variety of different
purposes and offices, and the voter registration can hence be articulated at several
different levels. It can, for example, be phrased as a question about registration for

¹ In the following, I use the ‘right to elect’ and the ‘right to vote’ as interchangeable synonyms.
municipal elections, as a question that concerns presidential elections, or as a question about national parliamentary elections. But I shall not try to address all these variants of the problem. Instead, I am going to focus specifically on the case of national parliamentary elections, for this is the question that is most uncertain. Let me develop this point in just a little more detail.

Local elections serve principally to elect officials who are legally competent to decide on very local matters that almost exclusively affect the persons who permanently live in the municipality in question. Thus, it is very likely that both Kymlicka’s and Barry’s respective liberalisms will find it acceptable if the registration for this type of election is subject to a strict residence condition and is reserved for those who permanently live in the area in question. Similarly, it is likely that both theories will reject such a limitation in the case of presidential elections, at least if they (as in France) are direct and not only serve to appoint a ceremonial head of state, but also an official who heavily influences domestic and foreign policy. But with national parliamentary elections the case is different. Here, we have an election that principally serves to appoint deputies who decide on a range of (national) policies that have pervasive effects. But parliamentary representation does arguably also have a ‘local character’ (Mill 1991:167). And in the case of national elections it is also important to be attentive to considerations of relative constituency size. It is, that is, important that the different electoral constituencies are of an equal demographic size, but this objective can be

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2 Local, municipal councils typically decide on questions such as the local waste management policy and local planning permission policy.
3 Note here, that Mill was not adamant about the local character of elections. Mill actually objected to the British system of geographically defined districts and was instead in favour of the Hare system, arguing that such a system, although it does away with geographically defined constituencies, would not jeopardize the local character of elections.
4 NB: There are some circumstances in which it may be justified to depart from the norm of equal
difficult to square with workarounds for nomadic citizens. So while it is relatively predictable how our two rival frameworks will resolve the voter registration question as it applies to local and presidential elections, it is not so clear how they will handle it at the level of national parliamentary elections. And thus, I shall exclusively focus on this last variant of the problem.

With this preliminary clarification in place, we can now turn to the normative analysis and first consider how Barry’s classic neutrality approach handles the issue of voter registration.

2 Classic Neutrality Liberalism and Residence-Based Voter Registration

Barry’s liberalism involves a range of different normative principles. But of these principles, it is only the basic rights principle and, more precisely, the basic right to vote which is not plainly inapplicable to, or inconclusive for, the problem of voter registration. So if we want to understand how Barry’s classic neutrality liberalism handles this issue and how it, first of all, assesses a system of voter registration that is entirely residence-based, then we need to focus on this particular right and examine if it can accept that voter registration is subject to an absolute residence condition. And the

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NB: I take it here that all the other basic rights that figure in the principle (e.g. the rights to free speech, to free movement, or to freedom of association) have no bearing on the question of voter registration.

This is true for the education principle and the equal basic goods principle. It is also true for the principle of non-discrimination which, recall, is narrowly concerned with people’s socio-economic opportunities – their chances of getting jobs, university place and the like.

This is true for the principles of equality of opportunity and legal uniformity. The explanation as to why equality of opportunity is inconclusive for the voter registration problem is perfectly parallel to my earlier argument about equality of opportunity and the housing benefits question (Cf. chapter 4 section 3.B) The explanation as to why legal uniformity is inconclusive is, likewise, parallel to the argument that I developed in chapter 4 section 3.A
way I propose to accomplish this is as follows. I start with some basic, but important, points about the structure of the right to elect, and I suggest that the key question is whether a residence-based system of voter registration reflects Barry’s fundamental commitment to fairness (2.A). Then I discuss the argument according to which the residence-based system leads to an unequal distribution of political power and social status and therefore is unfair (2.B). I suggest that this view is too simple, and that the question also depends on other considerations, in particular the system’s onerousness and the solidity of its underlying rationale (2.C). Finally I argue that the residence-based system is both onerous and lacks a solid rationale – which leads to the conclusion that an entirely residence-based system of voter registration is unfair and, therefore, inconsistent with the right to elect (2.D).

2.A Preliminaries on the Right to Elect

The right to vote is not a purely negative right that merely requires that certain agents, notably the state, forebear from performing certain actions. But nor is it a purely positive right that only correlates with duties of action. The right to vote is rather – as Jeremy Waldron (1993:24; 1998:308-10) has remarked – a right that straddles the conceptual divide between negative and positive rights, and simultaneously enjoins the government to perform certain types of action and to abstain from others. The right to elect demands, for instance, that the government does not prevent citizens from casting their ballots. But it also requires the state to perform a whole series of actions, notably that it sets up polling stations, counts the votes, ensures that ousted incumbents hand over their offices to the newly elected officials, and so forth. So as we try to work out whether a completely
residence-based system of voter registration is compliant with the right to vote, we need to consider two different questions: First, is the residence-based voter registration system in keeping with the *negative* government duty that correlates with the basic right to vote? And second, is such a system compliant with the *positive* government duty that correlates with the right to vote? In other words, is a completely residence-based system of voter registration the kind of institutional framework that the positive voting rights duty\(^8\) envisions and mandates?

As to the first question, I take it that there is no conflict. A state that maintains a residence-based voter registration system might be acting in a morally inappropriate manner. But if it does so, the problem is certainly not that the state is *insufficiently restrained* and *performs an action that it should actually abstain from performing*. The normative problem, if there is one, must rather be that the state does not perform the correct *kind of action* and does not operate the institutional framework that is implied by the positive voting rights duty. So is that now the case? Does the residence-based voter registration system somehow depart from, or violate, the positive voting rights duty?

Well, Barry’s liberalism does not specify the shape or content of the various fundamental rights that it wants to grant to citizens. So there is no quick and obvious answer to the question of how the residence-based voter registration system relates to the basic right to vote and its correlative, positive government duty. But we know that the right to elect, in Barry’s framework, is rooted in the ideal of fairness, which is defined as the idea that the benefits and burdens of social co-operation should be distributed equally.

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\(^8\) NB: When I speak of the positive (or the negative) ‘voting rights duty’, that is meant as a shorthand to designate the positive (or the negative) government duty that correlates with the (individual) right to vote. The label does not refer the duty that individual citizens might have to participate in elections.
among the cooperating parties. So even though Barry’s account fails to specify anything in this regard, we can make some inferences or predictions about the content of the right and its correlative duties: We can infer that the right to elect and its corresponding duties presuppose public policies that either promote the ideal of fairness or which, at very least, are innocuous to this ideal. And the question for us becomes, thus, how a residence-based system of voter registration relates to, or affects, the ideal of fairness: Is such a system a reflection or a departure from the ideal of fairness?

2.B The Simple Inequality Argument

One possible answer to this question runs as follows. If the voter registration system is completely residence-based and the possession of a fixed residence is a sine qua non for registration, then it will be impossible for nomadic Roma and Travellers to enrol as voters and to vote. They will effectively be disenfranchised and so have less political power – less ability to shape the laws and institutions that govern their lives – than other, settled citizens. Equally, they will come to lack the social status or the ‘standing’ (Shklar 1991) that is associated with the legal ability to vote. So a system of residence-based voter registration entails a two-fold inequality between settled citizens on the one hand and nomadic Roma and Travellers on the other. And for this reason – so the

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9 Remember: In chapter 3 we saw that Barry seems to think that all his basic rights are grounded in the idea of fairness. But this construction, I showed, is implausible, and so we decided to assume that Barry’s basic rights principle has a double foundation so that its various liberty rights rest on a basic commitment to individual autonomy, while the basic right to elect continues to rest on the commitment to fairness; cf. chapter 3 section 4.B

10 NB: The amount of political power that comes from being a registered voter is, granted, small. In a modern, large-scale representative democracy, individual voters only have a tiny impact on the eventual policy decisions. But this observation does not invalidate the point that registration gives power. For having a little bit of influence is still more than having no influence at all. For a classic discussion of an individual voter’s limited impact, see Downs (1957:244-5). For more recent discussions of this point by political theorists see Somin (2013:63-4) and Waldron (1998:313-16)

11 See Shklar (1991) for a compelling exploration of the link between the legal ability to vote and social status; see also Spinner-Halev (1994:123) and Waldron (1998:313-16)
argument goes – there is a certain tension between the ideal of fairness and the residence-based system of voter registration.

But this argument moves a bit too fast. The residence-based voter registration system is not, let’s say, a benefits-distributing policy that simply hands out a benefit or good. Rather, it is a benefits-conditioning policy that makes available a benefit on the condition that citizens meet a certain requirement. And thus, it is not self-evident that the inequalities that occur under such a system should be ascribed to the system, and that we should hold the system responsible for the disenfranchisement of nomadic Roma and Travellers. Indeed, it could also be that this disadvantage should be ascribed to the nomadic Roma and Travellers and their refusal to settle in a permanent residence. So if we now look to evaluate the fairness of the residence-based system of voter registration, then we cannot – as the above argument does – take it for granted that the inequalities that come with such a system should be ascribed to the system and, more precisely, to the residence condition for voter registration. Instead, we need to take serious the question of responsibility.

2.C Onerousness and Rationale

So who is then responsible for the inequalities and disadvantages that are associated with a completely residence-based system of voter registration? Is it the voter registration system or is it the nomadic Roma and Travellers? One way to answer this question is to fall back on David Miller’s analysis of the responsibility concept, and of ‘outcome responsibility’ in particular.\textsuperscript{12} Miller argues that an agent A is normally responsible for an

\textsuperscript{12} Miller distinguishes between three different concepts of responsibility: causal responsibility, outcome responsibility and moral responsibility. The notion of causal responsibility asks about the causal reasons
outcome O, if O is a result of A’s ‘genuine agency as opposed to inadvertent action’ (Miller 2007:88), and if the causal link between A and O is so tight that A could reasonably foresee that O would be the result of his actions (Miller 2007:88, 96). But, Miller adds, A’s responsibility for O can be diluted, or even wiped out, if A acts on the basis of coercion, manipulation or derangement and, in more general terms, is subject to forces or ‘causal antecedents’ that ‘remove or radically restrict … [A’s] control over outcomes.’ (Miller 2007:91, 94). And this account seems now to suggest that the disenfranchisement of nomadic Roma and Travellers should be ascribed to these people’s refusal to settle. For the outcome (the disenfranchisement) is here a fairly direct consequence of these people’s refusal to settle; their unwillingness to settle is not inadvertent (they know what they are doing); and nomadic Roma and Travellers are not generally manipulated or coerced into a travelling way of life.

But Miller’s framework is not quite adequate for our purposes. Miller’s framework is a basic framework that deals with cases in which a single agent brings about a given outcome. It is, let’s say, an action-outcome model.14 We, by contrast, are looking to explore a somewhat different case; we are dealing with a situation where individuals act in certain ways, and where those actions subsequently combine with a government policy to bring about an outcome of disadvantage. In other words, we are concerned with a 

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13 I will very shortly provide an explanation for this qualifier.

14 It should be noted here, that Miller is well aware that his model is a basic one, and that the allocation of outcome responsibility sometimes requires us to consider other factors than those detailed above, notably the behaviour of other agents (Miller 2007:97). However, he does not specify which factors we might want to consider when dealing with complex situations in which the outcome in question can potentially be ascribed to several different actors/sources.
situation where the action in question does not directly entail the outcome in question, but where the outcome and the action are linked together through a government policy. And so, we need to factor in the government policy into our analysis.

How, though, is this factoring to be done? What are the relevant considerations, and what are their respective implications? Let me answer this with the help of a hypothetical. Imagine that a state has a voter registration system that requires prospective voters to register personally in a central registration office located in the capital, and that voter registration is effectively subject to a ‘go-to-the-capital’ condition. Under such a hypothetical system many provincials would presumably abstain from registering and so wind up with a comparatively small share of political power and social status. But it is not very intuitive here to claim that this disadvantage or inequality should be ascribed to the provincials and their failure to make a trip to the capital. Most of us will instead intuit that it is fairly difficult or costly, at least for the citizens who do not live in the capital, to meet the ‘go-to-the-capital condition’, and that it for this reason is the condition, not the provincials, that is responsible for the provincials’ disenfranchisement. So it seems that the onerousness of a condition is a key consideration, and that the more a condition for the access to a benefit is onerous, the more we are willing to ascribe its associated outcomes to the condition, and the less we are willing to ascribe them to individual persons and their failure to meet the condition.

But the onerousness of a condition is not the only relevant consideration. We can appreciate this, by considering the conditions that states usually impose on those who want to drive a vehicle – i.e. the requirement that prospective drivers take driving lessons and pass a test. These requirements are arguably burdensome – both in financial terms
and in terms of the time involved. But would anyone be prepared to say that a person who lacks a driving licence is not responsible for her inability to legally drive cars and that the responsibility instead lies with the onerous conditions for driver certification? I think not.

In this case, it seems more appropriate to say that the conditions for driver certification are onerous indeed, but that there are very good reasons of road safety to have such conditions, and that this circumstance removes the responsibility from the condition and places with the individual and her actions. So the factors that determine where we place the responsibility for a given disadvantage seem to be two-fold. The question seems in part to depend on the onerousness of the condition that governs the access to the benefit in question; but it also seems to depend on the condition’s underlying rationale in the sense that the ‘responsibility pointer’ moves away from the condition and towards people and their behaviour insofar as the condition in question serves a valid purpose and rests on a solid rationale. And the question for us becomes, thus, how a residence-based voter registration system holds up against these two considerations: Is there anything onerous about an absolute residence condition for voter registration? And what, if anything, justifies such a condition?

2.D The Onerousness and Rationale of the Absolute Residence-Condition

As for the first question, the answer is straightforward. Settled citizens will find it relatively easy to comply with a residence-condition, as that happens more or less automatically. But residenceless citizens as nomadic Roma and Travellers must, in order to meet this condition, search for a new brick-and-mortar home, they will have to move into that new home, and if they are involved in a profession that requires continuous
mobility (e.g. seasonal labour, itinerant trading), they might also have to adjust their private economic model.\textsuperscript{15} So the residence condition is not always easy to meet. In the case of nomadic Roma and Travellers at least, it is a rather onerous a condition – very much in the same way as the above ‘go-to-the-capital’ condition is practically onerous for all those do not live in the capital.

But what about the question of rationale? Maybe there is a good reason to have an absolute residence condition for voter registration? One view on this matter – which has been suggested to me by David Miller – runs as follows. There may not be any intrinsic reasons to make residency an absolute condition for voter registration. But there are some good reasons for a state to entertain an electoral system that is built on geographically defined constituencies. Geographic constituencies ensure for one thing that geographically concentrated interests (e.g. interests related to mining) are represented in the legislature and that parliamentary representation has a ‘local character’ (Mill 1991:167; cf. Utter and Strickland 2008:62). And geographically defined constituencies are, for another, conducive to there being a relatively close bond between representatives and the electorate, as geographic constituencies incentivise candidates and incumbents to interact with their constituents, for example in the form of constituency surgeries (cf. Reynolds et al. 2005:36). But for these virtues to be realised, so the argument continues, it is necessary that the people who vote in the different constituencies also permanently live there. So if the voter registration system makes residence an absolute condition for

\textsuperscript{15} NB: Some people might here want to add that nomadic Roma and Travellers will not only find it practically onerous to meet the voter registration condition, but will also find it onerous in the sense that they will have to give up a practice that is key to their identity and culture. But we have earlier seen that Barry’s liberalism does not accord any particular moral status to citizens’ cultural projects and commitments (cf. chapter 3 section 4.A). So I do not think that we at this point may invoke considerations about culture and/or identity in order to show that the residence requirement is burdensome: This would be at odds with the account’s general inclination to disregard culture and identity.
registration, then – so the argument goes – there is a strong instrumental rationale for this condition: This is what ensures that a geographic electoral system can actually deliver in terms of securing proximity between voters and representatives, and in terms of securing the representation of local interests.

But this line of argument suffers from the same kind of problem as the preservation argument for an absolute ban on out-of-season hunting. A hunting ban can, as Waldron has noted, be ‘motivated by a desire to preserve some species of animal’ (Waldron 2002:29). But since ‘the preservation of the species is a matter of degree’, the preservation argument does not, Waldron (rightly) argues, explain why there cannot be an exemption that would allow Native Americans to hunt a small number of deer in connection with their religious celebrations. In other words, there is ‘room for [an] exemption’ (Waldron 2002:29). And something similar is now true for the line of argument that is suggested by Miller. It may well be that (1) a geographic electoral system helps to secure the representation of local interests and promotes proximity between representatives and the people. And it is certainly true that (2) these virtues will only be realised if voters cast their ballots in the constituencies where they live on a permanent basis. But these considerations cannot explain why there ought to be an absolute residence-condition for voter registration, and why there can be no workaround at all for the small group of individuals who do not have a fixed residence. The considerations (1) and (2) can explain why the state, or the law, as a general rule may want to insist that people have a residence in order to register as voters. But (1) and (2) do not – and this is the crux – explain why that residence-condition should be absolute. This does simply not follow from (1) and (2).
But perhaps there is another way to argue that the absolute residence condition is purposeful?

I think not. In fact, it would seem that the very opposite is true. National elections serve to appoint representatives who for a period of time occupy a seat in the national legislature and principally decide on the direction of national legislation and policy – e.g. fiscal policy, retirement policy, labour law, criminal law, family law, defence policy, international cooperation, and so on. These are all pervasive policies that affect citizens regardless of where they reside and, indeed, regardless of whether or not they have a fixed residence. The criminal law, for instance, is going to apply to everyone regardless of whether or not they have permanent residence. So national elections are a process that affects all citizens and their respective interests, no matter what their residential situation. And thus, it is difficult to see why participation in this process should be strictly linked to people’s residence situation and why residence should be an absolute condition for voter registration: There seems rather to exist a quite good reason to ensure that citizens’ residential situation does not affect their eligibility for voter registration.

So all in all, it seems that an absolute residence condition for voter registration resembles our earlier ‘go-to-the-capital’ condition: It looks to be an onerous policy, at least for some citizens; and it does not seem to rest on any solid rationale. There may, granted, be good reasons to make the possession of a residence a general or a default condition for voter registration, but they do not explain why such a residence condition should be absolute. And as a result, we can conclude that the status and power inequalities that are associated with a residence-based voter registration system should not be ascribed to nomadic Roma and Travellers and their refusal to settle, but rather to
the absolute residence condition. In other terms, it is the absolute residence condition that is responsible for the inequalities that come with such a condition. And so, it is fair to say that there is a tension or conflict between this condition and the value of fairness.

