1. Introduction

This paper addresses a significant problem of political morality that arises from the institution of charity. It concerns whether that institution is coherent with the doctrine of liberal neutrality. Charitable activity is widely regarded as a valuable component of civil society, for which there may be good reason to facilitate such activity. Indeed, many states do in fact facilitate charitable activity by granting special status, tax exemptions, subsidies and other measures to associations that pursue particular purposes. Those measures are why I refer to an institution of charity, so as to separate it from everyday altruistic acts.

Yet, in granting those privileges, the state makes a value judgement about certain goods. The state affirms that a set of goods it defines as charitable are worthy of special privileges that are not available to the pursuit of other conceptions. In short, it is at odds with the widely endorsed doctrine of liberal neutrality, which says the state should not favour or pass judgement on particular conceptions of the good. We have then, a considered judgement about the value of charitable activity, an institution that is defined by particular goods, and a liberal doctrine that appears to conflict with both.

Despite being a major institution that is held in high regard, liberal neutralists have paid the institution of charity no attention as a source of controversy in political morality. I suspect there are two reasons for this. First, charitable associations are, by and large, considered to be admirable organisations that operate outside of the state. I do not doubt that there are many organisations pursuing worthy causes, but they are not entirely independent of the state. Indeed, charitable associations cannot be as such without government sanctioning, otherwise they are like any other traditional private association pursuing a particular good.
Second, the charitable purposes that immediately spring to mind typically include care for the poor, sick, elderly, and disabled. And what could possibly be objectionable about charitable associations – facilitated by the state – pursuing such ends as these? But charity understood in public policy terms is not limited to these pursuits. In many countries, particularly of common law tradition, what constitutes a ‘charitable purpose’ entails a broad range of goods where there is room for reasonable objection – the arts, amateur sport, animal welfare, national heritage sites, religion, and spiritual and moral belief systems.

Further still, even categories such as healthcare can encounter controversy. Bodies pursuing homeopathy, for instance, believe they fall under legitimate healthcare but rival bodies are vehemently opposed to such methods. As their line of argument goes, if you want to know which is the legitimate medicine, it is the one without ‘alternative’ before ‘medicine’. And education encounters controversy too. On the face of it, education like healthcare is a basic value to all walks of life, but the content and approach of each educational pursuit is open to dispute, particularly where it entails a particular religion, or an idiosyncratic ethos, for example.

In summary, the institution of charity prompts sufficiently weighty normative issues that should be of great concern to liberal neutralists. Whether or not neutrality can be reconciled with the institution of charity is the question this paper seeks to address. The paper runs as follows. In section 2, I assess neutrality of effect. I argue that it does not entail the normative tools to address the fundamental problems raised by the institution of charity. To do so, I turn to neutrality of justification in section 4. There I dismiss approaches derived from Barry and Rawls, and instead suggest that the grounds for affording charitable status should be formed around the value of general altruism. This, however, does not answer which conceptions should be granted charitable status. In section 4, I present the case for affording all conceptions of the good charitable status
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(subject to basic regulations of how charities paradigmatically operate) based on a third conception of neutrality, namely neutrality of treatment.

2. Neutrality of effect

Neutrality of effect is so-called because it views the impact that policies have on citizens’ pursuit of their favoured conceptions of the good as the subject of state neutrality. It requires that the ‘state should not do anything that has the effect – whether intended or not – of promoting any particular conception of the good, or of providing greater assistance to those who pursue it’.¹ This view is often thought to appeal to notions of equal treatment given that the state must not advantage some conceptions of the good over others.² Before we evaluate neutrality of effect in relation to the institution of charity, some further clarification is required regarding its relevance to ‘promoting’, ‘assisting’ or ‘facilitating’ charities.

For questions of neutrality of effect to arise, we must determine whether the privileges afforded to charities do in fact have some bearing on how certain conceptions of the good fare in society. If such an effect does not occur then charitable status should not raise any concern. With regard to how conceptions fare in society, neutrality of effect is said to be concerned by their ‘success’. The success of conceptions is the measure by which we understanding the impact of state policies having an equal impact. In this respect, as Patten notes, there are two dimensions by which success can be measured: ‘popularity’, where a conception ‘is more successful the more adherents it has’; and ‘realisability’, where a conception ‘is more successful the easier it is for people to pursue and realise

that conception of the good’. The former is simply a matter of numbers, whereas the latter concerns the carrying out of a conception on the ground.

In both these respects, charitable status can be seen to have this impact on the pursuit of conceptions of the good. As the Charity Commission of the UK states, ‘[t]here are considerable advantages which arise from charitable status: reputational – people are more likely to offer time, energy or money to a registered charity; opportunity – many grant-makers only give to charities; fiscal – charities receive a wide range of tax advantages’. Thus, charities can attract a greater number of adherents and resources in virtue of having charitable status, and those resources and tax breaks will comparatively speaking make it easier to realise their aims than associations that do not enjoy this benefit. In short, then, existing practices would appear to violate neutrality of effect.

Here it would appear there are three paths for the state. One would be for the state to entirely remove the provision of charitable status and tax exemptions, so that no conceptions of the good was made better off than others. In essence, this is a levelling down strategy for existing practices. Since this would obviously have the effect of dissolving the institution of charity, for without those privileges they would cease to exist the distinct private associations we understand charities to be, we ought to reject this option. This argument, however, is incomplete for we need a reason to facilitate charitable associations in the first place. And if we do have a legitimate reason to facilitate such associations, then levelling down is undesirable. I believe there is such a reason, which is based on the general value of the practice of charity. I will return to this point later.

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4 Charity Commission, The Charity Commission’s Approach to Public Benefit, Appendix to Parliamentary Briefing. (Oct 2006).
The second path would be to level up conceptions that are not afforded the advantages of charitable status. Either it could compensate the disadvantaged conceptions, or give charitable status, equal subsidies, and equal tax breaks to the pursuit of all conceptions of the good. We would only choose the first strategy over the second if there was some justification why specific conceptions should receive unique advantages. But since the state would have to equalise any effects of those unique advantages, this scheme seems nonsensical. In any case, presumably the reasoning would be along the lines of charitable pursuits being special in some sense. There is a case to be made here, but neutrality of effect by itself cannot make it, for it concerns the impact of state policies not the justification behind them. The second strategy is, I think, the correct path, with some provisos based on fundamental liberal principles and how charities ought to operationalize their aims.