But this is not the end of the story. The reason we have explored how the residence-based voter registration system relates to the ideal of fairness has not been pure curiosity. The reason is that we at the beginning of this section (cf. 2.A) established that the positive government duty that correlates with the right to elect envisions structures and institutions that either enhance or, at very least, do not undermine the value of fairness. So if we now find that the residence-based voter registration system is unfair, then that is of wider significance. It means that a residence-based system is not the sort of system that the positive voting rights duty calls for, but constitutes a violation of the right to elect – not because it prevents citizens from casting their votes (or something like this), but rather because the system is not the sort of institutional framework that a fairness-based right to vote requires. What we find is, in brief, that Barry’s liberalism cannot accept a system of voter registration that is entirely residence-based.

But if Barry’s right to elect (and his liberalism more generally) objects to a completely residence-based system of voter registration, can it then endorse any of the two rival systems? Can it accept the simple or the qualified workaround system, or maybe even both?

3 A Qualified or a Simple Workaround System?
To determine whether the simple and/or the qualified workaround system square with Barry’s liberalism and, more specifically, the right to elect, we must investigate the same
basic questions as in the previous section. We must, that is, examine if these systems are compatible with the positive government duty that correlates with the right to elect, and this requires in turn that we explore the relationship between fairness on the one hand and the qualified and the simple workaround systems on the other. And to this end, I am shortly going to develop a two-pronged argument showing that the relationship varies with the circumstances and that the right to vote does not entail a general, invariable preference for one or the other system (3.B and 3.C). But prior to this, I want to clear some ground and discard two misguided arguments (3.A).

3.A Two Misguided Arguments

As we begin to think about the relationship that exists between the ideal of fairness and the qualified and the simple workaround systems respectively, there quickly come to mind two lines of argument. The first claims that the ideal of fairness is harmed by the qualified workaround system; and the other claims that fairness is undermined by the simple workaround system.¹⁶ Both these arguments are invalid. But since they have some superficial plausibility, it is necessary that I briefly discuss and discard them before I turn to present my (correct) core argument.

The first argument – the one which charges the qualified workaround system with being unfair – runs as follows. The qualified workaround system makes it possible for nomadic Roma and Travellers (and other gens du voyage) to register as voters and to enjoy the same share of political power and social status as other, residing citizens. So there is, so the argument concedes, an important sense in which the qualified workaround

¹⁶ Note here that the two lines of argument are mutually inconsistent and cannot be held at the same time. But note also that this inconsistency is not a problem for me, as I do not endorse either, but seek to refute both.
system promotes fairness and equality. But, so the argument continues, the qualified workaround system does not only allow the gens du voyage to register as voters; it also involves a special 3 year rule and, especially, a 3% rule which provides that the gens du voyage must not make up more than 3% of a municipality’s total population. And this rule produces two connected outcomes. It means, first, that all electoral constituencies are overwhelmingly composed of settled residents and that nomadic Roma and Travellers (and other gens du voyage) will never make up more than 3% of the electorate in any constituency. And this demographic composition can in turn impact these people’s electoral prospects: It can – insofar these people have a distinct political interest or agenda – mean that they have ‘difficulty becoming meaningful electoral constituencies’ (Commissioner for Human Rights 2012:210) and can never form a decisive, electoral majority in any constituency. And this – so the argument goes – means that there is not only a sense in which the qualified workaround system promotes the value of fairness, but also an important sense in which the system departs from, and undermines, this value.

The second line of argument – the one which incriminates the simple workaround system – runs like this. The simple workaround system makes it possible for nomadic Roma and Travellers and other residenceless individuals to enter the electoral register, to participate in elections, and to thus enjoy the same share of political power and social status as other, residing citizens. But the simple workaround system also makes it possible for these people to ‘electorally congregate’ and to enrol en masse in one single constituency. For such a simple system does not involve any mechanisms for

17 In the following I will for the sake of variation also be saying that the simple workaround system enables nomadic Roma and Travellers to ‘electorally congress’, to ‘gather for electoral purposes’, and that it enables ‘nomadic (electoral) assemblies’. In each case, the phrasing is meant to refer to one and the same phenomenon: i.e. a situation where large numbers of nomadic Roma and Travellers enrol on the electoral
controlling and/or limiting the number of residenceless people that declare themselves attached to a given constituency. And such electoral assemblies can ultimately cause the electoral outcomes to be distorted, either in the sense that the gathering nomads outvote the locally settled citizens and catapult their own preferred candidate into office, or in the sense that the gathering nomads alter the pre-existing balance of power and help to elect a candidate who otherwise would only have received a minority of the votes. Such distortions of the electoral outcome, however, are unfair. And so – so the argument goes – there is not only a sense in which the simple workaround system promotes the value of fairness, but also an important sense in which it jeopardizes and undermines this value.

But both the first and the second line of argument are invalid. Consider first the argument which holds that the qualified workaround system is unfair because it can make it impossible for nomadic Roma and Travellers (and other gens du voyage) to form an electoral majority in any electoral district. For this argument to be coherent, it needs to be the case that the ideal of fairness is attentive to people’s prospects of electoral success and requires that people have equal chances of being part of the electoral majority of a constituency. But in a district-based, majoritarian electoral system, there will, because of the system’s very structure, ‘virtually always be voters who voted for losers … [and] to seek equality of success within’ such a system is, as Charles Beitz has pointed out, ‘to seek a goal that cannot normally be attained.’ (Beitz 1989:151) So it cannot be, that the register of one and the same electoral district.

Let me also emphasise that I, when I speak of ‘nomadic assemblies’ or ‘nomadic electoral assemblies’, do not mean to refer to formal assemblies (as, for example, a council), but only to a situation where numerous nomadic citizens register in the same electoral constituency. This latter potential for confusion is unfortunate, but I do not see how it might be avoided. It would, of course, be possible to speak of ‘nomadic congregations’ rather than ‘nomadic assemblies’, but that terminology leads the thoughts to religious communities.
ideal of fairness mandates equal electoral success.\(^{18}\) Fairness does, of course, require that the voting system treats voters and their votes equally,\(^ {19}\) and that voters have equal prospects in an ‘abstract’, ‘a priori’, or ‘ex ante’ sense (Beitz 1989:9-10). But fairness cannot, because it is a practical impossibility, mean that voters should have equal electoral prospects in an ‘actual’ or ‘ex post’ sense so that they have equal chances even after the actual distribution of political preferences is taken into account (Beitz 1989:10). And so, we are not entitled to argue that the qualified workaround system is unfair because it causes nomadic Roma and Travellers (and other gens du voyage) to have comparatively poor electoral prospects and makes it unlikely that they will get the electoral outcomes they want.\(^ {20}\)

But what is wrong with the second argument, the ‘distortion argument’? Is it not troubling if large numbers of nomads electorally gather in some constituency and decide the vote? That may well be; in fact, I am shortly going to develop an argument that implicitly acknowledges this. But for now, I am concerned with the more specific view which holds that the simple workaround system is unfair because it can bring about a situation where electoral outcomes do not reflect the preferences of the settled voters. And this view is unwarranted. For it hinges on the understanding that fairness demands that electoral outcomes primarily reflect the political preferences of the locally settled constituents.\(^ {21}\) And this understanding has no connection whatsoever with the conception

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\(^{18}\) NB: It is an implicit assumption in this argument that ‘ought’ implies ‘can’. This view should be uncontroversial.

\(^{19}\) I.e. Fairness is inconsistent with some voters having multiple votes.

\(^{20}\) To be clear: I do not, here, seek rule out the possibility that the qualified workaround system might be unfair for other reasons or in other ways. The target for now is only the claim that the qualified workaround system is unfair because it prevents nomadic Roma and Travellers from getting the electoral outcome they would prefer.

\(^{21}\) NB: There is, strictly speaking, one further way to sustain the claim that it is unfair if electoral outcomes do not reflect the preferences of the locally settled voters. This is to say that fairness demands that (settled)
of fairness that is at the heart of Barry’s classic neutrality liberalism. The notion that the political preferences of the locally settled constituents ought to be privileged is not an implication, precondition or constituent part of the conception of fairness according to which the benefits and burdens of social cooperation should be distributed equally among the cooperating parties. These two notions are conceptually separate from each other, and we are not, therefore, entitled to argue that the simple workaround system is unfair because it can engender distorted electoral outcomes. This is not a valid line of argument.

But if the ‘distortion argument’ and the ‘poor-electoral-prospects argument’ are unwarranted, how should we then view the relationship between the ideal of fairness and the simple and the qualified workaround systems respectively? What is the correct way to envisage these relationships? To start to answer this question, I want first of all to draw attention to a basic methodological point. The above distortion argument has highlighted that nomadic Roma and Travellers could in principle try to electorally congregate in large numbers in some constituency. And even though I have rejected the above ‘distortion

voters from one constituency should have the same chances of being electorally successful as the (settled) voters from another constituency, and that it is unfair if the settled voters from one constituency, as the result of a nomadic gathering, come to have smaller chances of being electorally successful than the settled voters from some other constituency. But this is the same basic idea that I rejected a little earlier. Here again, it’s claimed that fairness is attentive to voters’ prospects and demands that voters have equal chances of electoral success. (The only difference with the earlier claim is that here, it is not the voters from one and the same constituency, but voters from different constituencies, who should have equal prospects of success). And this notion that fairness requires equal prospects of electoral success is implausible: In a district-based majoritarian electoral system there will always be voters who vote for winning candidates and voters who vote for losing candidates. And so, it is impossible to achieve equal electoral prospects both within and across electoral districts.

Besides, we would have to accept rather odd claims if we were to accept the idea that fairness requires equal prospects of success across constituencies. For example, we have to accept the claim that it’s unfair that labour supporters in a safe Conservative constituency have smaller chances of being electorally successful than Labour supporters who vote in a safe Labour constituency.

22 Let me emphasise here, that I do not claim that it is always incoherent to demand that the preferences of the locally settled constituents should be privileged. This demand is perfectly coherent if one, for example, motivates the right to elect on the grounds that it fosters a sense of community and encourages the voters of a constituency to see each other as members of a community in a thick sense. My claim is only that one cannot hope to privilege the preferences of the settled constituents if one grounds the right to elect in an ideal of fairness that is construed as an ideal to the effect that the benefits and burdens of social cooperation should be distributed equally.
argument’, I do think that the point is relevant to consider as we look to assess the fairness of our two different workaround systems. But it is quite uncertain whether nomadic Roma and Travellers actually have a proclivity to massively congregate for electoral purposes. Social-scientific observers have – curiously – nothing to say on this point; and governmental and parliamentary reports from both France and the UK, which regularly note that nomadic electoral gatherings are a possibility, never discuss whether nomadic Roma and Travellers actually have a real inclination to electorally congregate (cf. Home Office 1999: sections 2.3.3 to 2.3.7; Derache 2013; Gouvernement Français 1968; Assemblée Nationale 1968). And the proclivity of nomadic Roma and Travellers to electorally gather seems furthermore to depend on a host of factors – e.g. their ability to organise, their political interest and mobilisation, their population size as compared to an average electoral district – that can vary both across time and from one country to another. So in my analysis of the simple and qualified workaround systems, I am not going to take any particular view on the inclination of nomadic Roma and Travellers to congregate for electoral purposes. Instead, I want to develop an analysis that considers both the possibility that nomads do have such an inclination, and the possibility that they do not. I will take the two scenarios in turn, and first proceed on the assumption that nomadic Roma and Travellers are not inclined to electorally gather.

23 The whole issue of nomadic Roma and Travellers’ political participation and behaviour is, curiously, very little studied.
24 If, that is, nomadic Roma and Travellers are politically disinterested, they will probably be less inclined to gather than if they are politically mobilised.
25 The smaller the nomadic Roma and Traveller population is as compared to an average constituency, the more it is difficult for this population to orchestrate a successful/meaningful electoral rally, and their inclination to congregate for electoral purposes will presumably be partially dependent on this population-constituency ratio. An additional factor that impacts the proclivity of nomadic Roma and Travellers to congregate for electoral purposes is the distinctiveness of their political agenda and interests. If they have a distinct agenda and do not divide along the political cleavages that divide the rest of the citizenry, nomadic Roma and Travellers will presumably be more inclined to congregate and they will conversely be less inclined to do so if they are divided along the same line as the rest of citizenry and lack a specific agenda.
3.B The Two Workarounds Under a No-Nomadic-Assemblies Scenario

So, assuming that nomadic Roma and Travellers have no inclination to congregate for electoral purposes, what is the relation between the value of fairness and the simple and the qualified workaround systems respectively?

Well, both workaround systems have the effect of enfranchising nomadic Roma and Travellers and of making sure that political power and social status is evenly distributed. So there is clearly a sense in which the two systems promote the value of fairness. But elections and their infrastructure do not only serve to distribute power and status. Elections and their infrastructure are also, and ultimately, a collective decision-making procedure to settle the contentious question of who is going to sit in parliament and exercise a legislative function. So an electoral system needs not only to be fair in the sense that it brings about an equal distribution of power and status. It also needs to be fair in a procedural sense, which involves at least two elements: The electoral system must – as already indicated – be fair at the moment of the election and ‘treat everybody equally’, notably by adhering to the norm ‘one person, one vote’. And the system must also be fair during the preceding campaign stage and make sure that all citizens have ‘their interests and perspectives expressed with equal force and effectiveness’ (Barry 1995: 110). In short, it is necessary that the electoral system is both ‘election fair’ and ‘campaign fair’. And this is where the simple workaround system gets into problems. Let me develop this last point in some more detail.

Under the simple workaround system, it is effectively possible for nomadic Roma

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26 The above specification of procedural fairness is from Barry (1995), but it is by no means idiosyncratic. Similar accounts of procedural fairness are also found in, for example, Beitz (1989:155; 175-180) and Barry (1990:97, 99).
and Travellers (and other residenceless individuals) to freely choose the constituency they are going to vote in. But that option is not available for other, residing citizens, who must vote in their constituency of residence. Of course, it is arguable that residing citizens can choose the location of their of residence and, thus, their constituency. But since residing citizens will actually have to reside in the constituency in which they would like to vote, this is a heavily qualified choice, especially as compared to the unqualified freedom that the system affords to a residenceless individual. So when it then comes to an election, there will be a certain inequality in the tools, or the resources, that are available to the advocates of different interests and perspectives: Supporters of the, say, the Conservative party will have to address the local electorate and try to win over a given set of voters, while those who advocate for the interests and perspectives of nomadic Roma and Travellers effectively have the additional option to appeal to partisans from outside the constituency. In other words, it is possible for the latter to ‘import’ voters or partisans, while advocates of other perspectives need to convince voters. And this inequality in the campaign resources is clearly inconsistent with the notion that the electoral campaign should allow all interests to be expressed with equal effectiveness.

Or is that really so? Could one not argue that the simple workaround system does afford an extra campaign resource to those who advocate for the interests of nomadic Roma and Travellers, but that that merely compensates for the fact that the Roma-and-Traveller perspective is a minoritarian point of view which receives less attention (e.g. less media coverage) than, say, the Conservative perspective? I think this view could have some merit if the political landscape was composed of a few dominant perspectives

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27 Recall: The individuals who file a ‘declaration of local connection’ do not have to prove that they actually have some material connection to the constituency that they want to be attached to (cf. chapter 2 section 7).
on the one hand and the point of view of nomadic Roma and Travellers on the other. But the political landscape will normally be much more complex than that, and feature a whole myriad of minoritarian perspectives; e.g. a Sikh point of view, a Muslim perspective, an LGBT perspective, and so forth. So if the simple workaround system affords an extra campaign resource to those who advocate for the interests and perspectives of nomads, that might not be unfair vis-à-vis the partisans of the dominant perspectives, but it is certainly unfair towards the supporters of other minoritarian perspectives (e.g. the partisans of the Sikh point of view). And the intermediary conclusion to be drawn is, thus, that the simple workaround system is not entirely in keeping with the ideal of fairness. Such a system is fair in the sense that it enfranchises nomadic Roma and Travellers, and it is also fair in the sense that it treats voters and their votes equally at the moment of the election,\textsuperscript{28} but the system is nevertheless ‘campaign unfair’ as it gives nomadic Roma and Travellers an extra campaign resource that is not available to others.

A similar situation occurs in the case of the qualified system; here, too, we observe a certain unfairness at the campaign stage. But the reasons for this are not the same as in the case of the simple system.

The qualified workaround system makes it possible for nomadic Roma and Travellers (and other \textit{gens du voyage}) to choose their constituency, as the system allows them to choose their municipality of attachment. But this constituency choice is not as free as under the simple workaround system, for the choice of a municipality of

\textsuperscript{28} NB: In section 3.C I will argue that the simple workaround system is ‘election unfair’ if it is put to work in a scenario where nomadic Roma and Travellers are prone to gather for electoral purposes. But for now we are looking at the scenario where nomadic Roma and Travellers do not have such inclinations, and in this situation it is relatively clear that the system does not represent, or involve, a departure from the notion that voters should be treated equally at the moment of the election.
attachment is binding for two years, and the ability of the *gens du voyage* to choose their constituency is thus constrained or qualified in a way that resembles the way in which a resident citizen’s choice is qualified: In both cases it is in principle possible for the individual to choose his or her constituency, but the choice is in both cases limited in a quite significant way: in the one case by the rule saying that the voter actually needs to reside in the constituency in which he wants to vote, and in the other case by the rule which says that every new attachment is binding for two years. So the qualified workaround system does not allow nomadic Roma and Travellers (and other *gens du voyage*) to freely move in between constituencies, and the system cannot, therefore, be charged with giving an extra campaign resource to those who advocate for the interests of nomadic Roma and Travellers.

But when the law caps the size of a group within a constituency to 3%, it is structuring the environment in which election campaigns take place and it produces a situation where attention to the group’s interests is definitively not a vote winner and where the group’s interests will largely be overlooked and screened out from the electoral campaign. And this is directly in tension with the notion that everyone’s interests and perspectives should be expressed with equal effectiveness during an election campaign. So the qualified workaround system is – just as the simple workaround system – a partially unfair system: It promotes the value of fairness in the sense that it enfranchises nomadic citizens and in the sense that it is ‘election fair’; but since the system has the effect to largely screen out nomads from the electoral campaign, there is also a sense in which it is ‘campaign unfair’.

But if neither the simple nor the qualified workaround system is entirely in

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29 Cf. chapter 2 section 7
keeping with the ideal of fairness in the procedural sense, what does that mean for these systems’ relation to the right to elect? Can at least one of these systems be consistent with this right?

In section 2.A I suggested that the positive government duty that correlates with the right to elect presupposes policies that either enhance or, at very least, do not undermine the value of fairness. So if we now observe that both the simple and the qualified workaround systems are campaign unfair, then we must strictly speaking infer that neither of these two systems is the sort of institutional set-up that this positive government duty envisions and calls for. And this means, of course, that Barry’s right to elect cannot, strictly speaking, countenance either. But it seems to me that the two breaches of ‘campaign fairness’ that I have just discussed are not of an equal magnitude. The simple workaround system does confer a campaign advantage to those who advocate for the point of view of nomadic Roma and Travellers – there is no denying this. But this advantage is not as significant (or profound) as the disadvantage that comes with a qualified workaround system. For the 3% rule does not just somewhat compromise the ability of nomads to effectively articulate their interests. What it does is to almost entirely screen out these people’s perspective from the electoral campaign and to render their interests virtually invisible. So to my mind, it is arguable that the simple workaround system comes closer to instantiate the requirements of ‘campaign fairness’ than the qualified workaround system. And on this basis I want to suggest that Barry’s right to elect is not equally averse to the simple and the qualified workaround systems, but (grudgingly) favours the simple workaround system, which it sees as the least bad option.
3.C The Two Workarounds Under a Nomads-Are-Prone-to-Congregate Scenario

I have so far been analysing the simple and the qualified workaround systems on the assumption that nomadic Roma and Travellers are disinclined to congregate in a particular constituency. But what happens if we drop that assumption and instead conjecture that nomadic Roma and Travellers are indeed prone to enrol *en masse* in the same electoral constituency? Does such a change of assumptions alter the picture?

To understand this, let us first look at the case of the simple workaround system. We have just seen that the simple workaround system is fair in the sense that it enfranchises nomadic Roma and Travellers, but ‘campaign unfair’ as it gives the advocates of the nomadic perspective an extra campaign resource. And these two assessments remain true if we now drop the assumption that nomadic Roma and Travellers are not inclined to gather for electoral purposes. If we assume that nomads have a tendency to congregate for electoral purposes, that does nothing to challenge the argument according to which the simple workaround system enfranchises nomadic Roma and Travellers, and it does nothing to challenge argument according to which the simple system is ‘campaign unfair’. In fact, it might be argued that the change of scenario amplifies that system’s ‘campaign unfairness’ for the change means that the option of ‘importing’ partisans changes from being a relatively hypothetical option to being a quite real possibility.

But the change of scenario is more consequential than that, and does also change something at the *moment* of the election. Let me develop this point in some more detail.

Under the simple workaround system, there are no mechanisms to regulate and limit the number of people who declare themselves attached to a given constituency. So if we make the assumption that nomadic Roma and Travellers are prone to come together in
large numbers for electoral purposes, then we need to concede that such a system will regularly result in large gatherings of nomads. Such gatherings, however, have a number of important consequences. They mean, first, that the constituencies of congregation (C1) come to comprise more voters than other constituencies (C2, C3, etc.) and to be malapportioned as compared to C2, C3, etc. And these malapportionments mean in turn that the individual ballots that are cast in C1 come to be less influential for the eventual electoral result than the ballots that are cast in C2, C3, etc. So the final outcome is, in brief, that votes are unequally influential depending on where they are cast. And this stands, of course, in stark tension with the notion that voters should be treated equally at the moment of the election. Voters having unequally influential votes is a direct contravention of the norm ‘one person, one vote’, and the change of scenario means therefore that the simple workaround system goes from being ‘campaign unfair’ only, to being both ‘campaign unfair’ and ‘election unfair’. The dropping of the no-assemblies assumption has, in other words, the effect to aggravate the unfairness of the simple workaround system.

But with the qualified workaround system the situation is different. In section 3.B I argued that the qualified workaround system is campaign unfair as it severely restricts the ability of nomadic Roma and Travellers to put forward their interests during election campaigns and to meaningfully participate in the campaign stage of elections. And this remains true if we drop the no-assemblies assumption and instead assume that nomadic Roma and Travellers are prone to electorally gather. But if nomadic Roma and Travellers are prone to congregate en masse for electoral purposes, there is also a sense in which the qualified workaround system helps to secure fairness at the very moment of the election.
For this system’s 3% rule sets a hard limit to the number of nomadic Roma and Travellers (and other *gens du voyage*) that can congregate within a given constituency and has thus the effect to stave off the malapportionment phenomenon that can occur under the simple workaround system. And the same is true for the 3 year rule, which effectively makes it necessary that assemblies are planned and carried out at least three years ahead of an election.

So the dropping of the no-assemblies assumption does not produce the same effects as in the case of the simple workaround system. The change of scenario does not aggravate the unfairness of the qualified workaround system, but has rather the effect to render the picture more complex and to suggest that the qualified workaround system both undermines and promotes the value of procedural fairness.

But this is not yet the whole the story. The norm of ‘one person, one vote’ is (in my view) an absolutely central component of procedural fairness. Indeed, it is very difficult to see how a collective decision-making procedure might be procedurally fair if it does not treat or count everybody’s input equally. So if the qualified workaround system now helps to secure election fairness and helps to uphold the norm ‘one person, one vote’, then it is making a very significant contribution to the value of procedural fairness, and the system’s fairness-damaging effect is – even if it is severe – cancelled out. In other words, it appears that the qualified workaround system’s ‘election fairness’ compensates

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30 There is one potential objection to this claim. This holds that fairness cannot always require that parties have equal input into the final outcome, as we in the case of legal trials are content to say that the procedure is fair even though it treats the input of the different parties unequally depending on whether they are judge, defendant, jury, plaintiff, or prosecutor. But legal trials are not, in fact, an instance of collective decision-making. Legal trials are not a means for a group to select one rather than other possible course of action, but a means to draw out the implications of the existing law to particular cases. Legal trials serve to a) identify the facts of a given case (who has done what under which circumstances?) and b) to determine what the existing legislation implies for such a set of facts. Thus, one cannot invoke the case of legal trials to challenge the claim that fairness in collective decision-making requires parties to have equal input.

31 Cf. the argument towards the end of section 3.B
for its being unfair at the campaign stage, so that on balance the system is neutral or innocuous with regard to the value of procedural fairness.

So the dropping of the no-assemblies assumption does, then, make a difference. If we abandon the conjecture that nomadic Roma and Travellers are disinclined to congregate for electoral purposes and instead presume that nomadic electoral assemblies are quite possible, then it is still the case that the simple workaround system undermines the ideal of procedural fairness, and campaign fairness in particular. But the appraisal of the qualified system changes. This system can no longer be regarded as a system that undermines the value of procedural fairness, but must instead be viewed as a policy that is on balance innocuous to this value. And this affects the recommendations of the right to elect. If – as I have just suggested – the qualified workaround system is neutral to the value of procedural fairness, then it is not – as under the no-assemblies assumption – inconsistent with the positive government duty that correlates with the right to vote. On the contrary, it is perfectly consistent with this governmental obligation, and the right to elect has therefore a different policy implication than under a no-assemblies scenario: The right does no longer grudgingly advocate for the simple workaround system, but has instead a wholehearted preference for the qualified workaround system, which (unlike the simple system) is the very sort of institutional set-up that the right to elect envisages.

Over the last thirty pages or so, I have attempted to argue three main points. First, I have suggested that most principles of Barry’s liberalism are either inapplicable or inconclusive for the question of voter registration, and that the resolution of this problem solely hinges on the right to elect. I have also shown that Barry’s right to elect cannot countenance a system of voter registration that is entirely residence-based. And I have
finally shown that the right to elect does not invariably prefer the simple or the qualified workaround system, but will favour one or the other depending on whether or not nomadic Roma and Travellers are prone to congregate for electoral purposes. So the eventual conclusion that we now arrive at is that Barry’s classic neutrality liberalism objects to a system of voter registration that is entirely residence-based, but has no general, invariable preference for the simple or the qualified workaround system and effectively says: If it is certain that nomadic Roma and Travellers will not gather for electoral purposes, then it is most appropriate, though not entirely ideal, that the state operates a UK-type, simple workaround system. If, on the other hand, nomadic Roma and Travellers are likely to gather, it is more appropriate for a state to opt for the French-style, qualified workaround system.

4 The Multiculturalist Approach to Voter Registration

Let me now turn to look at the voter registration question from the point of view of Kymlicka’s multiculturalist liberalism. Kymlicka’s liberalism is – just like Barry’s – committed to a basic rights principle saying that citizens must (inter alia) enjoy a basic right to vote. Thus, it is amenable to the same kind of basic-rights argument that I developed in the two previous sections. But rather than rehearsing that argument, I shall here focus on the elements that are unique to Kymlicka’s account and try to demonstrate that its distinctive concern for societal-culture membership and its notion of equal accommodation engender the very same policy recommendations as Barry’s classic neutrality liberalism. The argument proceeds as follows. I will first show that Kymlicka’s concern for societal-culture membership and his ideal of equal accommodation rule out a
system of voter registration that is completely residence-based (4.A). And then I will demonstrate that Kymlicka’s liberalism will favour either a qualified or a simple workaround system, depending on whether or not nomadic Roma and Travellers are prone to gather for electoral purposes (4.B and 4.C)

4.A  Residence-based Voter Registration, Societal-Culture Membership and Equal Accommodation

In section 2 we saw that a completely residence-based system of voter registration makes it impossible for nomadic Roma and Travellers to register as voters and to participate in elections. And this, I suggested, is an unfair state of affairs. But participation in the electoral process is not only a matter of fairness and equality; it is also a matter of societal-culture membership. For parliamentary elections are one of the most central mechanisms of the mainstream society’s system of self-government, and they are hence a very important branch of the mainstream societal culture. So if nomadic Roma and Travellers are disenfranchised, that does not only represent an unfairness, but also a restriction of their societal-culture membership. And thus, it is clear that Kymlicka’s concern for societal-culture membership is inconsistent with a completely residence-based system of voter registration, and implies that the state needs to institute some kind of workaround system which enables nomadic Roma and Travellers to participate in, let’s say, the political branch of the mainstream societal culture.\textsuperscript{32} And this conclusion is also supported by Kymlicka’s ideal of equal accommodation. For a voter registration system that disenfranchises nomadic Roma and Travellers – but not the members the settled

\textsuperscript{32} It is an implicit assumption in this argument that Kymlicka’s notion of a societal culture encompasses institutions of government. I have explicitly discussed and explained this assumption in chapter 4 section 2.B
mainstream society – does clearly not provide equal measures of support to the settled and to the travelling ways of life respectively.

But once it has been established that Kymlicka’s liberalism objects to a system of voter registration that is entirely residence-based and instead calls for some workaround system, there remains the question of whether it is the simple or the qualified workaround system that is the more appropriate option. So I shall now turn to look more carefully at these two alternatives. And here again, I will both consider the possibility that nomads are largely disinclined to gather for electoral purposes, and the possibility that they do have such an inclination. I begin with the scenario where nomadic Roma and Travellers do have an inclination to electorally gather.

4.B The Two Workarounds under a Nomads-Are-Prone-to-Congregate Scenario

In section 3.B I argued that the qualified workaround system severely limits the ability of nomadic Roma and Travellers to participate effectively in electoral campaigns and to effectively express their interests. And that, I suggested, is procedurally unfair. But if nomadic Roma and Travellers are effectively screened out from the campaign stage of an election, that it is not merely a fairness problem. This also imperils and restricts their societal-culture membership, for the electoral campaign is, after all, an integral part of the electoral system, which – as I have already argued – is an important branch of the mainstream societal culture. And Kymlicka’s concern for societal-culture membership implies thus that the qualified workaround system is an inappropriate policy choice, and that the simple workaround system, which does not involve any 3% rule and does not engender the sort of marginalisation that comes with the qualified system, is a more
appropriate option.

However, there are also considerations that point in a quite different direction. In section 3.C I argued that the simple workaround system, if combined with a scenario where nomadic Roma and Travellers are prone to congregate for electoral purposes, opens the door for regular malapportionment phenomena and violations of the norm ‘one person, one vote’. And on that basis I suggested that the simple workaround system violates the right to elect, and that this right calls for a qualified system, which can help to safeguard the norm of ‘one person, one vote’.\textsuperscript{33} So even though Kymlicka’s concern for societal-culture membership backs the simple workaround system, it is not at all self-evident that that, as it were, is the framework’s last and unequivocal word. Rather, we seem to have hit upon a value conflict in which Kymlicka’s concern for societal-culture membership pulls in one direction and supports a simple workaround system, while the account’s commitment to basic individual rights, and to the franchise in particular, pulls in another direction, suggesting that it is the qualified workaround system that is more preferable.

However, this is not the end of the story. In \textit{Multicultural Citizenship} Kymlicka argues that national minorities are entitled to maintain their societal culture and that they therefore should enjoy a wide range of special legal rights, notably legal means to control the immigration of non-members into their homelands.\textsuperscript{34} Such powers, however, limit the

\textsuperscript{33} NB: I also argued that the simple workaround system is campaign unfair as it gives nomadic Roma and Travellers an extra campaign resource and enables them to ‘import’ voters during the campaign stage of an election. But this flaw is minor as compared to the malapportionment problem. So for the time being, I am going to leave this point aside. However, I will return to it in section 3.C. Note also, that the eventual analytical outcome is not substantially affected by this omission and that we would reach the same conclusion if we were to include this point in our considerations.

\textsuperscript{34} Cf. chapter 3 section 3.A
mobility rights of non-members.\textsuperscript{35} They ‘impose restrictions on the members of the larger society, by making it more costly for them to move into the territory of the minority’ (Kymlicka 1995:109). But Kymlicka does nevertheless think that such powers are justified, arguing that ‘the sacrifice required of non-members by the existence of these rights is far less than the sacrifice members would face in the absence of such rights.’ (Kymlicka 1995:109). So Kymlicka does not seem to think that dilemmas that pit the protection of minority members’ societal-culture membership against the protection of non-members’ basic rights are intractable. His view seems rather to be that we in such cases need to sensitively weigh the gains and costs of one alternative against the gains and cost of the other. And if we now conduct such a balancing for our workaround dilemma, it seems that it is the protection of the franchise and the qualified workaround system that come out on top.

Why?

Well, the right to vote and the norm ‘one person, one vote’ are, as I have suggested earlier, intimately intertwined. So if now observe that the simple workaround system jeopardises the one-person-one-vote norm, then we need to regard it as a system that poses a deep challenge for the right to elect: The simple workaround system does not compromise the franchise in a light or relatively superficial fashion, but represents a severe dilution of this right. The qualified workaround system, on the other hand, does not seem to involve such dramatic costs. The qualified workaround system does, of course, compromise the societal-culture membership of nomadic Roma and Travellers –

\textsuperscript{35} NB: I am here focusing on the way Kymlicka handles conflicts between the value of societal-culture membership on the one hand and the basic rights of non-members on the other, as I take it to be clear that the simple workaround system compromises the franchise not only of nomadic Roma and Travellers, but of all the voters who vote in a malapportioned constituency.
there is no denying this. But the system cannot be said to profoundly or categorically undermine this good, for it does, after all, make sure that these people are able to participate in the electoral process and – what is more – that their votes count for as much any other vote. So it seems, in brief, that the (moral) costs and gains that are associated with the simple workaround system are of a more profound character than the costs and gains of the qualified workaround system. And if this argument is sound, we need to conclude that, if nomadic Roma and Travellers are prone to congregate for electoral purposes, Kymlicka’s liberalism will not advocate for the simple workaround system, which maximises the societal-culture membership of nomadic Roma and Travellers, but rather for the qualified workaround system, which (in a manner of speaking) does some damage to the societal-culture membership of nomadic Roma and Travellers, but in exchange makes a major contribution to protect the franchise and the underlying norm ‘one person, one vote’.

This policy recommendation is not, however, an invariable one, but changes if we abandon the assumption that nomadic Roma and Travellers are prone to congregate for electoral purposes and instead presume that they are disinclined to do so.

4.C  The Two Workarounds under a No-Nomadic-Assemblies Scenario

To see how the change of background assumptions alters the policy implications of Kymlicka’s liberalism, we should focus on the good of societal-culture membership. In the preceding subsection I argued that the qualified workaround system makes it virtually impossible for nomadic Roma and Travellers to participate effectively in the campaign stage of elections and thereby restricts their societal-culture membership. This continues
to be true if we drop the assumption that nomadic Roma and Travellers are prone to congregate for electoral purposes and instead conjecture that they are disinclined to do so. But in this no-assemblies scenario there is also another way or sense in which the societal-culture membership of nomadic Roma and Travellers is restricted. I have previously argued that the qualified workaround system can help to ensure that electoral constituencies do not come to be malapportioned and that votes in different districts are equally influential. This argument, however, is quite irrelevant if nomadic Roma and Travellers are anyway disinclined to electorally gather and nomadic electoral assemblies do not occur anyways. So the qualified workaround system will – in a no-nomadic-assemblies scenario – appear in a somewhat different light than in a scenario where nomads are indeed prone to congregate. Such a system will not appear as a means to ensure that votes are equally influential, but will rather convey that the wider society is wary of letting nomadic Roma and Travellers (and other gens du voyage) participate in the electoral process and that these people are not genuinely welcome to participate in elections.\(^{36}\) And this alienating message can in turn discourage these people from making use of the franchise and press them to self-restrict their societal-culture membership.\(^{37}\) So if nomadic Roma and Travellers are disinclined to congregate for electoral purposes, there is not just one, but two ways or senses in which the qualified workaround system

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\(^{36}\) Let me emphasise here that I do not mean to claim that special voter registration conditions always carry an alienating subtext. My claim is only that the 3% and the 3 year rules do so when they are put to work in a situation where nomadic assemblies are unlikely to occur anyway. So the above argument does not necessarily commit me to the questionable claim that, for instance, special voter registration conditions for non-citizen voters (in local elections) carry a message to the effect that non-citizens are not really welcome in the electoral process. For instructive discussions of non-citizen voting in local elections, see Carens (2005) and Lenard (2014).

\(^{37}\) We may note here that this process of alienation and ensuing self-exclusion may actually be occurring in France. Anecdotal evidence suggests that the gens du voyage rarely enrol as voters (cf. Garo 2007:78; Derache 2013), which may well be a sign that they experience the 3% and the 3 year rules in the way I have suggested. But I do not want to put much weight on this point, as the evidence of low registration is only anecdotal, and since low rates of voter registration can also be due to other factors (e.g. political disinterest or disenchantment with the candidates).
compromises their societal-culture membership. And accordingly there are two reasons to suggest that Kymlicka’s concern for societal-culture membership does not support the qualified workaround system, but instead favours the simple system (which does not restrict nomads’ ability to participate effectively in election campaigns and does not involve any special and potentially alienating rules).