But it cannot be founded on neutrality of effect. Neutrality of effect is only plausible for the institution of charity when it is manifested as levelling down. Given the core voluntaristic nature of charity, levelling up cannot work. Charitable status comes about because a private association voluntarily seeks it out and then meets the conditions set by the state. The state does not impose charitable status on private associations. For a state that does intend to promote certain pursuits, it is not inconceivable that it would encourage private associations to come forward, but it must still be a voluntary decision on the part of said associations to obtain charitable status. Thus, to equalise effects in other policy areas it would be implausible for the state to force existing private associations to become charities, or create new private associations for the purposes of becoming charities. Similarly, to equalise within the institution of charity, it could not force organisations to take up charitable status to counterbalance the privileges already given to rival conceptions of the good. The opera, for example, is extensively facilitated as a charitable purpose, so to neutralise the effects of this facilitation ought the state impose charitable status on other art forms? The sensible answer is, I think, no.
Notwithstanding the above problem, there needs to be a reason for facilitating anything in the first instance, and neutrality of effect does not have the resources to give that reason. To explain, suppose that different conceptions of the good were commensurable, and that the state were able to measure the required level of compensation necessary to establish equal impact on all conceptions.\(^5\) What would this mean for the supposed conflict between neutrality and affording charitable status? Even if it were possible to equalise effects – notwithstanding problems of expensive conceptions that similarly plague equality of welfare – it remains the case that neutrality of effect cannot account for the basic problem with the promotion of conceptions of the good deemed charitable. That is, the justification for facilitating any conceptions of the good.

In view of trying to rescue neutrality of effect from the above problem, the principle of ‘added value’ may help.\(^6\) The argument runs as follows: the market provides certain goods and services; some goods and services are not adequately provided for in the market; the state addresses this shortfall by facilitating organisations that offer those under-provided goods and services; by doing so, the state is able to ‘add value’ to those goods and services. It cannot add value in such a way if goods or services are adequately provided (perhaps even over-provided) in the market. There is not, for example, any value added by having organisations further promoting pop music that already saturates the market. The state might, however, be able to add value to less successful arts, by facilitating groups to promote and educate the public.

This argument does hinge on whether the state ought to intervene in the market. Those more libertarian-minded would presumably not endorse this position. In a Hayekian fashion, they may appeal to the logic of the market – if goods and services are supposed to be under-provided for in


\(^6\) Special thanks to Paul Bou-Habib for suggesting this line of argument.
the market, then it is because people do not value them. By facilitating the provision of those goods and services, the state is not adding value, but disregarding the market mechanisms that tell us what is and is not valuable. This counterargument, however, is grounded on a particular understanding of value, that of capital and profit, and charities seek to provide goods and services precisely because they do not turn a profit – or a sufficient one to be attractive to private providers – but are nonetheless valuable. Care for the homeless, hospices and child welfare are just some examples that fit this criteria. We may well argue that such services should be fully met by the state, but in non-ideal circumstances I believe it is uncontroversial for the state to facilitate the provision of such services where the market cannot.\textsuperscript{7}

The ‘added value’ argument, however, runs into difficulties when the goods and services shift from such basic services like those above. The problem arises from how people’s interests in under-provided goods and services are conceived. Let us suppose that opera is under-provided in the market, but there are existing preferences for it. To facilitate opera, then, is to help people realise their existing preference. But not everyone has an existing preference for opera. It is, after all, part of the disputed domain of the arts. Thus, the state’s power is being used to promote a good that not everyone values. Similarly, if the state facilitated opera on the basis that more people should value opera, then it is engaging in the kind of paternalist or perfectionist reasoning that is antithetical to state neutrality.\textsuperscript{8}

\textsuperscript{7} I expand on the significance of non-ideal circumstances below.
\textsuperscript{8} Patten can be seen to appeal to the added value argument when he mentions in passing that ‘saving’ a valuable option like opera from disappearing is defensible when the necessary subsidies place such a small burden per taxpayer. See Patten, ‘Liberal Neutrality’, p. 267-8. But if it being ‘valuable’ is understood in perfectionist terms, then it is problematic for a neutral state to promote it no matter the cost. For why paternalist reasoning is also problematic for neutrality, see J. Quong, Liberalism without Perfection. Oxford: Oxford University Press (2011).
3. Neutrality of justification

Broadly speaking, neutrality of justification, requires that policies pursued by the state should be justified independently of any appeal to the alleged superiority of conceptions of the good over others. In doing so, it does not invoke controversial claims, namely, claims about the value of conceptions of the good that are reasonably objectionable to citizens. If neutral charitable purposes could be established, then in terms of neutrality of justification, the state would not be predicing its decision to facilitate charitable associations in a way that respects the reasonable pluralism within society. Two possible ways of defining ‘neutral goods’ are goods that are ‘generally accepted’ or ‘not reasonably objectionable’. The former would probably require a survey of people’s values and beliefs; goods would then be neutral if they correlate with the goods people actually hold in society. Besides the immense practical difficulties this would entail, neutralists have theoretical reasons to dismiss defining neutral goods in such a way. One pitfall is that it opens the neutralist position to the challenge that it collapses into perfectionism. If goods are neutral merely because many people consider them to be valuable it appears that we are making similar claims as the perfectionist with regard to the value of conceptions of the good.

The reasoning underlying the second definition helps differentiate neutrality from perfectionism as it sets certain constraints on what goods can be neutral independently of what people hold to be valuable. These constraints usually conform to liberal values, hence racist and sexist views, for example, are precluded under the ‘not reasonably objectionable’ definition. I shall examine the issue of liberal values in more detail shortly. Of course it may be (and often is) the case that ‘generally accepted’ and ‘not reasonably objectionable’ goods correlate, but the reasoning behind each is quite different. I think it is no coincidence then that neutralists generally hold ‘not reasonably objectionable’ as the definition of neutral goods. I shall follow the published literature in this respect.
The first proponent of *neutrality of justification* I will consider is Brian Barry. Though he is opposed to extending neutrality to non-justice-based issues, Barry does in fact provide us with a way of overcoming non-neutrality in those issues. As an illustration, take disagreements about which religion, if any, is true. How then is the state to establish freedom of religion without invoking judgements about the competing conceptions of the good in question? For Barry, we ought to establish a description of the good that is neutral between all disputants. Often this will mean abstracting the good to a level that neither promotes nor discourages specific conceptions. So the neutral description in this case would be the ‘right to pursue one’s religion’. The terms of the right do not invite disagreement as they make no reference as to the value of religious faiths. If it were described as “‘being saved from eternal damnation” then this is something we would all like to have done to us – but that description depends upon prior identification of the true religion.” 9 This would merely be framing the freedom in the terms of the original dispute.