This is not the end of the story, though. For here again, there is a franchise-related consideration that pulls in a different direction. In the previous section I pointed out that the simple workaround system can cause constituencies to be malapportioned and so engender departures from the norm ‘one person, one vote’. And on those grounds I suggested that Kymlicka’s commitment to basic individual rights counsels against the simple workaround system and instead backs the qualified system, which can help to secure the value of the franchise. This line of argument, however, does not make any sense if nomadic Roma and Travellers are anyhow disinclined congregate for electoral purposes. So it might initially look as though the combination of a simple workaround system and the no-nomadic-assemblies scenario is quite consistent with Kymlicka’s commitment to the franchise. But we have earlier\(^{38}\) seen that the simple workaround system gives an advantage to those who support the interests of nomadic Roma and Travellers and effectively enables them to ‘import’ partisans and voters from outside the constituency. And that, we saw, represents a form of procedural unfairness, meaning that the simple workaround system is not entirely in keeping with the right to elect. So even if the simple workaround system does not invite any malapportionment phenomena, it is still arguable that such a system is not entirely in keeping with the right to elect, and that Kymlicka’s commitment to the franchise counsels against such a system and instead

\(^{38}\) Cf. section 3.B
favours the qualified workaround system. In other words, we are once again confronted with a dilemma where the protection of the franchise conflicts with the protection of the societal-culture membership of nomadic Roma and Travellers. And so, we must again weigh and balance the respective systems' virtues and disadvantages against each other – just as we did at the end of section 4.B. But the result of this balancing is not the same as in 4.B.

If the simple workaround system makes it possible for some people to attract partisans and potential voters from outside the constituency, that is certainly unfair (in procedural terms) and the right to elect is diluted. There is no denying this point. But if nomadic Roma and Travellers are disinclined to electorally gather, then it would seem that the opportunity to ‘import’ voters is primarily a virtual or hypothetical advantage, and that the simple workaround system only represents a slight, or relatively minor, violation of the right to elect. If, on the other hand, nomadic Roma and Travellers are discouraged from participating in the electoral process, that seems to constitute a rather important restriction of their societal-culture membership. For the electoral process is – to reiterate – one of the most central mechanisms of the wider society’s system of self-government. So it appears, in short, that the normative cost that is associated with the qualified workaround system is greater, or more profound, than the cost that is associated with the simple workaround system. And Kymlicka’s liberalism will therefore favour the simple workaround system over the qualified one – even if such a simple system does some harm to the right to elect. And this finding means, in conjunction with the findings of section 4.B, that Kymlicka’s multiculturalist liberalism does not have a general preference for the simple or the qualified workaround system, but advocates for one or
the other depending on whether or not nomadic Roma and Travellers are prone to congregate for electoral purposes. And this is, of course, the very same policy position that is associated with the classic neutrality liberalism of Barry. So what we observe is, in a word, that Barry’s and Kymlicka’s respective liberalisms, despite their differences, can agree on the issue of voter registration and propose to resolve this problem in the very same, context-dependent fashion.

5 Conclusion

In this chapter I have continued the work that I began in chapter 4 and carried on to apply Barry’s and Kymlicka’s respective liberalisms to the six institutional problems that we identified and described in chapter 2. More specifically, I have been looking at the issue of voter registration, and I have found that our two theoretical frameworks converge on this particular problem, agreeing with each other that it is morally inappropriate for a state to operate a system of voter registration that is entirely residence-based and that the state should instead institute either a simple, British-style or a French-style, qualified workaround system, depending on whether or not nomadic Roma and Travellers are inclined to congregate for electoral purposes.

The rationales for these policy recommendations are, of course, different. In the case of Kymlicka’s liberalism, they are logical upshots of the account’s commitment to the ideal of equal accommodation, its concern for societal-culture membership, and its commitment to basic individual rights. In the case of Barry’s liberalism, they are an implication of the account’s commitment to the right to elect and the underlying ideal of fairness. But the convergence between the two accounts is nevertheless intriguing and
raises questions: We start out with theoretical frameworks that operate with different normative concepts and take different approaches to citizens’ cultural commitments and projects, and yet we end up with a common policy recommendation to the effect that Roma and Traveller itinerancy should be accommodated – what does that suggest? Can we somehow exploit this observation to draw some broader conclusions about classic neutrality liberalism on the one hand and multiculturalist liberalism on the other? This is a very important question, and I shall in due course try to answer it. But first, I want to address our final two problems, namely the education question and the question of the travel permits.
Chapter 6

Liberal Agreements II: Education Policy and Travel Permits

1) Introduction

At this stage, we have worked out how Kymlicka’s and Barry’s respective liberalisms resolve a good part of the problem of Roma and Traveller nomadism. We have seen how the frameworks deal with the issues of GP and voter registration, and we have examined how they handle the housing benefits issue and question of public halting site provision. But it is still an open question how the two accounts propose to resolve the question of education and the issue of the travel permits. So in this chapter I want to turn to these last two problems, and I shall demonstrate that our two competing liberalisms resolve these problems in the same fashion and generate a common set of policy prescriptions. But the character of this convergence is quite different from the one we observed in the previous chapter. Barry’s and Kymlicka’s respective liberalisms do not, I will show, agree that the state needs to accommodate Roma and Traveller itinerancy by instituting an itinerancy-friendly education policy and/or by refraining from operating a travel permits policy. Quite on the contrary, they come together to have a rather favourable view of the policy
of conventional and compulsory education and to support the French-style travel permits system.

The chapter is divided into two main parts. The first part (s.2, s.3, and s.4) looks at the question of education. I begin by showing that Barry’s education principle and its underlying concern for equality of opportunity counsel against a British-style exemption policy and support the policy of conventional and compulsory education, and I demonstrate furthermore that Barry’s principles of non-discrimination and conscientious liberty are not opposed to conventional and compulsory education. Then I turn to the multiculturalist perspective of Kymlicka and develop an argument to the effect that this liberalism will also have to reject the exemption policy in favour of conventional and compulsory education, partly because that is the option that is favoured by Kymlicka’s education principle and concern for societal-culture membership, and partly because Kymlicka’s ideal of equal accommodation, which pulls in a different direction, is secondary to the concern for societal-culture membership. And in the final stage, I shall turn to the French-style distance education policy and show that we can discern the general conditions that need to obtain if Barry’s and Kymlicka’s liberalisms are to support such a policy, but that we lack the empirical information to definitively determine how these accounts judge the distance education option.

The second part (s.5 and s.6) deals with the travel permits policy. I show that Barry’s basic commitment to fairness is difficult to reconcile with a no-travel-permits policy and that there is a fairness case for the operation of a travel permits system, as such a system helps to ensure that nomadic Roma and Travellers comply with their fiscal and other civic obligations. And I also develop an argument to explain why the travel
permits policy does not constitute a violation of the basic right to free movement.

Similarly, I suggest that Kymlicka’s objective of securing societal-culture membership is best secured through a travel permits policy, and that there therefore exists a societal-culture membership argument for the operation of a travel permits policy. I also show that Kymlicka’s ideal of equal accommodation counsels against such a policy, but since this ideal is secondary to the goal of securing societal-culture membership, I conclude that this liberalism, too, has a preference for the travel permits policy.

Section 7 concludes and articulates some broader questions that follow from the findings of the chapter.

2 Conventional and Compulsory Education vs. Exemption: The Classic Neutrality Approach

The institutional question that is raised by the education question is, recall, whether a state can justly maintain an education policy that combines a universal school attendance obligation with a conventional school system that presupposes settled pupils or whether the state should make its education policy more itinerancy-friendly, either by adopting a French-style distance education system or by adopting a British-style exemption policy. And to see how Barry’s and Kymlicka’s respective liberalisms resolve this problem, I would first like to focus on the classic neutrality account of Barry.

However, I am not going to analyse the whole education problem in one go. Instead, I want to cut the problem into two halves, and begin by simply asking whether Barry’s liberalism prefers the exemption policy or the policy of conventional and compulsory education (s. 2). Then I’ll direct the same question at Kymlicka’s
multiculturalist liberalism (s. 3). And it is only after this, that I shall turn to consider the option of instituting a distance education system (s.4).

So what, then, is the counsel of Barry’s classic neutrality liberalism if the choice is between a policy of conventional and compulsory education on the one hand and a British-style exemption policy on the other? The answering of this question necessitates primarily an examination of Barry’s education principle. So I will begin with an analysis of this very principle and show that it counsels against the exemption policy and instead favours a policy of conventional and compulsory education (2.A). But the policy of conventional and compulsory education can be challenged on several different grounds. It might for one thing be asked whether such a policy really coheres with Barry’s principle of non-discrimination. And it can also be questioned whether conventional compulsory education is consistent with the right to conscientious liberty. So once I have examined the implications of Barry’s education principle, I will turn to these two worries (2.B and 2.C) and show that neither concern is warranted,¹ thus suggesting that Barry’s liberalism advocates for a policy of conventional and compulsory education.

2.A The Implications of Barry’s Education Principle

In chapter 3 we have seen that Barry’s classic neutrality liberalism does not only feature a commitment to standard liberal rights, to equality of opportunity, and so on, but also a distinct education principle which insists that children be educated. And this principle, we have seen, is very specific with regards to the content of the education that children should be provided with. The principle requires, recall, that the state should provide

¹ As for the other principles of Barry’s liberalism, I take it that they are either inconclusive (the principles of legal uniformity and equality of opportunity) or inapplicable (the equal basic goods principle).
children with a ‘functional education’ that equips them with the skills necessary to get by in a modern society; and it also demands that children be given a ‘good education,’ that provides them with a foundation in history, the arts and the sciences, and fosters their ability for critical and logical thinking. But the principle is at the same time highly indeterminate when it comes to the institutional aspect of education. The principle does not say anything about the institutional structure that is supposed to deliver good and functional education, and so we might think that the question of this principle’s implications is an essentially empirical question that we are not well positioned to answer. We might think, that is, that the question of whether Barry’s education principle prefers the policy of conventional and compulsory education or the exemption policy depends on how well those policies manage to deliver good and functional education – which is presumably a difficult empirical question.

But this first view is not quite accurate, I think. For we know that Barry’s education principle has four conceptual cornerstones. We know that the principle rests on (1) the thought that children have a very important interest in future survival and welfare; (2) on the notion that children have a very important interest in ‘living well’ (Barry 2001: 211); (3) on the thought that people should be capable of autonomy; and (4) on the principle of equality of opportunity and the concomitant understanding that young adults, who have not yet made any choices of their own, should all have the same opportunities. And so it is possible for us to draw at least some inferences about the institutional aspect of Barry’s education principle. We can deduce that the principle envisions an institutional structure that secures and advances the ideas (1) to (4) and that it, conversely, rules out

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2 Cf. chapter 3 section 3.A
3 Cf. chapter 3 section 4.B
arrangements that undercut or damage these four fundamental ideas. This, however, is precisely what the exemption policy does. Let me develop this point in a little more detail.

The exemption policy makes it possible for travelling parents to legally keep their children out of school for almost half of the ordinary school year. So this policy inevitably risks producing a situation where some children – in particular the children of nomadic Roma and Travellers – receive much less formal education and acquire fewer skills than others and, therefore, start their adult lives with an opportunity set that is much more restricted than that of their peers. In other words, the exemption policy risks leading to a situation where most children or young adults can enjoy a ‘potentially limitless range of occupations and ways of life’, while ‘the education (or rather non-education) of a gypsy child fits it for nothing except to be a gypsy’ who makes a living by ‘selling sprigs of heather in the street’ (Barry 2001:240; cf. Daskalovski 2002:45), and the exemption policy is therefore the very kind of policy that Barry’s education principle rejects and aims to prohibit.

With the policy of conventional and compulsory education, however, the situation is quite different. There are, of course, many examples of education systems that combine a conventional school system with obligatory school attendance and dramatically fail to produce equality of opportunity; fail to equip children with the mental abilities that Barry sees as conditions of personal autonomy (i.e. the ability to reason critically and independently⁵); and fail to provide children with a good and functional education that enables them to lead rich and fulfilling lives. But there are also instances of conventional

⁴ Cf. chapter 2 section 4
⁵ Cf. chapter 3 section 4.B
and compulsory education that are quite successful – think, for instance, of the Finnish education system that consistently scores high in the OECD’s PISA studies (cf. OECD 2011: chap. 5). So the failures of particular conventional education systems cannot then be due to any intrinsic reasons, but must be the result of contingent factors that it in principle is possible to remedy (e.g. underfunding, use of inappropriate pedagogical methods etc.). In other words, it would seem that the policy of conventional and compulsory education is at least in principle capable of securing equality of opportunity for young adults, of enabling children to reason critically and independently, and of providing children with good and functional education. And this suggests ultimately that the policy of conventional and compulsory education, unlike the exemption policy, is quite consistent with Barry’s education principle and that this principle of Barry’s prefers a policy of conventional and compulsory education to a British-style exemption policy.

Once this conclusion has been reached, however, there immediately arise two critical questions. First, is it not arguable that a policy of conventional and compulsory education is discriminatory vis-à-vis nomadic Roma and Travellers? And second, is there not a tension between conventional and compulsory education and the basic right to conscientious liberty? So I shall now turn to these remaining two questions, starting with the issue of non-discrimination.

2.B Is Conventional and Compulsory Education Discriminatory?

To understand how the policy of conventional and compulsory education relates to Barry’s principle of non-discrimination, it will be useful to first consider a case of discrimination that Barry discusses in Culture and Equality (2001), namely the British
In this case the family of a Sikh boy contested the uniform rules of a private school in Birmingham, Park Grove School, that required boys to keep their hair cut short and to wear dark caps. The family argued that these rules were discriminatory against Sikhs, who are religiously obliged to keep their hair long and to wear turbans. This claim was eventually accepted by the House of Lords, which ruled that the complaint was justified and that the uniform rules were indeed discriminatory. And Barry approves of this decision, arguing that the school’s strict uniform rules undermined Sikhs’ chances of getting a place at the school, but could not be construed as a form of qualification that would justify the school’s intransigent insistence on these rules. One the one side, Barry writes, there ‘was a denial of equal … educational opportunity, and on the other side no interest that was worthy of protection. Wearing a … turban to school threatened no danger to the public or to the individuals concerned, nor could it plausibly be said to interfere with the effective functioning of the business of the school.’ (Barry 2001:62) And with this assessment in mind we might now think that the policy of conventional and compulsory education is also incompatible with non-discrimination: Here, too, we have an educational regulation or an institutional feature – namely the schools’ functional presupposition of sedentariness – that conflicts with the practices of the children of a minority, and so it would appear that the policy of conventional and compulsory education is just as inconsistent with non-discrimination as the school uniform rules of Park Grove School.

But this analogical reasoning does not hold up. Barry’s principle of non-discrimination holds, recall, that equally qualified persons should have the same chances of reaching a given position of socio-economic advantage. So for there to be a violation

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6 For the details of the case, see Poulter 1998:305-7
of non-discrimination, there need to obtain two different conditions. First, it is necessary that some persons are less likely than others to occupy some position of socio-economic advantage – call this the *unequal prospects condition*. And second, it is necessary that the discrepancy in people’s prospects does not correlate with their skills or qualifications.

Now, in the case of Mandla v Dowell Lee it is pretty clear that the unequal prospects condition is fulfilled. The uniform rules of Park Grove School are a particularity of Park Grove School. So they have the effect of repelling (devout) Sikhs from this particular school while incentivising them to attend other schools (that do not have such rules) – which ultimately means that Sikhs are comparatively unlikely to attend Park Grove School.⁷ But in the case of conventional and compulsory education, the condition does not seem to be met. For the schools’ conventionality – which is what conflicts with the travelling way of life – is here a general feature that characterises all schools, and the policy does not therefore have the same ‘repelling effects’ as the school uniform regulations of Park Grove School. The policy of conventional and compulsory education will not discourage nomadic Roma and Traveller children from attending some particular school and incentivise them to attend others. What it might do is, of course, to discourage nomadic Roma and Traveller children from attending school altogether, so that nomadic Roma and Travellers are comparatively unlikely to have a school place simpliciter. But this discrepancy is ultimately prevented by the fact that the policy of conventional and compulsory education makes school attendance mandatory and forces children to attend some school.

⁷NB: This argument hinges on the assumption that it is advantageous for children to be enrolled at Park Grove School. If this were not case – e.g. because Park Grove School provided a particularly poor standard of education – it would not be possible to argue that its uniform rules lead to unequal prospects.
So the effects of the policy of conventional and compulsory education are, then, that nomadic Roma and Traveller children are as likely as other children to attend *some* school and that they are as likely as others to attend one rather than another school, and the unequal prospects condition is therefore unfulfilled. And this suggests ultimately that the charge of non-discrimination falls flat.

I have now demonstrated that Barry’s education principle favours the policy of conventional and compulsory education and that Barry’s principle of non-discrimination is not opposed to such a policy. So begins to look as though Barry’s liberalism is generally in favour of such a policy. But some might still want to resist compulsory and conventional education, as such a policy is going to be highly inimical to the travelling way of life. More specifically, it might be argued that the combination of a universal school attendance duty and a conventional school system effectively obliges parents to settle when their children reach school age and prevents nomadic Roma and Travellers from socialising their children into a nomadic mind set (which is critical for ensuring that the practice of itinerancy persists over time). And this might be said to run counter to Barry’s basic rights principle and, more precisely, to the basic right to conscientious liberty, which grants individuals the freedom to live in accordance with their fundamental commitments and deeply held views on the good and ethical life. In other words, one might try to mount an objection that is similar to the claim of the Amish, who in the 1970s went to court to contest school attendance regulations and complained that it was a violation of their right to religious liberty to require them to send their children to school until the age of 16. So I shall now turn to this last, freedom-of-conscience concern\(^8\) and

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\(^8\) Some readers might here feel that it is not very intuitive to frame the objection in terms of freedom of conscience and that it would be more natural to frame the complaint in terms of the right to maintain one’s
try to see whether a policy of conventional and compulsory education might indeed be inconsistent with the right to conscientious liberty.

2.C Does Conventional and Compulsory Education Violate the Right to Freedom of Conscience?

To reason about the policy of conventional and compulsory education and its potential inconsistency with the right to conscientious liberty, we should first of all note that the right to conscientious liberty is generally understood to have a limited scope and to only protect an individual’s essential, central and deep convictions and does not cover all the beliefs and preferences that a person might have. So the first question to ask is whether nomadic Roma and Travellers’ attachment or commitment to the travelling way of life falls into the category of beliefs and convictions that the right to freedom of conscience protects, or whether it is a, let’s say, superficial preference that is beyond the scope of the right. But I do not want to get hung up on this first question. We have earlier seen that nomadic Roma and Travellers have a deep attachment to the travelling way of life and see it as a part of their identity, and so we can assume, I think, that their attachment to the identity and/or culture. But we need to remember, here, that Barry’s liberalism does not feature any such right. Barry’s framework contains no principle to the effect that citizens’ cultural commitments or identities need to be treated in some particular way – let alone be protected – so the account does simply not allow for complaints that appeal to a putative right to maintain one’s culture.

Another complaint that might be raised is that the freedom of conscience charge is obviously implausible as it presents the policy of conventional and compulsory education as a simple government attempt to clamp down on individual’s liberty and elides that the policy does not only affect parents but also their children and might be an attempt to balance their respective interests. This, I think, is a basically sound point and my subsequent analysis reflects this. But the point is one that needs to be argued and cannot be assumed ab initio.

9 Cf. Miller (2016), Greenawalt (2006:202) and Eisenberg (2009:chap. 2); but note that these three authors frame the liberty in question as freedom of religion rather than freedom of conscience. See also Ahdar & Leigh (2005) who argue that the notion of centrality forces courts to decide on questions of religious doctrine and ‘entangles courts in answering questions they have no competence to resolve’ (Ahdar & Leigh 2005:169), but still endorse the idea that the right to religious liberty only protects against ‘material’ burdens ‘and not merely ‘trivial or insubstantial’ or ‘minuscule’’ (Ahdar & Leigh 2005:185) burdens – which looks like ‘centrality’ in another guise.
travelling way of life is the kind of attachment that the right to conscientious liberty is concerned with. And the question becomes then whether Barry’s basic right to freedom of conscience is of such a nature, or is so extensive, that it rules out a policy of conventional and compulsory education.

So, how extensive is Barry’s right to freedom of conscience? Is it so wide that it prohibits a policy of conventional and compulsory education? To answer this question, it will be useful to first of all note that Barry’s liberalism does not specify the content of this right. Barry’s account does not tell what class of activities this right is supposed to protect, nor does it specify what governmental activities the right prohibits. And as a result, there is no obvious answer to the question of whether (or not) the policy of conventional education is consistent with this right.

That said though, we should remember that we do know some things about the right to conscientious liberty. We know that the right is rooted in the idea that people should be capable of autonomy and that they, to this end, should have certain mental abilities and should be free from coercion. So even though Barry does not specify this, we can infer that the right to conscientious liberty aims to secure people’s mental abilities and the absence of coercion and that it, conversely, rules out government policies that undermine these goals of autonomy. And once this point is established, we can see that the policy of conventional and compulsory education is not a violation of the right to conscientious liberty. Let me explain this last point in some more detail.

An education policy that combines obligatory school attendance with a conventional school system that presupposes settled pupils, has the indirect effect of

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10 Cf. chapter 3 section 4.B. Remember also that we have assumed that the ideal of autonomy presupposes that people have their vital needs satisfied. But I am here leaving aside this last component, as I take it that a policy of conventional and compulsory education has no incidence on this last element.
placing a legal (and presumably sanctionable) obligation on parents to stay settled during term time – and that for the entire period during which parents have school-aged children. So if we now understand coercion to occur when an agent (the coercer) issues an unattractive threat designed to bring about a certain behaviour in another agent (the coercee),\textsuperscript{11} then there can be little doubt that the policy of conventional and compulsory education is coercive vis-à-vis parents and has an autonomy-invading character.\textsuperscript{12}

But the policy of conventional and compulsory education does not only involve the obligation and coercion of parents; it also implicates school attendance and education for children. The policy of conventional and compulsory education helps to ensure that children become literate, learn facts about the world in which they are going to live, and develop an ability to reason for themselves. In short, it helps to equip children with the mental abilities that are preconditions for the exercise of personal autonomy. So there is not only a sense in which the policy of conventional and compulsory education damages the ideal of autonomy, but also an important sense in which it promotes this ideal.

This is not the end of the story, though. For the autonomy-damaging and the autonomy-enhancing effects that I have just indicated differ in an important qualitative manner. To recognise this, we can first focus on the abilities and skills that the policy of conventional and compulsory education helps to bestow upon children. Many of these skills are not tailored to a specific domain of life, but are multipurpose and transferable. This is especially true for the ability to read, to write, and to calculate, and the capacity to

\textsuperscript{11} NB: I take it here, that this understanding of coercion is quite uncontroversial. For influential accounts that define coercion in this manner, see Nozick (1972) and Raz (1986:148). See also Abizadeh (2008:57-60), Anderson (2015) and Held (1972), but notice that the latter three authors propose to expand the concept of coercion so that it not only refers to the issuance of threats, but also to the direct application of physical force to the coercee.

\textsuperscript{12} It is an implicit assumption of this argument that nomadic Roma and Traveller parents will not want to part with their children, and will not be content for them to stay with sedentary friends or relatives. I think this assumption is uncontroversial and shall not defend it any further.
reason independently, which can all be deployed in, for example, the professional domain, the religious domain, or in the financial domain, or when it comes to the choice of a spouse, the decision to obtain a divorce, the decision to take up a loan, and so forth. So the autonomy-enhancing effect of conventional and compulsory education is of a quite comprehensive or global character: It spans a variety of domains of life.\textsuperscript{13}

This, by contrast, can hardly be said about the autonomy-invading effect that the policy brings for parents. For while the policy of conventional and compulsory education does prevent parents from pursuing a travelling way of life and from impressing that lifestyle upon their children (and so constitutes a major interference in their plan of life), it does not invade parents’ ability to be autonomous in, for instance, the religious, the financial or the professional domains of life, and the policy’s autonomy-invading effect seems thus to be of a relatively local or concentrated character.

So there seems, in brief, be a qualitative asymmetry between the autonomy-invading and autonomy-enhancing effects of conventional and compulsory education and it seems therefore arguable that the policy’s autonomy-enhancing effect compensates for its autonomy-invading effect so that we can regard the policy of conventional and compulsory education as a policy that is overall innocuous or harmless to the ideal of autonomy.\textsuperscript{14} And if this argument is correct, then it follows that such an education policy is not the kind of autonomy-damaging policy that Barry’s right to freedom of conscience aims to rule out, but is fully compatible with this right, even if it does compromise the

\textsuperscript{13} The distinction between a local and global capacity for autonomy is drawn from Dworkin (1988:13), but note that Dworkin’s original distinction is not well-defined.

\textsuperscript{14} Note here, that my argument is \textit{not} based on claims of moral priority, but on claims of comparative effects: The claim is not that it is morally more urgent, or important, to secure autonomy for children than for parents, but rather that the autonomy-enhancing effect of conventional and compulsory education can cancel out, or compensate for, the policy’s autonomy-invading effect – very much in the same way as a large, one-off (financial) expense can be compensated for by a series of small, but repeated incomes.
autonomy of parents.

So all told, it does not look as though the right to conscientious liberty is a (conceptual) obstacle to the policy of conventional and compulsory education. On the contrary, there exists a powerful reason to suggest that Barry’s basic right to freedom of conscience must be shaped in such a manner that it allows for conventional and compulsory education. And this means ultimately that Barry’s classic neutrality liberalism supports the policy of conventional and compulsory education and implies that the state should not seek to accommodate Roma and Traveller itinerancy with a British-style exemption policy – partly because that is the recommendation that flows from the account’s education principle, and partly because the framework’s commitments to conscientious liberty and non-discrimination are not opposed to such a policy.

This finding, though, does not suffice to completely settle education question, for there is still the option of replacing the policy of conventional and compulsory education with a French-style distance education policy. But before I turn to investigate this third policy option, I want to change the theoretical lens and try to see how Kymlicka’s multiculturalist liberalism handles the choice between the policy of conventional and compulsory education on the one hand and the exemption policy on the other.

3 Conventional and Compulsory Education vs. Exemption: The Multiculturalist Approach

Kymlicka’s multiculturalist liberalism has so far consistently advocated for the accommodation of Roma and Traveller itinerancy. It has supported the institution of caravan-conscious housing benefits system and the public provision of a fine-meshed
halting site network; it has advocated for a generous GP registration exemption; and it has lent support to the creation of workaround regulations that enable nomadic Roma and Travellers to register as voters. So as we now come to the education question and, more specifically, the question of whether the state should opt for a British-style exemption policy or a policy of conventional and compulsory education, we might predict that Kymlicka’s liberalism is again going to justify the accommodation of Roma and Traveller nomadism and will prefer the exemption policy. But this, I believe, is not in fact the case. Kymlicka’s liberalism does not, as I will now try to show, militate for an exemption policy, but rather implies that such an exemption is to be rejected and that the policy of conventional and compulsory education is a more appropriate policy choice.

The argument proceeds in three broad steps. I shall first concentrate on Kymlicka’s ideal of equal accommodation and show that this notion supports, not the policy of conventional and compulsory education, but the operation of an exemption policy (3.A). Then I will turn to Kymlicka’s education principle and his basic concern for societal-culture membership and suggest that these two elements support a policy of conventional and compulsory education (3.B). And in the final step I will try to work out how Kymlicka’s liberalism balances the ideal of equal accommodation on the one hand and the objective of securing societal-culture membership on the other (3.C), and I shall develop an argument to the effect that Kymlicka prioritises the latter and so, like Barry, has an overall preference for the policy of conventional and compulsory education.
3.A The Educational Implications of Equal Accommodation

Our earlier discussions have made it clear that the policy of conventional and compulsory education is not particularly advantageous to the nomadic way of life, but works to its detriment – both in the sense that it directly limits families’ ability to travel here and now, and in the sense that it prevents nomadic Roma and Travellers from socialising their children into a nomadic habit. And this, we should note, is while the policy does not have any comparable effects or outcomes for the families who lead a settled life. The policy of conventional and compulsory education is entirely built up and organised around the majoritarian, sedentary mode of living, and does not in any way require the members of the settled majority to compromise their sedentary way of life. And as a result, there can be little doubt that a policy of conventional and compulsory education is heavily biased in favour of the majoritarian, settled way of life and treats it much more favourably than the minoritarian, itinerant way of life.

This form of bias (or asymmetric support) does not, however, occur in the case of the exemption policy. For this policy is expressly designed to simultaneously enable the settled and the travelling lifestyles. Indeed, the whole point of the exemption policy is to make sure that families are not obliged to settle when their children reach school age, but can continue to maintain a travelling lifestyle.

So Kymlicka’s ideal of equal accommodation is, then, better realised through an exemption policy than through a policy of conventional and compulsory education and this ideal of Kymlicka’s will therefore counsel against a policy of conventional and compulsory education and will instead support the exemption policy.

But this is not yet the end of the story. For Kymlicka’s liberalism is not only

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15 Cf. sections 2.B and 2.C
committed to the ideal of equal accommodation – it also features an education principle and it is, furthermore, committed to the ideal that people should enjoy secure societal-culture membership. And these elements of the framework pull, as I now want to show, in a different direction than the ideal of equal accommodation.


Kymlicka’s liberalism features – as seen in chapter 3 – an education principle stating that children ought to be educated. But this principle does not specify the content of the education that children should receive, nor does it spell out what institutional form such an education should take. So we are not given any explicit guidance on whether the education principle favours the exemption policy or the policy of conventional and compulsory education.

But we know that Kymlicka’s education principle is rooted in a fundamental commitment to personal autonomy. We have seen, recall, that Kymlicka justifies the education principle on the grounds that it gives children ‘an awareness of different views about the good life, and an ability to examine these views intelligently’ and thus enables them to be (or to become) autonomous agents who are ‘able to rationally assess [their] conceptions of the good … and to revise them if they are not worthy of … continued allegiance.’ (Kymlicka 1995:81). And we also know that Kymlicka views personal autonomy as a concept that has several preconditions, notably the availability of options and societal-culture membership. We have seen, remember, how Kymlicka argues (1) that people, in order to be autonomous, need to have options, and (2) that such options are in large part provided by societal cultures, and so arrives at the view that (3)
‘membership in a societal culture … is necessary for liberal freedom’ (Kymlicka 2001:53).\(^{16}\) So even if Kymlicka does not originally specify the content of his education principle, it is still possible for us to draw our own inferences about this. We can deduce that the principle only accepts arrangements and programmes that either enhance or – at very least – do not damage children’s autonomy and societal-culture membership and, conversely, rules out educational systems that undermine these two values.

_This_, however, is precisely what the exemption policy does. For this arrangement has – as we have seen earlier\(^{17}\) the outcome that (some) nomadic Roma and Traveller children have much less formal education and develop much more restricted skills than other children. And such a dramatic under-education will, in the long run, put these children in a very precarious position. It will make them unable to compete successfully for places in the private labour market, in the civil service sector, in apprenticeship programmes, in universities etc.; it may also make them unable to make sense of the general public conversation; and it may even make them unable to handle (written) documents (e.g. application forms for vehicle registration, for social benefits etc.). In other words, it may put them in a position that is akin to that of immigrants who are not educated in the mainstream language and so lead ‘a shadowy existence at the margins of society’ where they are ‘disadvantaged economically, educationally, and politically’ (Kymlicka 2001:54),\(^{18}\) and the exemption policy cannot, therefore, be consistent with Kymlicka’s education principle. Rather, we seem here to have the very kind of policy that Kymlicka’s education principle means to prohibit.

\(^{16}\) For the details of this argument see chapter 3 section 3.B

\(^{17}\) Cf. the discussion in section 2.A

\(^{18}\) NB: It is an implicit assumption in this argument that the good of societal culture membership, in the case of nomadic Roma and Travellers, must be interpreted in relation to the societal culture of the mainstream society. I have discussed this assumption in chapter 4 section 2.B
With the policy of conventional and compulsory education, by contrast, the situation is different. This policy can at least in principle ensure that all children are reasonably well educated,¹⁹ can all gain access to mainstream institutions and so enjoy the good that (on Kymlicka’s account) is vital for personal autonomy, namely the good of societal-culture membership. And Kymlicka’s education principle will thus regard the policy of conventional and compulsory education as an (in principle) acceptable policy, and it will prefer this latter arrangement to the exemption policy, which, again, fails to protect the societal-culture membership of nomadic Roma and Traveller children.

3.C. The Question of Priority

We have now established that Kymlicka’s ideal of equal accommodation supports the exemption policy while Kymlicka’s education principle and his underlying concern for societal-culture membership support the policy of conventional and compulsory education. So we are now faced with a value conflict and we must try to see how Kymlicka’s liberalism balances the ideal of equal accommodation and the concern for societal-culture membership. This, however, is a controversial question that can give rise to several different answers. So before I lay out my view on this priority problem (3.C.2), I want to discuss and deflate two potentially competing view.

3.C.1 Two Misleading Views

The first view that I want to discuss is a suggestion that has been put to me by the confirmation assessors and runs as follows. Nomadic Roma and Travellers are not – as

¹⁹ Cf. the discussion in section 2.A
seen earlier— an immigrant group. So unlike immigrants, they cannot be said to have waived their entitlement to live in their own societal culture. Nomadic Roma and Travellers have not gone through the process of international migration that, on Kymlicka’s view, extinguishes one’s moral entitlement to live in one’s own societal culture. And this disanalogy between nomadic Roma and Travellers on the one hand and immigrants on the other might now – so the suggestion goes – be worthwhile to consider as we try to see how Kymlicka’s liberalism balances the ideal of equal accommodation and the objective of securing societal-culture membership.

But I think this suggestion is beside the point. It is, of course, true that there is an important conceptual difference between nomadic Roma and Travellers and immigrants. But this difference does not, as far as I can tell, have any implications for the relationship that obtains between the ideal of equal accommodation and the objective of securing societal-culture membership. What it implies is rather that nomadic Roma and Travellers – if they had a societal culture of their own – would be entitled to maintain that culture. But that is, apart from being counterfactual, a question that is different from the one that we are considering. So the disanalogy observation is, in brief, correct but irrelevant for our present purpose.

The second view I want to discuss is to do with Kymlicka’s discussion of the famous Wisconsin vs. Yoder case, the US court case in which Amish parents successfully demanded the right to withdraw their children from public school at the age of 14 and were effectively exempted from the ordinary school attendance obligations that apply up until the age of 16. In his discussion of this case, Kymlicka writes that the case of

\[\text{Cf. chapter 4 section 2.A}\]
\[\text{Cf. chapter 4 section 2.B}\]
'longstanding ethnic groups or religious sects who have been allowed to maintain certain illiberal institutions for many years' is a 'complicated' one, and that 'we cannot entirely dismiss' their demands (Kymlicka 1995:170). So it seems that Kymlicka endorses the Yoder decision, and this might by some be taken to indicate that Kymlicka accords greater priority to the ideal of equal accommodation than to the objective of securing societal-culture membership, for the granting of the exemption helps the Amish to maintain their particular way of life but it simultaneously restricts their children’s ability to access the mainstream societal culture.

But this extrapolation is not actually warranted. For Kymlicka’s rationale for supporting the Yoder decision is not a principled rationale that flows from his fundamental concerns for equality, autonomy, equal accommodation, and societal-culture membership. The rationale is instead that the Amish have a historical quasi-agreement with the American state. Kymlicka thinks that the Amish (might) have a claim to be exempt from school attendance requirements because they, when they arrived in the US, ‘were given exemptions from the usual requirements regarding integration,’ (Kymlicka 1995:170) and because ‘respect for agreements is important’ (Kymlicka 1995:119). So Kymlicka’s treatment of the Amish and the Yoder decision cannot tell us anything about the relationship that obtains between the objective of securing societal-culture membership on the one hand and the ideal of equal accommodation on the other.

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22 NB: The above interpretation of Kymlicka’s remarks is contestable: It is not crystal clear what it means to say that the demands of some group ‘cannot entirely be dismissed’, and some commentators have indeed taken Kymlicka to be opposed to the Yoder decision (see for instance Crowder 2013:57 and Newman 2011:206; for an interpretation along my lines see Spinner-Halev 2000:331). But I do not think that my above interpretation is unreasonable. Besides, nothing in the overall argument hinges on this interpretive point. If one holds that Kymlicka opposes the Yoder decision, that will not change my overall argument – it will only mean that the ‘Amish argument’ fails at an earlier point than I give it credit for.