Can we apply Barry’s notion of neutral description to charitable purposes? The task is to specify charitable purposes in such a way that does not invoke particular conceptions of the good in question. In some cases this requires reform of existing legislation, particularly in common law jurisdictions. For instance, the ‘promotion of high standards of the arts’ would no longer be acceptable. It invites disagreement about what are ‘high standards’ and what artistic pursuits are capable of high standards. A neutral description would render it the ‘the promotion of the arts’ provided of course that what constitutes ‘the arts’ is not subject to differing conceptions of the good. The category concerning religious organisations, however, does not require revision. In most countries, no specific religions are stated and the criteria of a ‘religion’ are carefully formulated to be wholly inclusive of different faiths.

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So far, so good. But to be carried out in the practice of charity law, this strategy is not plausible. It is problematic to abstract charitable purposes to a level of non-controversy in terms of adequately maintaining state neutrality. When affording charitable status and tax advantages, the state would surely need to ascertain how a given organisation would go about pursuing the good in question so as to ensure it was not a specious claim. Indeed as it stands, a key role of regulatory bodies is to hold charities accountable to their donors, beneficiaries and the public. For the question at hand, a specious claim is one that appeals to a broad neutral purpose but on closer inspection is in fact non-neutral. For example, were a charity to pursue ‘good health’ it would need to demonstrate how it intends to do so, such as researching causes and/or treatment of certain cancers or perhaps simply disseminating information on healthy diets. Simply abstracting the description of charitable purposes would allow an organisation to state its aims in particularly vague terms such as ‘good health’ and then pursue a seemingly controversial and foreseeable interpretation such as homeopathy or other ‘alternative’ medicines. The state would thereby be affording privileges to organisations with non-neutral aims. In this sense abstract, broad categories are in fact self-defeating for state neutrality.

In light of the problems arising from Barry’s abstraction thesis, a different approach is required to establish neutral purposes, that is, purposes that could not be reasonably rejected. A prominent example of neutral goods in the liberal tradition is Rawls’s ‘primary goods’. They include basic liberties, opportunities, income, wealth and the social bases of self-respect. Following Norman Daniels, we may also include health here. Rawls labels these ‘primary goods’ as they are things that are ‘supposed a rational man wants whatever else he wants’. It follows the neutrality of justification reasoning given that in the original position principles are chosen rationally but in

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12 Rawls, A Theory of Justice, p. 79.
ignorance of, among other things, one’s conception of the good. Accordingly, it is not possible to appeal to the superiority of particular conceptions of the good. I believe that the goods, arranged by the two principles of justice, are applicable to charity law.

An objection may be that ensuring primary goods for all citizens is a duty of the state, and not to be applied to legislation concerning charity.\textsuperscript{13} Here it is worth pausing to discuss the fact that purposes in existing legislation are indeed related to justice, particularly social justice. Care for the poor, homeless, elderly and the infirm are the sorts of activities that immediately spring to mind when one thinks of charity. They are paradigmatic of altruistically helping others in need, and the class of beneficiaries is paradigmatic of those in need. A plausible interpretation of these activities is that they fall under the category of social justice, simply by virtue of the good and services provided and the kinds of beneficiaries. It is reasonable to suppose that reasons for this provision, and for whom it goes to, can be found in various theories of social justice accounts based on human rights, welfare, capabilities, and sufficiency, are all capable of providing a defence for the interpretation of these charitable activities as falling within social justice. For liberal neutralists like Rawls, Larmore and Ackerman, principles of justice are uncontroversial for they do not draw on controversial ideas about the good, and in one way or another can be publicly justified. If charities work towards fulfilling those principles of justice, it follows that their activities are uncontroversial. Thus from the perspective of most liberal neutralists, these justice-related charitable purposes are legitimate.

There are some objections to this view, however. They too are framed in terms of social justice. The main objection is that it should not be the remit of voluntary organisations that do not have the ensured resources to meet the basic needs of citizens. It is the state’s duty to meet these basic needs, and by delegating that duty to voluntary organisations without the power to compel citizens to contribute to fulfilling the duty, the state is in effect failing to meet its duty. I have great sympathy

\textsuperscript{13} The adage, ‘justice not charity’ expresses this complaint.
with this objection, but there is a convincing reply. One can agree that it should be the state’s responsibility to meet these needs, but in non-ideal conditions, where the state cannot or will not meet those needs, it does not give us reason to prohibit charities for trying to meet the state’s responsibility. We may well regret the need for charities to pursue these goods but presumably would not object to their efforts.

But suppose the state is willing to meet its duty, but chooses to delegate it to private associations like charities. Even with statutory funding for private associations to deliver the goods and services, many will have legitimate concerns about such basic provisions not being fulfilled by the state, which is regulated by the principles of justice. The reply here is that the regulatory principles should extend to private associations, and apply just as they would to the state.  

There are, of course, other legitimate concerns such as that charity ‘traps’ beneficiaries, that it demeans beneficiaries, and even that it is a fetter on establishing social justice. These concerns can partly be assuaged by a robust legal test regarding each charity’s activities that accounts for the long-term effects of certain goods and services, and partly by allowing charities to alleviate the causes of poverty, not just their effects. At present, this is not permitted in existing legislation, particularly common law ones. This final measure is likely to have the strongest force against the above objections, since it is precisely because charities are prevented from treating the causes of poverty that beneficiaries can be become trapped and so on. It follows that if the state does privatise some of its primary justice duties, then charities will indeed have to be permitted to operate beyond the effects of poverty. It seems the only reason for limiting to charities to the effects of poverty is political expediency, that is, it would be counterproductive for the state to extend privileges to bodies that plan to highlight its failings and criticise its policies. But this reason carries

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14 For a comprehensive analysis of this point, see C. Cordelli, ‘The Institutional Division of Labour and the Egalitarian Obligations of Nonprofits.’ *Journal of Political Philosophy* 20 (2012), pp. 131–155
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little, if any, normative weight. And in actual fact, charities in their constrained campaigning capacity already criticise state policies, or at least provide information and research that bolster such criticism. To limit their remit to alleviating the effects of poverty then is unjustified and nonsensical. A proper response to the objections though requires a comprehensive sociological and economic understanding of the effects that charity has on individuals, communities and society as a whole. I cannot undertake that task here, but if true, clearly these concerns should have an impact on the defence of these paradigmatic charitable activities, even in non-ideal conditions for they may be counterproductive to pursuing the demands of social justice.