23 See Peddle (2000) and Spinner Halev (2000:331) for commentaries that also identify and stress this historical-agreement justification of the exemption.
case could in principle have done so – for it does give rise to a conflict between equal accommodation and the concern for societal-culture membership – but the way Kymlicka actually handles and frames the case means that it becomes fruitless for us and does not shed any light on the way his liberalism balances equal accommodation and the concern for societal-culture membership.

All this is not to say, though, that there is no way to tell how Kymlicka’s liberalism balances the ideal of equal accommodation and the objective of securing societal-culture membership. I do think there is such a way, and I shall now turn to develop this point.

3.C.2 The Priority of Societal-Culture Membership

Throughout Kymlicka’s work there are several instances in which Kymlicka discusses the linguistic education of immigrant children. In all these passages, the policy recommendation is constant: Kymlicka thinks that states ought to provide mother-tongue education for immigrant children, at least during their first years of school education (e.g. Kymlicka 1995:97; 2001:312). But this, Kymlicka makes clear, should ‘not [be] a substitute’ for learning the dominant language. Indeed, he thinks that it is ‘appropriate to encourage and even pressure immigrants to integrate into the existing societal culture’ and, notably, to ‘legally [require] children to learn the dominant language in school’ (Kymlicka 2001:54, 51; cf. 312). Such an education policy involves a quite stark trade-off, though. It helps on the one hand to secure the societal-culture membership of immigrant children, for fluency in the dominant language is, as Kymlicka notes himself, ‘pivotal to the economic prospects of most immigrants, and indeed to their more general
ability to participate in social and political life’ (Kymlicka 2001:166). But an education policy that obliges children to learn the dominant language, but makes immigrant language education facultative (at best), does at the same time compromise the ideal of equal accommodation. For such a policy is much more favourable to the identity and linguistic practice of the majority than to the identities and linguistic practices of immigrants. So Kymlicka cannot, then, be thinking that the objective of securing societal-culture membership and the objective of securing equal accommodation are equipollent, or that the ideal of equal accommodation has priority. Rather, he needs to assume that it is more important to secure the good of societal-culture membership than to promote the value of equal accommodation, for this is the only way he can coherently commit to the ideal of equal accommodation and oblige immigrant children to learn the dominant language. And this means ultimately that Kymlicka’s liberalism has to advocate for the policy of conventional and compulsory education rather than the exemption policy. This latter arrangement is, of course, the one that is favoured by the ideal of equal accommodation. But it is at the same time counter-indicated by Kymlicka’s concern for societal-culture membership, which is the more important component of Kymlicka’s framework, and Kymlicka’s liberalism will therefore have to reject the exemption policy and instead support the policy of conventional and compulsory education – which, recall, is the very same policy recommendation that flows from Barry’s classic neutrality account.

4 Distance Education

We have now established that Kymlicka’s and Barry’s respective liberalisms take a
common view on the question of whether it is permissible for a state to insist on a policy of conventional and compulsory education or whether it needs to provide nomadic Roma and Travellers with an exemption from the ordinary school attendance requirement. But the exemption is not the only means to accommodate Roma and Travellers itinerancy – this can also be achieved through the operation of a distance education system as it is currently done in France. So I shall now turn to this third alternative and demonstrate two main points. I will show that, for lack of appropriate empirical data, it is uncertain how Barry’s and Kymlicka’s respective liberalisms would assess the distance education policy (4.A). But I shall also argue that it is possible in advance to specify the conditions that need to obtain if Barry’s and Kymlicka’s liberalisms are to support a distance education policy, and that the two theories take a converging view on these conditions (4.B).

4.A The Difficulty of Drawing Out Certain Implications

We have in our earlier discussions seen that Barry’s education principle is originally indeterminate with regards to the institutional aspect of education. But we have also conducted some extrapolations of our own and established that the principle envisions an educational structure that (inter alia) secures equality of opportunity for young adults and aims to prohibit arrangements that undermine this objective. So in a sense, it should be easy to work out how Barry’s education principle (and his liberalism more broadly) assesses the distance education policy and whether it prefers such a policy to the system of conventional and compulsory education: All we need to do is to see whether a distance education policy promotes or undermines equality of opportunity.

The answer to this question, however, is not so obvious, for two different reasons.
The first reason stems from the Quentin report, which is a recent parliamentary report – and to my knowledge the only report or study – that looks at the educational outcomes of the French distance education system. The Quentin report suggests that two thirds of the nomadic Roma and Traveller children who are enrolled in the French distance education system have so great educational lacunae that they, when they reach the level of secondary education, cannot follow the regular syllabus, but need to follow a special programme designed to remedy their knowledge gaps (Assemblée Nationale 2011:65).

So it might initially look as though the French distance education policy has a similar educational outcome as the exemption policy that we discussed earlier. It might seem, that is, that the distance education system causes nomadic children to have a skill and opportunity set that is much more restricted than that of their peers. But this inference is not actually warranted, for the existence of a statistical association between enrolment in the French distance education system and poor educational achievements does not by itself show that the French distance education system causes children to have restricted skills and so poses a fundamental threat to equality of opportunity. This conclusion will only be warranted if the association persists when one controls for other, extraneous factors such as parental education, parental income and so forth. This, however, is something that the Quentin report fails to do. The report does not consider any extraneous factors but contents itself with showing that many of the nomadic Roma and Traveller children who are enrolled in the distance education system have great educational

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24 NB: There does, of course, exist some social scientific work on the French distance education system; e.g. Repaire (2007). But this literature is, curiously, completely focused on the system’s mode of functioning and has nothing to say about its educational outcomes.

25 Note here, that I, when speaking of the distance education system, do not refer to the distance education policy as a whole, but more specifically to the branch of the education system that provides distance education for those children who do not attend a conventional school.

26 That is around the age of 11 to 12.

27 For details on this special programme, see Repaire (2007)
lacunae. And thus, it is largely unclear how the French distance education system actually affects children’s skills and whether it enhances or undermines equality of opportunity.

And even if it were certain that the French distance education system causes children to develop very restricted skills, there would still – and this is the second reason – be the question of whether that shortcoming is intrinsic to distance education, or if it is a mere contingency that can be remedied. And this question is uncertain as well. For while the social scientific literature on the education of nomadic populations does report the existence of other distance education systems than the French one, there do not seem to exist any systematic studies examining those systems’ effectiveness and educational outcomes (cf. the overviews in Dyer (2006) and Griffin (2014)).

So in the end, it is quite uncertain how a distance education system shapes children’s eventual skills and subsequent opportunity sets. It might be that such a system causes children to develop an extremely limited set of skills and to have very restricted options – just as the exemption policy does. But the presently available data does not confirm, nor does it disprove, this hypothesis. So at the present state of knowledge, it is impossible to definitively establish whether a distance education system secures or radically undermines equality of opportunity. And this means eventually that we cannot tell with certainty how Barry’s education principle, or his liberalism more broadly, will assess the distance education policy and whether or not it prefers this option to a policy of conventional and compulsory education.

But it is not just hard to see how Barry’s classic neutrality account will assess the distance education policy. This is also the case for the multiculturalist liberalism of Kymlicka. For this model’s assessment and implications depend primarily on whether the
distance education system promotes or threatens the good of societal-culture membership and, more specifically, the goal that nomadic Roma and Travellers should have access to the mainstream societal culture. And that is a question that cannot be answered with certainty if we do not know whether a distance education system is reasonably effective or gives children an extremely limited set of skills.\(^{28}\)

4.B Conditions Under Which Distance Education is Acceptable

I have now examined what Barry’s and Kymlicka’s respective liberalisms imply for the distance education policy and shown that we currently lack the empirical knowledge to ascertain the frameworks’ exact implications. Once this point has been established, though, one might still want to pose a more general question and ask: What are the general conditions that need to obtain if Barry’s and/or Kymlicka’s liberalisms are to countenance the distance education policy? And how do these conditions compare to each other? So before I close this discussion of the distance education policy, I want to address this more general issue. I begin by looking at the case of Barry’s classic neutrality liberalism.

Our previous analysis has suggested that Barry’s education principle presupposes an education system that promotes equality of opportunity and rules out education systems that undermine equality of equality. And we have in chapter 3 seen that Barry’s

\(^{28}\) For the sake of completeness we should here note, that there is one sense in which Kymlicka’s liberalism does have a clear implication for the distance education system. The distance education policy makes it possible for nomadic Roma and Travellers to reconcile their travelling way of life with their children’s school attendance, and this is while the conventional system offers a corresponding chance to the members of the sedentary majority. So the distance education policy is quite in line with Kymlicka’s ideal of equal accommodation, and this ideal of Kymlicka’s will have to prefer the distance education policy to the policy of conventional and compulsory education (recall the discussion in section 3.A). But the ideal of equal accommodation is, as seen in section 3.C.2, secondary to Kymlicka’s concern for societal-culture membership, so this observation is ultimately inconclusive.
equality of opportunity principle should be read quite literally to mean that people should have *identical* option sets (unless, of course, they have made choices that can explain and legitimises inequalities). So at first sight it would appear that Barry’s education principle will only accept a distance education policy if it can ensure that all school leavers have the same skills and so have identical options as they enter adult life. And this would in practice mean that the distance education policy must ensure that all children acquire the same skills regardless of whether they enrol in the conventional school system or in the distance education system.

But this initial view cannot be correct. For the skills of young adults are not completely malleable and determined by the school. These skills are also, to some extent, a result of children's varying, original endowments – e.g. their innate aptitude for abstract reasoning, their aptitude for manual tasks, etc. – and equality of opportunity cannot therefore mean that all school leavers should have identical skills. The objective must rather be that school leavers must be equally skilled insofar as they are equally endowed, and the education principle cannot therefore demand that the distance education system provides all children with the very same skills. The demand must rather be that skills must be equal insofar as original endowments are equal. And this, it is worthwhile to note, is still a fairly exigent demand, for its practical implication is that the distance education system must not become a second-class school, but must be functionally equivalent to the conventional school system so that equally talented children come to have the same skills regardless of whether they enrol in a conventional school or the distance education system.

Having said that, I turn to Kymlicka’s multiculturalist liberalism. Our earlier
discussions have established that Kymlicka’s education principle rules out education policies that undermine children’s societal-culture membership and envisions an education system that secures this good and ensures that children – once they have grown into young adults – can access the societal culture they live in. And this objective seems – at least prima facie – to require a great deal less than equality of opportunity; it seems to only require that children are made literate and are equipped with some marketable skills, some basic cognitive abilities, and some rudimentary general education. For once young adults possess these skills, they are able to participate in the market (both as consumers and as employees or self-employed agents), they are able to participate (at least qua audience) in the general public conversation, and they are able to have meaningfully interactions with government agencies.

However, it would be a mistake to think that the good of societal-culture membership is completely secured, and that Kymlicka’s education principle will accept the distance education policy if it just ensures that all school leavers have the sort of basic skills that I just indicated. For consider the situation of a young adult who has such a basic skill set but nothing more. This individual will be able to participate in the market and so on, but she will be unable to attend university, to become a police officer, to enter an aviation academy, or any other institution or corps that selects between aspirants and requires them to have more than a merely basic skill set. So a range of important mainstream institutions are effectively going to be closed off to this individual, and her societal-culture membership is going to be compromised and restricted.

But if the provision of basic skills does not suffice to secure the societal-culture membership of children, what does it then require? One possible answer is that we need
to make sure that all children are well-skilled and can all become university students, police officers, pilots, etc. But this is, for already discussed reason, an unrealistic goal. The skills of young adults are to some extent predetermined by their natural and varying endowments. So it is practically impossible to ensure that all children are sufficiently well-skilled to go to university etc., and Kymlicka’s concern for societal-culture membership cannot, therefore, mean that all young adults should be, let’s say, highly skilled. The concern must instead be given a less ambitious interpretation so that it means that young adults or school leavers should be as skilled as their natural endowments permit – which is the same as saying that school leavers should have the same skills insofar as they are equally endowed. And if this argument is sound, it follows that Kymlicka’s education principle makes the same demands as Barry’s – this principle, too, demands that equally endowed children develop the same skills sets, and this means in practice that the distance education system must not be a second-class school, but has to be functionally equivalent to the conventional school system so that equally talented children come to have the same skills regardless of whether they enrol in a conventional school or in the distance education system.

So the finding we arrive at is, then, that Barry’s and Kymlicka’s liberalisms take a common view on the conditions that need to obtain if the distance education policy is to be acceptable, and that they both insist that a French-style distance education policy will only be appropriate and justifiable if its distance education branch is functionally equivalent to its conventional school system. And this, I think, is a significant finding – even if it does not suffice to conclusively establish whether or not Barry’s and Kymlicka’s liberalisms support a distance education policy. For this finding helps us, for
one thing, to see what sort of empirical information the two accounts need in order to definitively judge the distance education policy. And it shows, for another, that these two frameworks do not only agree that a policy of conventional and compulsory education is to be preferred to the exemption policy, but also take a common, and arguably exigent, general line on the distance education policy.

5 Travel Permits from the Classic Neutrality Perspective

This brings us to the second question of the chapter (and the last question of the project), namely the travel permits question. The question here, is, recall, whether a state can justifiably maintain a travel permits policy of the French kind, which obliges the gens du voyage to hold a particular identification document and to regularly have it countersigned by police officials, or whether the state must refrain from operating such a system. And once again, I would like to first approach the problem from the vantage of Barry’s classic neutrality account. But my analysis is going to be structured in a somewhat different fashion than on previous occasions.

Previously, I have always worked out how Barry’s liberalism handles particular policy questions by focusing on the account’s first-order principles, and I have only fallen back on the account’s deeper ideals when there was a need for doing so (e.g. when there was a need to specify the content of some basic right). But the travel permits question raises a fundamental question of fairness, and it requires a consideration of whether a no-travel-permits policy can be reconciled with Barry’s general commitment to fairness. So as I now turn to examine how Barry’s liberalism handles the travel permits question, I will begin by looking at the account’s fundamental ideal of fairness, and I shall try to
show that this general ideal supports the travel permits system (5.A). This, however, is a potentially controversial recommendation that can be challenged on several different grounds, notably on the grounds of freedom of movement. So once I have established that Barry’s basic concern for fairness supports the travel permits policy, I will turn to the account’s first-order principles and examine whether a travel permits policy can be reconciled with the right to free movement (5.B).

5.A Fairness and Travel Permits

To see what Barry’s general commitment to fairness implies with regards to the issue of the travel permits, let us first note a reasonably basic point about the effects of continuous mobility. People who continually change their geographic location are generally difficult to track down, and states have therefore a quite limited ability to access and to control nomadic people. (Hence the analysis of the historian James Scott that nomadism is a ‘state-repelling’ technique that enables its adopters to ‘avoid the taxman and the military press-gang.’ (Scott 2009:184, 278-9)) And this, we should note, is a general point that does not only hold true for states of the past, but also for contemporary states that have access to modern communication technologies such as the mobile phone or email technology. For while these modern technologies do enable state agencies to

29 Another challenge comes from the principle of legal uniformity. It might be argued, that is, that the travel permits policy and the category of the ‘gens du voyage’ singles out nomadic Roma and Travellers and so violates the principle that the law must not make distinctions that track group membership. This is a charge that is frequently raised against the French policy (for a recent example see the deliberations of the United Nations Human Rights Committee in the case of Ory vs. France), but it is not a particularly persuasive charge. The explanation for this is completely parallel to the argument that I developed in chapter 4 section 3.A, so I shall not develop this argument in any further detail.

As for the other principles of Barry’s liberalism, I take it to be clear that the equal basic goods principle, the education principle and the principle of non-discrimination are inapplicable to the issue at hand, and that the principle of equality of opportunity is inconclusive. The argument explaining why equality of opportunity is inconclusive is parallel to the argument developed in chapter 4 section 3.B.
communicate with citizens who are of no fixed abode, they do not, in general, enable state agencies to actually locate and to physically access nomads, and the modern state’s ability to control nomads continues thus to be rather limited. And this condition of limited state control is now going to be entrenched if the state refrains from operating a travel permits system. For this policy entails in effect that nomadic Roma and Travellers (and other individuals who would qualify as gens du voyage) are entitled to stay away from state agencies, and that the state’s ability to access and to control these people is going to be limited and is largely going to depend on their willingness to regularly seek out state agencies and/or to regularly inform authorities about their current whereabouts.

How, though, does this observation bear on the value of fairness? Well, the outcome that I have just indicated does not in itself run counter to value of fairness. It is not per se unfair if the state’s ability to access and to control nomadic Roma and Travellers is limited. But if the state struggles to reach and to control nomadic Roma and Travellers, it is de facto easy from them to eschew a range of the duties that citizens must generally comply with (e.g. fiscal duties, military service duties etc.), and some will no doubt take advantage of that situation and, for example, dodge the taxman. And this free-riding behaviour is quite incompatible with the ideal of fairness: If some people enjoy the benefits of common social life, but dodge their civic duties and free ride on the contributions of others, that does not chime well with the notion that the benefits and the burdens of social life should be shared equally, and a no-travel-permits policy will thus have the effect of indirectly undermining the value of fairness.\(^{30}\)

\(^{30}\) It might at this point be noted that the above-described situation may actually be coming true in the UK, where there are no travel permits. There are reports from the UK that law enforcement agencies struggle to locate nomadic, wanted individuals and therefore collude with social service agencies to be informed when certain individuals are physically present in a given social service office (cf. Clark 2001:317-18). These
This, by contrast, does not seem to be true for the rival travel permits policy. For
this arrangement ensures that nomadic Roma and Travellers (and other *gens du voyage*)
regularly enter into contact with state agencies, and makes it possible for ‘the
administrative authorities to maintain a link with … [the *gens du voyage*] and … to
contact them, as well as, where necessary, to conduct checks under conditions that take
account of their itinerant way of life’ (Ory vs. France §5.5). And this helps in turn to
forestall the kind of free-riding that can occur under a no-travel-permits policy, which
ultimately suggests that Barry’s general commitment to fairness counsels against the no-
travel-permits policy and instead advocates for the operation of a travel permits system.

This conclusion however, is a contestable one that can be challenged on several
different grounds. It can, as already indicated, be questioned on the grounds of freedom
of movement. But it can also be charged with being tendentious. It might be argued, that
is, that a French-style travel permits policy might be consistent with freedom of
movement, but that my above free-riding argument is fundamentally flawed as it rests on
a prejudiced view of nomadic Roma and Travellers. So before I turn to the question of
(high) principle, I need to address this worry about tendentiousness.