Let us now return to the relation between existing charitable purposes and Rawls’s primary goods. When taken in conjunction with the two principles, they are specific goods that are practicable as a set of charitable purposes; that is to say, they are not too abstract or vague. The promotion of basic rights and liberties would be one such purpose. This may entail, as the current legislation specifies, the raising of awareness of rights issues and securing their enforcement. Interpreting the good of income or wealth as a charitable pursuit is somewhat less straightforward, but the relief of poverty could serve the difference principle. Depending on one’s account of the social bases for self-respect, it could give rise to many charitable pursuits; we can at least, I think, correlate it with the purpose of relief for those in need or hardship. A final example of the consistency between existing charitable practices and the Rawlsian version, albeit modified by Daniels, would be the advancement of health. Other categories that do not fall under the framework of primary goods could not be upheld on the basis that they do not meet the test of neutrality set out above. Legislation, then, would have to be revised to remove such purposes as the promotion of the arts, amateur sport, animal welfare, moral improvement and spiritual welfare.

One may object to the removal of such categories on the grounds that competing conceptions of the good might still share the view that, say, art or sport is better than no art or no sport. Let us assume
that it is agreed that art in society is better than no art in society. Thus we can be sure that it would not be reasonably objectionable were the state to encourage the arts by charitable recognition of art groups, providing they met other legal requirements. This should not pose a problem for liberal neutralists given that public reason is unanimous in this case. However, while we may safely make the above assumption, there remains disagreement over which art forms – and their subdivisions – are valuable. Thus, when it comes to affording charitable status, the neutral state is back to the same impasse. The options of levelling down or levelling up return: either dismiss all arts as a charitable category or set out policies that make clear that all art groups, other legal considerations permitting, may potentially be charities.

The upshot of this Rawlsian account of charity law is that the permissible set of purposes is tightly constrained. In essence, it seems limited to the justice-related purposes that I set out above. For many, this implication may not be troubling since it coheres with paradigmatic cases of charitable giving. But it does mean ruling out several aims that are not primary goods, such as environmental preservation, historical heritage, animal sanctuaries, the arts, and sport. Some may well insist, and reasonably so, that the relief of poverty or advancement of health is a more urgent pursuit, but this need not mean that, say, an animal sanctuary should not be a charitable purpose. The urgency and extent to which purposes are pursued would be determined by the support received by the given organisations from the public.

Let us now turn to the neutral justification that I think can capture a much wider range of charitable purposes. As already noted, justification, neutral or otherwise, is required for the facilitation of charitable pursuits. Assuming that reasons should be given for all political decisions – which surely they must – we cannot just assume that the natural condition is that charity be facilitated. For the

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justice-related purposes, the justification is plainly obvious. But there is a neutral justification that can capture all charitable purposes. Thus far, I have assessed considered judgements about specific purposes, but there is a considered judgement at a higher level that has so far not been accounted for, namely, about the practice of charity in general.

That higher, more general considered judgement concerns the value of altruistic behaviour. The fundamental practice of charity entails citizens selflessly dedicating their own resources – wealth, time, facilities, and skills – to improve the lives of their fellow citizens and their communities. The facilitation of this practice can be neutrally justified because altruism, particularly on a societal scale, is a sufficiently thin good that no one could reasonably reject. Under neutrality of justification, it is non-controversial then. I specify all reasonable persons in this instance to exclude nihilists, which at least for the purposes of liberal political thought, ought to be considered unreasonable.

One way the public value of altruism might be scuppered is by altruistic partiality. Lecce, for instance, discusses how altruistic partiality can affect equality. He notes that in ‘Big Brother & Sister’ schemes, children from poor neighbourhoods that are not part of the scheme will be distanced from those that are helped.\(^1\)\(^6\) Moreover, we choose our altruistic pursuits, and so some needs or sectors will not receive the amount that perhaps equality demands. For Lecce, the detrimental affects of altruistic partiality should not be tackled head on by the state. He states:

> Altruistic partiality will compete with equality, but any plausible moral view must accommodate it. So there is yet another reason why, even if the personal is political, we should expect the best theory of justice to endorse some indirect strategy of applying egalitarian principles to personal choice. Otherwise, we are not allowed to help anyone unless, *per impossible*, we somehow manage to help everyone. Surely, nothing could be worse for the badly off.\(^1\)\(^7\)

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\(^1\)\(^7\) Ibid.
In a sense, Lecce’s resistance to direct strategies for equalising altruism coheres with my previous remarks about the problem of levelling up under *neutrality of effect*. Given the fact of reasonable pluralism, citizens will also value different ways to improve lives and communities. Charitable bodies form and flourish given that at least some citizens value the same things, but of course there is a wide range of charitable aims people wish to pursue, some of which are incompatible with one another. This reiterates the running problem of this paper, that is, most charitable purposes in existing practices entail reasonable disagreement. It would seem there is an impasse then. We have a considered judgement on one level that advocates the facilitation of charity and could be neutrally justified. But on another level, when it comes to the actual facilitation of specific charitable aims, we have a considered judgement that those aims are controversial.

How do we account for two seemingly incompatible judgements? To facilitate general altruism, I suggest the state embraces reasonable pluralism at the specific level by allowing all conceptions of the good to be able to obtain charitable status, subject to some basic legal constraints. We cannot abstract or idealise away the fact that different people want to promote different things, but by allowing *all* the opportunity to gain charitable status, the state treats them equally.

The way I have described the strategy thus far is not unlike Barry’s abstraction strategy, in the sense that it establishes a neutral judgement below which are non-neutral judgements. But what I am not doing is neutrally describing each category of charitable purposes. The abstraction process is seeking a considered judgement above those particular purposes which is capable of neutral justification. My argument should also not be confused with accepting non-neutral by-products of pursuing a higher neutral goods. A good example of this would be literacy in schools, where literacy is a neutral good the state wishes to promote within the national curriculum, but in doing so it must decide on particular literature, which is open to reasonable disagreement. But the practice of charity gives rise to a slightly different reasoning; here the state is not selecting particular conceptions to serve a
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higher good. Unlike the case of public education, the institution of charity is such that the state is not forced to select particular goods in order to satisfy that more abstract judgement. As a legal entity, charitable status can, in principle, be extended infinitely to all conceptions. To explain why it ought to be extended to all reasonable conceptions of the good, I turn to Patten’s theory of neutrality of treatment in next and final section of the paper. Before doing so, I need to address Patten’s objection to neutrality of justification given that the first stage of my argument depends on it.