So, is there anything tendentious about the free-riding argument that I have just
laid out? This is a question worth asking, in that we do not want our analysis to rest on
prejudice. And it is true enough that people who hold a prejudiced view of nomadic
Roma and Travellers and want to portray them as anti-social people who lack civic sense
will be quick to make the above free-riding argument. But the argument does not

reports need to be treated with some caution though, as it is unclear whether they reflect relatively isolated
events and procedures, or a general problem and systematic policy.
31 I have myself observed this on numerous occasions, when telling people that I work on the problem of
Roma and Traveller itinerancy. I have in such moments often been met with disbelief and outrage, and
conceptually depend on such a prejudiced view. We do not need to think that nomadic Roma and Travellers are all thieves and tax dodgers in order to make the above free riding argument, but can also make this argument on the basis of the (Hobbesian) assumption that human beings are generally inclined to free ride, and that anyone will eschew their civic obligations when the legal and institutional framework facilitates such behaviour. And in fact, it is also possible to make the free ride argument without imputing bad faith to anyone. We all forget to do certain things, and we all procrastinate to some degree. So we need not think that nomadic Roma and Travellers are ill-intentioned in order to argue that some of them, under a no-travel-permits policy, will be unavailable for the state authorities. We can also make this argument on the basis of the knowledge that some of them will inevitably forget to regularly update state authorities about their current whereabouts, or will do so too late, meaning that letters, tax forms, etc. are sent to outdated locations.

So all in all, I do not think that the prejudice worry is compelling, and we can thus maintain the ideas that (a) the no-travel-permits policy carries with it a risk of unfairness and (b) that the value of fairness supports the operation of a travel permits policy. Once this point is firmly established, though, there is still the question of whether a travel permits policy is compatible with Barry’s basic rights principle and, more precisely, with the basic right to free movement. So I shall now turn to this question of principle and in

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32 One of the passages in *Leviathan* in which this view comes out best, is in Hobbes’s discussion of contracts in the state of nature. Hobbes argues here that contracts (or covenants) made in the state of nature are ‘void’, as none of contracting parties ‘have assurance that the other will perform’ (Hobbes 1946:89) and hold up their end of the deal, thus implying that human beings have a general tendency to free ride on the efforts and the goodwill of others.

33 Some might also wonder if the travel permits can be squared with freedom of conscience. But I don’t
this connection, I will first show that there is a prima facie reason to think that the travel permits policy is not compatible with the right to free movement.

5.B Travel Permits and the Right to Freedom of Movement

Barry’s liberalism does not, as we have remarked earlier, specify the content of its various basic rights. But we know that his basic rights principle is rooted in the idea that people should be capable of personal autonomy and that they, to this end, should be free from coercion. So we can deduce – even if this is not originally specified – that Barry’s right to free movement is meant to protect individuals against public policies that damage the basic value of personal autonomy and that the right prohibits policies that undermine the goals of autonomy and non-coercion. And once this point is in place, it would seem that Barry’s right to free movement cannot be consistent with the travel permits policy. For this policy does not involve the issuance of a simple instruction, but the imposition of a sanctionable duty. The travel permits policy does not, that is, instruct the gens du voyage to regularly have their travel permits countersigned, but makes this an obligatory action and it sanctions non-compliance with relatively significant fines and/or imprisonment. So if we now understand coercion to occur when one agent issues an unattractive threat designed to bring about a certain behaviour in another agent (the coercee), it is relatively clear that the travel permits policy is a coercive arrangement

think this is a natural way to phrase the problem. The travel permits policy does burden and restrict the travelling way of life, but it does not in any meaningful way prevent the practice of nomadism and thus, it is difficult to convincingly style the travel permits system as a violation of the right to conscientious liberty.

34 Cf. chapter 3 section 4.B. Remember also that we assume that Barry’s ideal of autonomy holds that people need to have their vital needs satisfied and should be capable of independent thought. But the travel permits policy and the no-travel-permits policy have no incidence on these latter two elements, so I am here leaving them aside.

35 Cf. chapter 2 section 3

36 Cf. section 2.C
and it seems hence to be the very kind of policy that Barry’s right to free movement is meant to prohibit.

But the story does not end here, for there is also a countervailing consideration that is to do with the need for compossibility. Before I develop this point in greater detail, though, I should discuss two objections that might be raised against the analysis that I have developed so far.

The first objection runs something like this. One of the central functions of the state is to secure citizens’ autonomy, notably through the provision of a police force and a judicial system that protect citizens both against each other and against attempts by the government to clamp down on citizens’ liberties. This autonomy-securing function, though, presupposes that the state levies taxes and collects funds from its citizens. So there is not only a sense in which the travel permits policy undermines the value of autonomy, but also a sense in which it promotes this value. The policy helps to ensure that citizens comply with their fiscal (and other civic) duties and in doing so, it is indirectly helping to ensure that citizens’ autonomy is secured.

But I don’t think this argument is particularly compelling, for a travel permits policy will only target the gens du voyage and help to ensure that this particular segment of the citizenry complies with its fiscal duties. And this group does only represent a very small fraction of the tax-paying population. In other words, it would seem that a travel permits policy will only affect a tiny proportion of the state’s sources of fiscal revenue and is fairly insignificant for the state’s ability to secure personal autonomy.³⁷ And hence,

³⁷ Note here, that the claim of insignificance is not a moral claim. The point is not that it is morally insignificant whether or not nomadic Roma and Travellers pay their taxes, but only that their compliance with their fiscal duties is functionally insignificant and does not impact the state’s ability to discharge its autonomy-securing functions.
it is rather strained to argue that the travel permits policy has the effect of indirectly advancing the value of autonomy. This, it seems, is an overstatement.\textsuperscript{38}

But the story does not end here, for the critic can still opt for another critique that has the structure of a \textit{reductio ad absurdum} and goes as follows. In the above analysis it is claimed that the travel permits policy is coercive and autonomy-invading and so prima facie inconsistent with the right to free movement. If this were true, though, we would also have to say that traffic regulations and trespassing rules – which are also backed up with threats of sanction – are coercive and autonomy-invading and, therefore, inconsistent with the right to free movement. But this is surely an implausibly view, and the above analysis of the travel permits policy cannot, therefore, be correct.

But this \textit{reductio} moves a bit too fast, I think. If we say that the travel permits policy is coercive and autonomy-invading, that \textit{does} commit us to say that traffic regulations and trespassing legislation are coercive as well. But these propositions do not automatically lead to the indeed implausible conclusion that such regulations would be inconsistent with the right to free movement. Let me develop this point in some more detail.

Many of the rights and principles that liberals are committed to are potentially in tension with each other and potentially impossible to realise simultaneously. Take, for example, the rights to own private property and to freedom of expression on the one hand and the principle of non-discrimination (or equality of socio-economic opportunity) on the other. These two elements \textit{can} be realised simultaneously if they are specified

\textsuperscript{38} Note here that this rebuttal of the argument from indirect autonomy promotion is contingent, and that the argument becomes more plausible if the number of the potential \textit{gens du voyage} increases and this population forms a sizeable part of the total citizenry. Note also, however, that that condition does not presently obtain in European state – which is part of the reason I want to resist the argument from indirect autonomy promotion.
appropriately; but it will impossible to do so if, for instance, the rights to own property and to freedom of expression are defined as very wide rights that allow private employers to hire according to racial criteria and/or to couple job advertisements with statements saying that members of one or the other gender, or some racial group, are by default ineligible. A theory, however, that features such incompossible rights and principles is not particularly plausible and coherent, and it appears accordingly that a normative theory, in order to be coherent, must specify its various elements and commitments in such a way that they are compossible and can be realised simultaneously (cf. Steiner 1994:2-3).

And this compossibility requirement can now explain why traffic regulations

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39 This example is from Rawls (2005:363). Rawls’s position on this case is discussed in note 41, below.
40 NB: The claim here is not that it is generally incoherent to construe the right to own property or to freedom of expression as very wide rights. The point is only that one cannot so construe these rights and simultaneously claim that there ought to reign equality of socio-economic opportunity.
41 David Miller has suggest to me that the requirement of compossibility may only be valid insofar as a theory treats its constituent principle as equipollent and does not rank them in some scheme of lexical priority (as is the case in Rawls’s theory of justice). But I do not think this can be right. Image that a theory grants individuals a basic right to own property and a basic right to freedom of expression, all while featuring a principle of equality of opportunity. Suppose further that the theory comes with a priority rule saying that the realisation of individual basic rights is lexically prior to equality of opportunity. Is it now coherent if the theory specifies the right to property and the right to freedom of expression in such an extensive manner that the rights allow private employers to advertise job offers containing statements saying that members of one or the other gender, or some racial group, are by default ineligible, thus making equality of opportunity a chimera? I don’t see why this would be so – we still have fundamental incompatibility between the basic rights on the one hand and equality of opportunity on the other, and the priority rule does not, as far as I can see, help to resolve this conflict, or explain how the theory’s components actually fit together in a coherent manner. So I do not think that the compossibility requirement is a limited one that only applies to theories with equipollent principles. This looks to be a general requirement that holds true for any normative theory. And this, it seems, has also been recognised by Rawls. To appreciate this last point, consider Rawls’s early Theory of Justice. The early theory of justice proposed two principles: a first principle saying that ‘each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others’; and a second principle saying that ‘social and economic differences are to be arranged so that they are both reasonably expected to be to everyone’s advantage and, attached to positions and offices open to all’ (Rawls 1999:53). And the first of these principles was given lexical priority, so that liberty could only be restricted for the sake of liberty and not for any other purpose, notably the realisation of the second principle (Rawls 1999:53-4). This architecture was subsequently criticised by Hart for being unable to accommodate a range of generally accepted restrictions of liberty that serve, not to promote liberty, but other values, e.g. laws prohibiting libel or environmental regulations (Hart 1983:239). And Rawls has since responded with a clarification arguing, first, that the freedom to libel others is not part of the basic right to freedom of expression and so can be forbidden (Rawls 2005:336); and arguing, second, that the right to advertise job openings is not a part of the basic to right to freedom of expression, but is an upshot of the principle of equality of opportunity, and so can be construed in narrow fashion that makes it possible to
and trespassing legislation are not in fact inconsistent with the right to free movement. Trespassing laws are essential for the protection of the right to own property,\textsuperscript{42} and traffic regulations are necessary to ensure that streets are minimally safe and that people’s – especially pedestrians’ – right to bodily integrity is reasonably secure. And thus, there is a consideration of compossibility to suggest that the right to free movement cannot be so extensive that it rules out the just cited regulations, but needs to permit them – even if they are autonomy-invading. So the \textit{reductio} is, in brief, unsuccessful.

I have so far developed an argument to the effect that the travel permits policy is autonomy-invading, and I have rebutted two objections that challenge this analysis. So it might now seem that we, in a manner of speaking, are left with the finding that the travel permits policy undermines the conceptual basis of the right to free movement and that the right cannot be consistent with such a policy. But this is not, as I have already indicated, quite accurate and I shall now try to explain why.

We have in section 5.A seen that the travel permits policy helps to ensure that the \textit{gens du voyage} comply with their fiscal (and other civic) duties, and that the absence of such a policy enables them to eschew those duties. But if some citizens free ride on their

\textsuperscript{42} NB: On this point, it is possible to have disagreements on the details: There can be reasonable disagreement on whether the protection of the right to property requires very stringent anti-trespassing laws or if that objective can be reconciled with a Scandinavian-type right to roam that gives non-owners the right to enter privately owned land, as long as they do not come within a certain distance of dwellings and gardens. This disagreement, though, does not undermine or invalidate the general point that some form of trespassing legislation is essential to the protection of the right to own property.

Let me also underline here, that I for the purpose of the discussion understand the right to property as a right to freehold.
fiscal and other civic duties, that is fundamentally unfair and means that the value of fairness is radically jeopardised. So it seems, then, that the travel permits policy is essential to the realisation of the value of fairness – very much in the same way as rules against trespassing are essential to the protection of property rights. And the compossibility requirement that I discussed a little earlier suggests thus that Barry’s right to free movement cannot be so extensive that it prohibits the travel permits policy, but has to be so narrow that it allows for such a policy and does not preclude the realisation of fairness – very much in the same way as it needs to allow for traffic regulations and trespassing legislation, which are also autonomy-invading but essential for the protection of property rights and the right to bodily integrity.

Or is this analysis perhaps exaggerated? Am I perhaps overstating the connection between the travel permits policy on the one hand and the realisation of fairness on the other? In other words, is it really the case that the absence of a travel permits policy radically jeopardises the value of fairness?

This, I think, is a basically sound concern. We do need to distinguish between fairness being (slightly) compromised and fairness being fundamentally jeopardised, and we should be wary of treating minor violations of fairness as a wholesale abandonment of fairness. But taxation (and military service) are some of the heaviest burdens that the modern state imposes on its citizens and thus, it is hard to see it as a minor or slight unfairness if some people – as a result of the absence of the travel permits policy – can free ride on these very duties. This looks much rather like a major and radical departure from fairness, and the travel permits policy should therefore be regarded as a policy that does not only promote fairness to some degree, but is critical for its realisation. And this
means, again, that the right to free movement, for reason of compossibility, cannot be so extensive that it rules out the travel permits system, but needs to allow such an arrangement.

So the findings we arrive at are, then, that Barry’s basic right to free movement is not inconsistent with a travel permits system, and that his general commitment to fairness supports such an arrangement. And thus, we can finally conclude that Barry’s liberalism has an unequivocal preference for the travel permits policy and implies that a state may, and indeed should, operate a French-style travel permits system.

6 The Multiculturalist Perspective on the Travel Permits

Having shown that Barry’s classic neutrality liberalism supports the operation of a travel permits policy, I shall now shift the theoretical lens and try to demonstrate that Kymlicka’s rival, multiculturalist liberalism generates similar policy recommendations and advocates for the operation of a travel permits policy as well. My argument proceeds in two main stages. I shall first home in on Kymlicka’s concern for societal-culture membership and show that this commitment supports the operation of a travel permits policy (6.A). And then I will consider a couple of countervailing considerations that appeal to equal accommodation and the right to free movement and demonstrate that they, while plausible at first sight, are ultimately invalid (6.B).

6.A Travel Permits and the Securing of Social-Culture Membership

To understand how Kymlicka’s concern for societal-culture membership bears on the

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43 As for the other principles of Kymlicka’s account (i.e. the education principle and the principle of non-discrimination) I take it that they have no bearing on the issue at hand.
issue of the travel permits, we must first notice a point about societal-culture membership that we have not yet had any reason to attend to.

The notion of membership – and now I am talking of membership simpliciter – often carries with it a connotation of benefit or privilege. We can see this by considering what it means to be a member of a sports club, a gentlemen’s club, or of a church. All these forms of membership imply the enjoyment of some sort of advantage or privilege – be it the ability to access a particular a sports facility; the ability to access a club house and an exclusive, social environment; or the ability to access a spiritual community (and perhaps also an otherworldly benefit). Kymlicka’s notion of societal-culture membership, however, is a somewhat broader notion that not only refers to the enjoyment of benefits, but to a more general condition of integration and participation. To have societal-culture membership is, on Kymlicka’s account, to have a general ‘ability to live and work’ in a given societal culture (Kymlicka 1995:96) and to be able to ‘fully participate in the mainstream of society’ (Kymlicka 1995:101) – it is a condition of ‘linguistic and institutional integration’ (Kymlicka 2001:54). So when Kymlicka insists that societal-culture membership is an important good, that does not merely signify that people should be able to extract and hoard the benefits that a societal culture offers. The idea is rather that they should be integrated in a broad sense and should generally participate in a societal culture’s various branches and institutions. And this objective of general integration is now better realised through a travel permits policy than a through no-travel-permits policy. For the former helps – unlike the latter – to ensure that nomadic Roma

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44 This last citation is from a passage that discusses the societal-culture membership of immigrants, hence the reference to the mainstream society.
and Travellers comply with their various civic duties\textsuperscript{45} and makes sure that they do not stand back from some of the wider society’s key institutions\textsuperscript{46} (e.g. the fiscal system, the defence apparatus, etc.).\textsuperscript{47} And this suggests ultimately that Kymlicka’s concern for societal-culture membership counsels against a no-travel-permits policy and instead supports the operation of a travel permits system.

6.B Two Countervailing Considerations: Equal Accommodation and Free Movement

I have so far concentrated on Kymlicka’s concern for societal-culture membership and shown that this particular element of Kymlicka’s liberalism advocates for the operation of a travel permits policy. But this finding does not yet warrant the conclusion that Kymlicka’s liberalism is generally supportive of the travel permits policy and makes the same policy recommendation as Barry’s classic neutrality framework. For the analysis I have developed so far leaves room for two countervailing considerations. It leaves room for the view that the travel permits policy is counterindicated by Kymlicka’s ideal of equal accommodation, and it leaves room for the claim that the travel permit policy is incompatible with Kymlicka’s commitment to the right to free movement. So I shall now

\textsuperscript{45} See the argument developed in section 4.A

\textsuperscript{46} It has been suggested to me that this analysis also commits me to accept the potentially implausible claim that poor people who are tax exempt have a compromised societal-culture membership. But I do not think this is true, for there is an important difference between a situation in which a person pays no taxes because she has filled in her tax return form and then has been granted a tax break, and a situation where a person pays no taxes because she is simply unreachable for the tax authorities. That said, I do not think it utterly implausible to say that, for example, people who have poor qualifications and therefore are unable to compete in the job market, are very restricted in their consumer choices, and pay few taxes, suffer a disadvantage that is rather similar to that of individuals who have incomplete societal-culture membership (e.g. immigrants who do not master the mainstream language).

\textsuperscript{47} It is a more or less implicit assumption of this argument that the fiscal system and the defence apparatus are not epiphenomenal, but central elements of the wider society’s system of government. But this, I think, should not be controversial - the fiscal system is, after all, one of the main mechanisms by which the wider society finances its various instruments of government, its public welfare systems, and its systems of (economic) redistribution, and the defence apparatus is the wider society’s ultimate protection against foreign military aggression.
turn to these two claims and examine their validity.

So, what is there to be said of the idea that the travel permits policy is counterindicated by Kymlicka’s ideal of equal accommodation? I think this is a basically plausible claim. The travel permits system has the effect of subjecting nomadic Roma and Travellers (and other *gens du voyage*) to a special legal obligation that does not apply to other citizens, and the policy fails hence to extend equal measures of support to the travelling, minority way of life on the one hand and to the majoritarian, settled way of life on the other. The no-travel-permits policy, on the other hand, does not suffer from this flaw, and thus it is plausible to think that Kymlicka’s ideal of equal accommodation counsels against the implementation of a travel permits policy and pulls in a different direction than his concern for societal-culture membership.