According to Patten, the principal problem is that neutrality of justification can permit the ‘most obvious and paradigmatic cases of non-neutrality.’\textsuperscript{18} The paradigmatic case he gives is religious establishment where special privileges are given to a particular religion because it is thought to be true or intrinsically valuable. For neutralists, this is a paradigmatic instance of a non-neutral state. Yet as Patten points out, we can formulate reasons for religious establishment that do not appeal to the truth or intrinsic value of a religion, but to good social consequences for all citizens. For instance, ‘by associating the state with the majority religion, they will enhance the authority and perceived legitimacy of the state in the eyes of many citizens, thereby making it more effective at pursuing its other objectives’.\textsuperscript{19} Thus, we have a neutral reason for a state of affairs that seem plainly non-neutral.\textsuperscript{20}

Though in principle Patten’s example above is a telling objection to neutrality of justification, in practice, it seems highly unlikely that such a policy would have the instrumental effects he supposes. Putting this empirical speculation aside, the neutral justification I have proposed for the facilitation of charity does not entail the kind of pragmatic, instrumental reasoning that Patten’s religious establishment example does. It is based on what I take to be a shared considered judgement about

\textsuperscript{18} Ibid. p. 257.
\textsuperscript{19} Ibid., pp. 255-6
\textsuperscript{20} Raz gives a similar argument, see The Morality of Freedom, p. 116.
the intrinsic value of general altruism. And since I then use neutrality of treatment to show that all reasonable conceptions should be facilitated, not an established few, I do not think my account is vulnerable to Patten’s objection.

4. Neutrality of treatment

Patten’s account of neutrality of treatment requires that the state be equally ‘accommodating’ of conceptions of the good. If the state were favouring particular conceptions of the good, then ‘the state must adopt an equivalent policy for rival conceptions of the good’ so that they are equally accommodated.21 But what is the measure of a policy being more or less accommodating towards a conception of the good? For Patten, it is whether it is expected to increase the ‘success’ of the given conception of the good.

The reference to the success of conceptions, and the expected consequences of state policies would appear to collapse neutrality of treatment into neutrality of effect. For Patten, the two are distinct as the latter concerns outputs, whereas the former concerns inputs.22 To demonstrate the conceptual difference, Patten provides the example of a philanthropist allocating resources between two worthy causes. She could allocate each an amount that is expected to bring about equal levels of success, or simply allocate each equal amounts. The first allocation equalises outputs, whereas the second allocation equalises inputs.23 To elucidate the difference, note that allocating the same amount for each cause will bring about relatively different success levels if one is more expensive to attain than the other. And if we were to equalise outputs, it may be such that we need to allocate the same amount for each, but since this is not necessarily the case, we have a measure of inputs that is independent of outputs.

22 Ibid., p. 257-8.
23 Ibid., p. 258.
The philanthropist is free to distribute her private resources as she sees fit. But where should the state stand on the distribution of resources to worthy causes? It has been noted that the state directly funds numerous organisations, often with hugely disparate amounts between rival conceptions of the good. So the Royal Opera House, for instance, is *accommodated* more so than a small amateur puppet theatre. To bring the state in line with *neutrality of treatment* here, the state could equalise inputs by removing all direct funding, or allocate equal amounts to rival conceptions.

*Neutrality of treatment* is distinct from *neutrality of effect* even when success is measured by realisability rather than popularity. Suppose that the state gives legal permission for playing fields to be used for team sports. In this instance, people either prefer softball or cricket, and the former is considerably more popular. This policy satisfies *neutrality of treatment*. It states that *team sports* are permitted to use the playing fields, and so the same legal right is given to softball and cricket players. Each then now has the same input – the field – to realise their goal of playing a game, but how far they are realised in actuality will differ. For one, the overwhelming number of softball players will make it difficult for the cricketers to use the field, and second, the cricketers’ numbers may be so low that they cannot get a proper game together anyway. Yet, the policy is still consistent with *neutrality of treatment*.\(^{25}\)

This distinction is crucial in the context of the institution of charity. If the same input of charitable status is made available to all rival conceptions of, say, ‘artistic excellence’ then the extent to which those rival conceptions differ in being realised as a result of charitable status is down to the uptake of charitable status by rival associations. The objection that the Royal Opera House is privileged over, say, punk rock is nullified provided that associations representing the later have the same


opportunity to gain charitable status. If so, their lack of privilege is down to no association having the
numbers or the will to take up charitable status.26

Note also that charitable status is not finite like the playing field. The field is only so big, and can only
be used as time allows. But as a legal entity, charitable status is theoretically limitless. However,
there are some implications that the state and the wider charitable sector will have to consider. It is
reasonable to assume, for example, that the social capital and goodwill garnered from charitable
status may deplete for all if ascribed en masse, for those qualities partly depend on the
distinctiveness of charities from other private associations. In the language of public goods,
charitable status could be seen as non-excludable, but rivalrous.

In the wider context of distributive justice, permitting all conceptions the opportunity to obtain
charitable status might prove problematic. The problem centres on the tax exemptions associated
with charitable status. That privilege may be so incentivising that the uptake will be so great that the
state will not have the tax revenues to meet its basic duties. In reply, I would argue that the uptake
is unlikely to reach this threshold. As is the case in existing practices, the granting of charitable status
not only facilitates associations, but regulates them. A key regulation that reflects a defining
characteristic of charity is that would-be charitable associations cannot pursue a profit. This surely
would discourage many who merely wish to take advantage of the tax breaks.

But even if we allow that uptake could pass this threshold, it does not give us reason to reject my
account of neutral charity law. It demonstrates a background assumption of Patten’s liberal
neutrality, specifically that neutrality is a defeasible principle where non-neutral decisions are

26 Given punk rock’s anti-establishment streak, punk associations might well be deterred from obtaining
charitable status.
necessitated for upholding basic liberal values such as individual self-determination.\textsuperscript{27} I do not have the space here to outline and defend this assumption further, but if correct, the upshot is that the state has a \textit{pro tanto} reason to permit all conceptions the opportunity to obtain charitable status, but if this is to the detriment of the state meeting its basic duties, then charitable status may have to be restricted in light of those circumstances.

Another of Patten’s examples is also remarkably close to issues of charity already noted. It concerns the taxation of goods and services between rival conceptions of the good. Say one is taxed at a rate of 15\%, while the other is taxed at the rate of 25\%. For Patten, it ‘seems natural to say that the state’s taxation policy is less accommodating’ towards the second than the first. Note further that it less accommodating even if it has no effect on the popularity of the conceptions, and even if the state remains neutral on the relative merits of the conception. Thus, \textit{neutrality of treatment} is also distinct from neutrality of effect and neutrality of justification.\textsuperscript{28}

In light of this last example, we can express the problem of charity for neutrality in a new way. Since the goods and services of conceptions of the good that fall under a charitable purpose are not taxed whatsoever, they are \textit{accommodated more} than the goods and services of conceptions that do not fall under a charitable purpose. And again, the state need not do so on the grounds that the former conceptions are more valuable or that they are more successful as a result of the favourable tax rate. It is simply the case that they are \textit{treated unequally}. Further, we can express the non-neutrality of the state of affairs without appealing to ideas of social justice and the impact of foregoing tax on the distribution of resources.

\textsuperscript{27} Patten, ‘Liberal Neutrality’, pp. 249-50.

\textsuperscript{28} Ibid., p. 258.
There are three strategies, according to Patten, that the state could adopt to pursue neutrality of treatment: ‘privatisation’, ‘generic entanglement’ and ‘evenhandedness’. The first strategy will not work for charity. Privatisation entails the state limiting as far as possible the regulation of provisions for the pursuit of conceptions of the good and ‘otherwise extends no assistance to, and imposes no hindrance on, any goods or activities that might be involved in such conceptions’. It merely sets out general rules that apply uniformly to the goods and services for the pursuit of conceptions of the good. As previously explained, charities are not private associations in the relevant sense; the state is not stepping back as it might in the market, but giving assistance and imposing constraints on charitable bodies that other associations do not bear. Though there may be general rules for the pursuit of charitable purposes (with special rules for some purposes), a set of purposes is still singled out. I cannot conceive of a way to modify this institutional distinction between charities and private associations that still maintains charities qua charities, therefore, if the practice is still to be brought in line with neutrality of treatment we are committed to jettisoning the privatisation strategy. Of course, this is only true if we are also committed to maintaining charity as a legal entity, for which I cannot see sufficient reason not to do so given the value of general altruism in society.

Let us see if the second possibility, ‘generic entanglement’, has more success. The basic idea here is that the state provides goods and services that figure in all conceptions of the good. The state’s provisions are entangled as it were in pursuit of all conceptions of the good. As such, ‘no special form of assistance or hindrance is being extended to or imposed on some conceptions of the good but not others.’ To take Patten’s example, if the fire service assists a synagogue, there is no violation of neutrality of treatment for it provides the same service to the facilities of all conceptions of the good. Is it possible to understand charitable status in this way? In some cases, yes. Several bodies are ascribed charitable status for providing services equivalent to the fire service in the ‘generic

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29 Ibid., p. 259.
30 Ibid., p. 260.
entanglement’ sense – education and healthcare, for example. If such services are provided without
discrimination to the public, then it is plausible that they assist the pursuit of all conceptions – good
health, and reading and writing skills are necessary to all, or almost all, conceptions of the good. In
this sense, neutrality is maintained by proxy, that is, it facilitates goods and services that are
entangled with the pursuit of all conceptions of the good.

In many other cases, however, charitable status is ascribed to particular conceptions for their own
pursuit. For instance, religious and moral belief systems, the arts, animal sanctuaries, and so on. How
then can we bring these in line with ‘generic entanglement’? Rather than measure the state’s
neutrality by proxy as above, we could measure the state policy itself. This might be equivalent to
the fire service example in the sense that the state will assist all conceptions of the good with special
status and tax exemptions. For it to be generic entanglement though, all conceptions must indeed
have the opportunity to be assisted. There is some evidence that this occurs under existing practices.
Rival conceptions of religion, for example, are assisted including those opposed to religious beliefs
such as rationalist and humanist groups.

But the above arguments by itself would have radical implications for existing practices. Where there
are no grounds based on basic liberal values such as Patten’s self-determination principle, then
charitable status cannot be refused. Crucially, this rules out refusal based on basic rules on what
counts as a charity, such as being non-profit, for that is irrelevant to neutrality of treatment when
charitable status itself is taken as generic entanglement. A purely private body, for instance, is not
entangled with all conceptions of the good, but the state’s policy must be. So what reason, then, is
there to refuse this private body and not a body that serves the public at large? Under neutrality of
treatment, I believe there is none.
Relatedly, tax could not be levied on any organisation. In essence, charitable status under generic entanglement appears to lead us to a minimalist libertarian position. Given the voluntarist outlook of minimal-state libertarians on redistribution, a much expanded charitable sector would be a harmonious if unintended implication of generic entanglement. Further, for the typical libertarian state, the promotion and regulation of particular pursuits would be illegitimate in the sense that it is unwarranted state interference. In short, the promotion and practices of particular pursuits should be determined by how individuals use their resources, without the state directing them this way or that way. This is an important position that is embedded in broader theories of social justice. I do not have the space to properly explore it here, but, as a rough approximation, most proponents of liberal neutrality also endorse principles of social justice that would be at odds with the libertarian outcome of generic entanglement for charitable status. Thus, they would have a reason to jettison the libertarian implication of generic entanglement.

There is, however, a counterargument to generic entanglement that does not have to draw from the wider debate on social justice. It is as follows: charitable status would be rendered meaningless if given to any and all pursuits of conceptions. Its function is to single out certain pursuits that are different in kind from others. Now this argument only carries weight if we have good reason to think that they are indeed different in kind. And here existing legal constraints on charities are important. Constraints on charitable activity — such as non-profit making, restrictions on private benefit, restrictions on fees, restrictions on the limiting of beneficiaries, and so on — together form the distinguishing features we naturally recognise as charitable.\(^{31}\) To afford the same status to a private body that does not bear these hallmarks would be contrary to what are, I think, strong considered judgements about what it is for an association to be charitable.

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\(^{31}\) To reiterate the distinction made in the introduction, here I am referring to charitable pursuits within the institution of charity, not private acts of altruism.
Reconciling liberal neutrality and the institution of charity

Thus, although I argue that under *neutrality of treatment* all conceptions of the good should have the opportunity to obtain charitable status, it is indeed an opportunity not a guarantee, for how they carry out their conception must be operationalized in way that is coherent with basic judgements about what it is to be a charity. Thus, the legal conditions listed above are a constraint on the actual attainment of charitable status. This is not inconsistent with Patten’s account of neutrality, since as previously mentioned, neutrality is taken as a *pro tanto* reason. In the scenario I describe here then, neutrality can be outweighed where an association’s activities do not tally with the basic understanding of the concept of a charity. This allows the state to extend charitable status to all conceptions of the good without entailing all private associations.

Let us now turn to the third and final strategy for *neutrality of treatment*, ‘evenhandedness’. Here the idea is not to provide a single generic accommodation for all conceptions of the good, ‘but by positively accommodating all of them in an equal fashion, each in their own way.’ So if the state provides one kind of recreational facility, which is valued by some, ‘then it does its best to provide a range of different kinds of comparable facilities that are valued by others.’ The provision of facilities is not left to the market nor is it a generic benefit such as vouchers for private recreational bodies.\(^{32}\) The provisions are tailored to each pursuit on an equal basis, that is, for every skate park, there is a swimming pool, a tennis court, and so on. In short, it is a pluralistic approach to neutrality.