That said, though, we need to remember that Kymlicka’s account does not treat the ideal of equal accommodation and the concern for societal-culture membership as equally important ideals. The account suggests on the contrary that the realisation of societal-culture membership has priority, and the fact that equal accommodation counsels against the travel permits policy is hence irrelevant: It may, that is, be perfectly true that this ideal objects to the travel permits policy, but this does not challenge or undermine the policy recommendation that issues from Kymlicka’s weightier concern for societal-culture membership.

But perhaps there is more to be said for the idea that the travel permits policy is inconsistent with Kymlicka’s commitment to the right to free movement? I think not. In section 5.B I argued that a coherent normative theory needs to formulate its various rights, principles and ideals in such a manner that they are compossible, and I suggested

48 Cf. section 3.C.2
that this requirement of compossibility would not be realised unless Barry’s right to free movement is construed so as to allow for a travel permits policy, which, recall, is key for the realisation of fairness. But the travel permits policy is not only essential to the realisation of fairness. It is also, as we have just seen, essential for the realisation of the good of societal-culture membership. So here again, there is a reason of compossibility to suggest that the right to free movement cannot be so wide that it rules out the travel permits, but needs to allow for such a policy. Besides, it would be rather strange if Kymlicka’s liberalism were to cite freedom of movement as a motive for resisting the travel permits policy, but accepts, and even recommends, that states oblige immigrants to learn the dominant language (which is surely a greater restriction of liberty than the obligation to intermittently stop by the policy office).

I have now argued three main points. I have shown that Kymlicka’s liberalism’s fundamental concern for societal-culture membership counsels against a no-travel-permits policy and instead supports the operation of a French-style travel permits system; I have shown that Kymlicka’s ideal of equal accommodation pulls in the opposite direction but cannot challenge or override the recommendations that flow from the concern for societal-culture membership; and I have finally argued that Kymlicka’s right to free movement cannot be so extensive that it prohibits the travel permits policy. And so, we arrive at the final conclusion that Kymlicka’s multiculturalist liberalism views the no-travel-permits policy as a less attractive policy option than the French-style travel permits policy and advocates for the latter – which is the very position that issues from the classic neutrality framework of Barry.

49 Cf. the discussion in section 3.C.2
7 Conclusion

We have in this chapter completed the task that we began in chapter 4 and continued in chapter 5. We have, that is, applied Barry’s and Kymlicka’s respective liberalism to the last two problems from chapter 2, namely the question of education and the issue of travel permits. And we have found that our two competing theories propose to resolve these two problems in similar fashions: Barry’s and Kymlicka’s respective liberalisms both imply that it is appropriate for a state to impede Roma and Traveller itinerancy and to insist on having a travel permits system of the French sort, and they also come together in favouring a policy of conventional and compulsory education, at least insofar as it is juxtaposed with the British style exemption policy.

In the case of Barry’s classic neutrality liberalism, these positions are principally the logical upshots of the account’s fundamental commitment to fairness, of its education principle, and of its underlying commitment to equality of opportunity. In the case of Kymlicka’s liberalism, they are implications of the account’s fundamental concern for societal-culture membership and of the fact that this concern has priority over the framework’s ideal of equal accommodation. So there is a certain conceptual difference in the way the two accounts handle the travel permits question and the education question. But the convergence at the level of practical policy is nevertheless intriguing and reinforces the question posed at the end of chapter 5: What does it tell us that we approach the problem of Roma and Traveller itinerancy via two liberal frameworks that purport to take different approaches to citizens’ cultural commitments and that we yet, in a good number of cases, find that the frameworks generate common policy responses? Can we somehow exploit this observation to draw some broader conclusions about
classic neutrality liberalism on the one hand and multiculturalist liberalism on the other?

But the findings of this chapter also invite another question: If, as I have argued, liberals of different strands agree that the state should insist on having a travel permits system, and also come together in support of the policy of conventional and compulsory education, what are the chances of Roma and Traveller itinerancy being perpetuated over time? In other words, does the implementation of liberal principles mean the end of Roma and Traveller itinerancy? So to close this study, I would now like to step back from the very specific policy problems that we have been looking at so far and try to see how we should think about the two broader questions that I have just pinpointed.
Chapter 7

General Conclusions

In the last three chapters I have applied Barry’s and Kymlicka’s respective liberalisms to the problem of Roma and Traveller itinerancy and so worked out how liberals with a multiculturalist inclination and liberals with a classic neutrality inclination should think about the various policy problems that together constitute the problem of Roma and Traveller itinerancy. But once it is clear how Barry’s and Kymlicka’s respective frameworks handle the question of voter registration, the problem of education, the issue of halting sites etc., there arise a couple of follow-on questions that are of a more general character: First, what do the findings of the previous three chapters tell us about liberalism’s general relationship to Roma and Traveller itinerancy? Can we say anything in general about how the implementation of liberal principles affects the nomadic way of life? And, second, what do the findings of the previous three chapters tell us about the classic neutrality vs. multiculturalism divide? So to close this dissertation, I want to step back from the very specific policy issues that I have been concerned with so far, and
address these two broader issues.

I begin with the question about liberalism’s impact on Roma and Traveller itinerancy, and here there are three main points to be made.

The first point is, naturally, to do with education. We have in chapter 6 seen that both Kymlicka’s and Barry’s liberalisms take a favourable view of the policy of conventional and compulsory education. The result of such a policy, however, is that families can only travel for a minor part of the year (i.e. during vacations and holidays) and that Roma and Traveller parents’ ability to socialise their children into a travelling way of life is severely restricted. So the operation of a conventional-and-compulsory-education policy will over time entail a diminution of the number of Roma and Travellers who have been socialised into a nomadic way of life, and the policy can thus be expected to engender a gradual extinction of Roma and Traveller itinerancy. And hence, it may seem that the preceding analysis shows that the implementation of liberal principles spells the end of Roma and Traveller itinerancy, at least in the long term.

But I think this is a rash conclusion. For our previous analyses have not ruled out and discarded the French-type distance education policy. On the contrary, we have seen that the liberalisms of both Kymlicka and Barry will accept such a system if it is possible – and this, recall, is an empirically uncertain question – to design the system in such a manner that the distance education is functionally equivalent to conventional schooling. And thus, it is rash to say that our previous examinations show liberalism to mean the end of Roma and Traveller itinerancy. What they suggest is rather that liberal principles are potentially very inimical to Roma and Traveller itinerancy, but that the ultimate resolution of this matter depends on empirical facts that are currently unavailable.
This first and arguably dramatic point must not, though, lead us to overlook two further points that are perhaps less sensational. In particular, it is worth noticing that if we leave aside the uncertain issue of education, liberal principles do not seem to be generally and directly hostile to Roma and Traveller nomadism. Barry’s and Kymlicka’s liberalisms do imply that the state should operate a French-style travel permits policy, but this is the only itinerancy-impeding policy that the accounts directly mandate. In no other policy domain do the respective frameworks imply that the state must operate policies that are inimical to Roma and Traveller nomadism. So liberalism does not, in the overall analysis, look to be generally inimical or adverse to the travelling way of life. The implementation of liberal principles will entail the operation of a travel permits policy, which is burdensome for nomadic Roma and Travellers, but this is, to reiterate, an exceptional policy recommendation, not a reflection of a broader pattern. And thus we may say that if we leave aside the uncertain issue of education, Taylor’s thesis on the hostility of liberalism to diversity is unwarranted insofar as we look at the case of nomadic Roma and Travellers.

That said, though, we should note as well – and this is the third point – that a Barry-type classic neutrality liberalism can be somewhat less advantageous to nomadic Roma and Travellers than a Kymlicka-type multiculturalist liberalism. In the previous three chapters we have seen that Kymlicka’s framework almost invariably militates for policies that are maximally favourable for nomads: The framework supports the institution of workaround regulations that enable nomadic Roma and Travellers to

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1 Cf. chapter 6 sections 5 and 6
2 Again, this is if we leave aside the issue of education.
3 Cf. chapter 1 section 6
register as voters;\textsuperscript{4} it advocates the institution of a generous GP registration exemption that gives nomadic Roma and Travellers a right to be treated by any GP in the country;\textsuperscript{5} it supports the public provision of a fine-meshed halting sites network;\textsuperscript{6} and it is finally in favour of a caravan-conscious housing benefits system.\textsuperscript{7} Barry’s account, on the other hand, takes a more reserved approach: This account, too, supports the institution of workaround regulations in the voter registration system.\textsuperscript{8} But it cannot countenance the generous GP exemption and favours instead a narrower exemption.\textsuperscript{9} And in the case of the halting sites question and the housing benefits question, it will afford the state some latitude in deciding whether it wants to operate a fine-meshed public halting sites system and caravan-conscious housing benefits system, or if it instead wants to opt for a wide-meshed halting sites system and/or for a caravan-blind housing benefits system.\textsuperscript{10} So the classic neutrality strand of liberalism is potentially, but not automatically, somewhat less supportive of Roma and Traveller itinerancy than the multiculturalist strand.

This brings us practically to the second question, which deals with the divide between multiculturalist liberalism and classic neutrality liberalism. But before I turn to that question, I want to dwell just a little longer on the issue of education and liberalism’s potential hostility towards Roma and Traveller nomadism. Suppose it turns out that distance education systems are necessarily incapable of providing the same standards of instruction as conventional schools and that it is not possible to make distance education a functional equivalent of conventional schooling. What then? In this case, it is (for the

\textsuperscript{4} Cf. chapter 5 section 4
\textsuperscript{5} Cf. chapter 4 section 6
\textsuperscript{6} Cf. chapter 4 section 4
\textsuperscript{7} Cf. chapter 4 section 2
\textsuperscript{8} Cf. chapter 5 sections 2 and 3
\textsuperscript{9} Cf. chapter 4 section 7
\textsuperscript{10} Cf. chapter 4 sections 3 and 5
reasons that I have already discussed) very likely that the implementation of liberalism leads to the demise of Roma and Traveller itinerancy, and theorists intent on protecting and preserving Roma and Traveller itinerancy will thus have to adopt some other normative framework or outlook. What this other framework might be, is not at all obvious, though. One might, of course, think that a libertarian model that provides minority communities with extensive negative liberties and very robust protections against outside interference is the obvious solution.\footnote{Think, for example, of Kukathas’s model; cf. Kukathas (1992, 2003)} But such a non-interference model will probably struggle to explain why, for instance, the state ought to adapt its GP registration system and/or its voter registration system to suit the needs of residenceless nomads. And above all, such a non-interference model will be unable to motivate the public provision of halting sites. So a non-interference model may not, in the overall analysis, be particularly supportive of Roma and Traveller nomadism either, and supporters of Roma and Traveller itinerancy will thus have to opt for, or work out, some other moral framework – one that can both explain why the state should take it upon itself to actively provide halting sites, but should only take a very limited interest in the prospects of nomadic Roma and Traveller children.

That said, though, it should be noted as well that liberalism’s potential hostility to Roma and Traveller itinerancy is contingent, not inherent. If distance education systems are necessarily incapable of providing children with the same standard of education as conventional schools and liberal principles support the operation of a policy of conventional and compulsory education, that will not be because liberalism is inherently opposed to the travelling way of life and has built into it a drive towards sedentarisation. Rather, it is a contingency that is due partly to the pedagogical facts and partly to the fact
that Roma and Traveller itinerancy takes place within a settled majoritarian society that has developed a powerful system of conventional education that provides a fairly high standard of instruction and helps children to develop a quite rich set of skills. In other words, if the majoritarian society had not developed a powerful conventional school system (say, because it did not value formal education) then it might be possible to realise the values of equality of opportunity and/or societal-culture membership through a distance education system as well, and liberal principles would not rule out the policy of distance education. Thus, what transpires is that liberal principles are potentially very inimical to Roma and Traveller itinerancy, but that this potentially inimical character is not due to an intrinsic bias towards a sedentary way of life, but a compound result of the liberal concern for children’s prospects in life and the structure of the wider society within which Roma and Traveller itinerancy takes place.

That said, we can turn to the divide between classic neutrality liberalism and multiculturalist liberalism. Here again, there are three lessons to be learnt. The first is fairly obvious. In chapter 4 we have seen that Barry’s and Kymlicka’s respective liberalisms make different policy recommendations for the housing benefits question, the halting sites question, and the GP registration problem. So one of the lessons to be learned from our previous analyses is that the difference between classic neutrality liberalism on the one hand and multiculturalist liberalism on the other is not merely philosophical, but has practical implications too. Classic neutrality liberalism and multiculturalist liberalism do not only have an abstract, conceptual disagreement on the claims of cultural and religious minorities, but do also disagree at the level of public policy.

\[12\] Cf. chapter 3
This policy disagreement is limited, though. Our two competing accounts make identical policy prescriptions when it comes to the question of voter registration, the issue of the travel permits, and the question of education. So our previous analyses do not only suggest that the division between classic neutrality liberalism and multiculturalist liberalism is of some practical import, but also – and this is the second lesson – that there is significant, though not complete, congruence in the respective liberalisms’ policy recommendations.

But the story does not end here. We can better understand this by looking more closely at the results of chapter 4. Chapter 4 has shown that Barry’s and Kymlicka’s respective liberalisms have different policy implications for the halting sites question, the housing benefits question, and the question of GP registration. But those differences are in most cases relatively minor. Barry’s and Kymlicka’s liberalisms do not, most of the time, generate policy recommendations that are diametrically opposed to each other, but are in most cases at odds on whether the state must operate a particular policy – notably a fine-meshed halting sites network and caravan-conscious housing benefits system – or whether the state has some leeway in deciding whether it indeed wants to operate those two policies or if it instead wants to opt for a wide-meshed halting sites network and/or for a caravan-blind housing benefits system. So the overall picture that emerges is, then, that the division between classic neutrality liberalism and multiculturalist liberalism is weak insofar as we look at their practical policy implications. And this, it should be added, is a point that, so far, has been underappreciated. Alan Patten (2015) has recently drawn attention to the fact that classic neutrality liberalism or, as Patten calls it, ‘non-culturalist liberalism’ can sometimes generate the same policy prescriptions as
multiculturalist liberalism, as some claims for respect-for-identity policies can ‘piggyback’ on standard liberal rights and commitments and so can be justified on the grounds that they are ‘instrumental to the enjoyment [or realisation] of other rights and values’ (Patten 2015: 209; cf. 8-9; 14-18). But I know of no argument which shows that the practical policy implications of classic neutrality liberalism and multiculturalist liberalism do not only overlap intermittently, but also tend to be close to each other when they are non-identical. So by examining how liberalism handles the problem of Roma and Traveller itinerancy, we have not only learnt something about liberalism’s practical policy implications and stance vis-à-vis Roma and Traveller itinerancy, but also something about the character of a central dispute within contemporary liberal theory.

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13 For a similar view, see Scheffler (2007:114-15), who in passing suggests that ordinary liberal ‘principles of justice may themselves require, by virtue of their guarantees of liberty of conscience and association, that certain limited exemptions from otherwise just laws should be provided to people for whom compliance would conflict with deeply held conscientious convictions, whether religious or nonreligious in character.’ See also Lagerspetz (1998)
Appendix:

The Literature Search Protocol

To see whether and how political theorists have discussed the problem of nomadism, I have conducted three different searches in the literature.

The first search used the online, digital archives of established, Anglophone political theory journals, namely *Philosophy and Public Affairs*, *The Journal of Political Philosophy*, *Journal of Applied Philosophy*, *European Journal of Political Theory*, *European Journal of Social Theory*, *Political Theory: An International Journal of Political Philosophy*, *Politics, Philosophy & Economics*, *European Political Science Review*, *Utilitas*, *Economics and Philosophy*, *Philosophy*, *Ethical Theory and Moral Practice*, *Ethics, Polity*, *Review of Politics*, and *Critical Review of International Social and Political Philosophy*. In all these journals, I conducted a full text search for the key terms (gyps* OR roma* OR travel* OR nomad* OR itineran*). Where necessary, these search terms were complemented with the supplementary criteria: NOT (romant* OR roman OR romania* OR fasc* OR romania OR greek) in ‘title’.¹ The selected time

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¹ These added criteria served to screen out clearly irrelevant articles, notably articles on Roman and/or
frame was from January 1960 till 2013. The search yielded 1880 results/articles, but none of these articles offered a substantial discussion of the problem of nomadism.

The second search made use of Proquest’s bibliographical database ‘Philosopher’s Index’, which provides a wide coverage of research in all areas of philosophy. The keywords searched for ‘anywhere’ were (gyps* OR travel* OR roma* OR nomad* OR itineran*). To these criteria were added the criteria: NOT (roman OR gree* OR romania* OR romant*) in ‘title’. The selected time frame was from January 1960 to 2013. The search output was subsequently filtered so as to only include the subjects ‘morality’, ‘law’, ‘politics’, ‘education’, ‘culture’, ‘political philosophy’, ‘social philosophy’, ‘ethics’ and ‘philosophical anthropology’. This search yielded 1475 results/articles, but none offered a substantial discussion of the problem of nomadism.

For the final search, I used a selection of books which looked particularly likely to contain some discussion of the problem of nomadism. The procedure to collate this selection of books was as follows. I first used SOLO (Search Oxford Libraries Online) to obtain a list of all the books on multiculturalism held by the Social Science Library, and from this list I picked out the books that approach multiculturalism from a normative-theoretical, as opposed to an empirical, perspective. The indexes of the resulting list of books (listed below) were then searched for the key words ‘Gypsy/Gypsies’,

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Greek classic philosophy, fascism, Romania and/or romanticism.

2 Since 2013, I have created search alerts in all these journals to be notified of the publication of articles matching the above search criteria. These alerts have over time resulted in a number of hits, but none of those articles have featured a substantial discussion of the problem of nomadism either.

3 NB: The Philosopher’s Index only covers titles and abstracts, not the full text. So a search ‘anywhere’ is effectively a search in the titles and the abstracts.

4 This was again to eliminate from the search output obviously irrelevant articles dealing with Greek and/or Roman classic philosophy, romanticism, or Romania.

5 Since 2013, I have created a search alert in the Philosopher’s Index to be notified of the publication of articles matching the above search criteria. These alerts have over time resulted in a number of hits, but none of the articles have featured a substantial discussion of the problem of nomadism.
‘Roma/Romani’, ‘Traveller’, ‘nomad/nomadic’ and ‘itinerant/itinerancy’. This procedure identified a number of potentially relevant passages, but closer inspection showed that none of the works feature a substantial discussion of the problem of nomadism.

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