For existing practices, the options for accommodation in the charity context are rather limited, and so the evenhandedness strategy would not operate very differently on the ground from generic entanglement. Special status, tax exemptions and direct funding are the main sources of accommodation for charities, and so, if the state is to equalise across rival pursuits, it will hand out these same accommodations. As noted in the philanthropist example above, the direct funding would have to be distributed on an equal basis too. That said, there is no reason that the state could

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not also provide goods and services for charities in the way that Patten describes for recreational facilities. Indeed there are many recreational charities that would greatly benefit from such provision, such as playing fields and equipment. And since evenhandedness does entail accommodations tailored to different pursuits, the state can aid the efficient running of charities by providing goods and services that are of specific importance to each.

There is a danger, however, that evenhandedness collapses into neutrality of effect, in the sense that the metric for ‘comparable’ accommodations rests on the expected effects of each accommodation. In other words, how is the state to know that it is positively accommodating each conception in its own way without an understanding of what it is for each to succeed. The inputs are different for each pursuit but thought to be equal. Yet we only know that the inputs are equal because of their anticipated consequences for each conception. This is particularly true in the realisability sense – skateboarders need a skate park to skate, and swimmers need a pool to swim in, and so on. Whereas, it would not be equally accommodating to give the swimmers a pool, and the skateboarders some sewing machines. However, this does not entail weighted distribution. That there are many more swimmers than skateboarders, does not mean the state under neutrality of treatment should provide more swimming pools than skate parks. The crowded swimmers will have to bear the consequences for realising their practice. Nor should the state provide more skate parks in an effort to equalise the popularity between swimming and skateboarding. Only the inputs must be equal, so for every swimming pool, there is one skate park. Thus, the evenhandedness strategy, despite taking note of realisability in order to make comparable accommodations, it still holds as an instance of neutrality of treatment.

Like generic entanglement, evenhandedness entails extending accommodation to all conceptions of the good. So again, we need to draw from existing legal conditions if we wish to distinguish charitable pursuits from non-charitable pursuits. It is interesting to note here that Patten
distinguishes state provision of facilities from the market and private recreational clubs.\textsuperscript{33} It is reasonable to assume then that Patten has the intuitive background idea in mind that the state-provided facilities are publicly owned and open to all citizens. Simply put, they are public goods. Alternatively, the state can look to the market without completely relegating the provision of facilities to it; for instance, it might commission private clubs to build such and such facilities to equalise accommodations it makes elsewhere for other sporting pursuits. But if this is to be genuinely accommodating, the private clubs will be constrained in certain ways, such as restrictions on fees and providing some free classes. Thus, we begin to see something that looks existing legal regulations of how charities operate.

Having set out how the strategies of neutrality of treatment are understood within the context of the institution of charity, finally I want to turn to an underlying principle of neutrality of treatment that bolsters the argument that the opportunity for charitable status ought to be extended to all conceptions of the good.

I have alluded to the fact that questions of neutrality arise in the institution of charity because the state distributes the benefits of charitable status to some conceptions of the good and not others. We can have further credence in that idea using what Patten calls ‘neglected passages’ in Rawls on a ‘benefit criterion’. Suppose a just distribution has been established, but some citizens want the state to provide further public goods. Again, sports facilities serves as an appropriate example. As Patten explains:

\begin{quote}
By assumption, these goods are discretionary, in that they are not necessary to establish just background institutions. They are simply goods that at least some citizens
\end{quote}

\textsuperscript{33} Ibid., p. 261
value and that, for one reason or another, are not made easily available on the market.\footnote{Patten, ‘Liberal Neutrality,’ p. 261.}

For these discretionary public goods, the ‘benefit criterion’ applies. In simple terms, it entails that the tax raised from each citizen to pay for these discretionary goods should be proportionate to the benefit each receives. If the state proposes to build lacrosse facilities, for example, which I and my fellow lacrosse-haters have no interest in, then we will not benefit from this scheme. If the lacrosse enthusiasts do not plan to reimburse the state, then ultimately the lacrosse facilities are funded out of general tax revenues. As such, the state is imposing a burden on ‘some citizens to subsidise the provision of benefits for others’, and on a basic level this is unfair.\footnote{Ibid.} As Rawls states, ‘there is no more justification for using the state apparatus to compel some citizens to pay for unwanted benefits that others desire than there is to force them to reimburse others for their private expenses.’\footnote{Rawls, A Theory of Justice, p. 250.}

For Patten, the basic principle of fairness at work in the benefit criterion helps explain what is problematic about departures from neutrality of treatment. It is not just the simple fact that the state is promoting certain conceptions of the good, but that it is using tax revenues from those who do not value or are indifferent to those being promoted, without analogous benefits being given to their own conceptions. Were benefits extended to all conceptions of the good, then all citizens are treated fairly in the distribution of tax revenues as the inputs would be equal – tax is levied and distributed equally between proponents of different conceptions of the good.

But perhaps we have missed a trick here. The schemes in question are for discretionary public goods. Can we not say, then, that all do benefit because they are open to the public at large to use. As such, it is not equivalent to subsidising private benefits as Rawls asserts above. So for instance, I may well have a strong dislike for lacrosse, but the facilities are now available should I develop an interest for lacrosse. In existing practices, this sort of reasoning is prevalent in the context of charities. These
include but are not limited to: charities that provide recreational and sports facilities (including private schools with charitable status), arts facilities including museums, and national heritage sites.

However, as Patten argues, this response does not stand up under scrutiny, for it is based on an implausible understanding of the benefit criterion. It is not the case that violations of the criterion ‘apply different rules to different people (lacrosse-enthusiasts vs. everyone else) and, in this way, violate the basic rule-of-law principle that the law should be the same for everyone’. After all, this can be diffused with the claim above that it is open to everyone. Instead, Patten argues, it is particular activities that are privileged, not a class of particular persons.37 This reasoning is able to capture the primary problem between the institution of charity and neutrality, which is the initial selection of charitable purposes. Neutrality cannot be maintained simply by pointing out that the goods and services provided by a charity are open to all. It is about not giving particular conceptions privileges in the first place.

But how do we explain that privileging particular activities is objectionable? And how does this square with liberal commitments to the individual? For Patten, this is where basic liberal principles come in, specifically, a principle of individual self-determination. This principle rests, as is to be expected from a neutralist account, on a want-regarding understanding of interest, not an ideal-regarding. That is to say, self-determination is understood as ‘the interest to pursue and fulfil the conception of the good that they, in fact, happen to hold.’38 By contrast, it would be ideal-regarding were the state to provide goods and services for conceptions that citizens should pursue.

Returning to the lacrosse example: some citizens do not, in fact, value lacrosse but have other conceptions they wish to pursue. When the state taxes some of their resources to provide facilities

38 Ibid., ‘Liberal Neutrality,’ p. 263, emphasis added.
valued by others, ‘it denies them the fair opportunity to pursue their own conception of the good. It denies them a fair opportunity for self-determination.’\textsuperscript{39} It is unfair because the other citizens – the lacrosse enthusiasts – are taxed too, but since they value the facilities being provided, they are comparatively better off as their self-determination to pursue lacrosse is not detrimentally effected, indeed it is aided by the state’s actions. For Patten, then, ‘the state’s pro tanto reason to be neutral derives from the pro tanto reason it has to opt for policies consistent with fair opportunity for self-determination.’\textsuperscript{40}

The distinction between want-regarding and ideal-regarding relates to the distinction made in section 2 regarding in what sense the state is ‘adding value’. And in light of Patten’s account, we can express the problem with the ‘added value’ argument thusly: the state cannot say to those disgruntled citizens that their conceptions are performing relatively better in the market than the subsidised ones. The inputs are not neutral if the state takes action for those performing less well in the market, and this is wrong for the simple reason that it is unfair to force others to subsidise the pursuits of others.

Let us now review charity law in light of the ‘benefit criterion’ and its underlying notion of fairness. The first thing to notice is that the state privileges conceptions in a positive and negative sense regarding taxation. In the positive sense, the state does distribute significant funds to many charities. Of those charities, some receive funds to provide public services such as education, healthcare and transportation. But many are subsidised to provide goods and services that are not in the traditional sense, public services. In the negative sense, all charities are exempt from taxation. The impact of forgoing tax on the donations to, and revenue generated by, charities places a burden on all citizens.

\textsuperscript{39} Ibid., emphasis added.  
\textsuperscript{40} Ibid., p. 264.
Since not everyone will value the goods and services provided for by charities, the benefit criterion would constrain which, and how much, taxation is distributed to charities. Yet, this naturally occurs in people donating to the charities that they value, so perhaps the simplest strategy would be for the state to remove all direct funding to charities. In a sense, this democratises the pursuit of conceptions of the good. Take the arts for example. If all art forms are permitted the opportunity to gain charitable status, then people will commit their resources to causes which they deem to be of artistic worth. In this respect, the tax exemption for any art form encapsulates Dworkin’s suggestion for indiscriminate tax subsidies for supporting the arts.  

But we are still left with the problem of forgoing tax from all charities. Recall, the basic problem with violations of the benefit criterion, is ‘the allocation of benefits and burdens to different people.’ Is this what is going on with tax exemptions for charities? Yes, but only if some conceptions are able to obtain those exemptions and not others. I argue that all conceptions should be able to obtain charitable status. The burden of tax expenditure then is shared by all, and all share the opportunity to benefit from the scheme. To be sure, my account does not collapse into neutrality of effect, for it could lead to violations of the benefit criterion in terms of outcomes. This is due to the fact that proponents of many conceptions may choose not to benefit from the scheme, so in actual fact their pursuit of their conception is not impacted by the state. But they do have the same opportunity as proponents of any other conception, thus from a neutrality of treatment standpoint, they are treated fairly.

At one point during his defence against perfectionism in A Theory of Justice, Rawls makes the connection between the pursuit of goods, associations and the use of state power explicit. Thus, I

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42 Patten, ‘Liberal Neutrality,’ p. 265.
think it is worth quoting this passage at length. At the outset, Rawls does not deny that in ‘a well-ordered society the values of excellence are recognised’, but under the principle of fairness:

[T]he human perfections are to be pursued within the limits of the principle of free association. Persons join together to further their cultural and artistic interests in the same way that they form religious communities. They do not use the coercive apparatus of the state to win for themselves a greater liberty or larger distributive shares on the grounds that their activities are of more intrinsic value. Perfectionism is denied as a political principle. Thus the social resources necessary to support associations dedicated to advancing the arts and sciences and culture generally are to be won as a fair return for services rendered, or from such voluntary contributions as citizens wish to make, all within a regime regulated by the two principles of justice.\(^{43}\)

In this one passage, there is a lot to unpack and relate to the case of charity. Firstly, Rawls need not deny the idea of human perfection and ideals \textit{per se}; after all this would appear contradictory to the capacity to form and pursue a conceptions of the good. Secondly, individuals with shared ideals form associations to pursue those ideals, and indeed we might say that some pursuits \textit{require} association with others. For example, by definition one cannot fulfil one’s interest in choral singing without others. Thirdly, against a background of value pluralism, while these interests might be shared with some, they are presumably not shared by all. Under the principle of fairness, then, one is restrained from using state power to further that interest. The tax privileges afforded to charitable associations might be seen as the ‘greater liberty or larger distributive shares’ that Rawls notes. But note that Rawls is making a comparative judgement between pursuits of different interests or ideals – it is couched in terms of ‘greater’ and ‘larger.’ But the institution of charity based on the idea of Patten’s \textit{neutrality of treatment} would not fall foul of such comparisons, as all pursuits – provided they meet certain legal requirements – would be entitled to charitable status.

Finally, the remarks towards the end of this passage suggest that the advance of one’s pursuits should be found in the open market, not from the state. What Rawls means by ‘the social resources necessary... are to be won as a fair return for services rendered’ is open to interpretation. It could refer to returns in the open market, or returns from the state for carrying out services on its behalf. The former interpretation is the more plausible given his preceding denial of political perfectionism, and the alternative suggestion of ‘voluntary contribution’ can obviously include donations to charitable associations. But as I demonstrated earlier, charitable associations are not standard private associations, and for the reasons I gave above, charitable associations are a special case given their inherent altruism. The associations Rawls discusses above are private associations pursuing the good for their own members or paying customers. If I am right about there being a neutral justification for establishing the institution of charity, then, together with the neutrality of treatment regarding all conceptions, it is neutral under Rawls’s basic principle of fairness.

5. Conclusion

In summary, I have set out a neutral version of charity law that accounts for the considered judgement about the practice of charity in general, and which can distribute the privileges that make charities the unique associations we paradigmatically consider them to be. What I have proposed is a two-stage argument. The first stage establishes a neutral principle for facilitating charitable associations. This principle though does not account for how the state selects purposes for facilitation. For that, we need a second principle. Each principle, then, is necessary but not sufficient to establish the neutral facilitation of charities. With respect to existing practices, this entails at least one substantial reform. In most cases, the state – through a combination of legislation, regulation and legal decisions – specify the goods and services that are capable of obtaining charitable status. Under my account, all conceptions of the good have the opportunity to obtain charitable status subject to basic constraints on what it means to be a charity. Thus, there is no need for the state to set out a thick conception of charitable purposes.