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Democracy and Multiculturalism

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Introduction

One of the most pressing issues facing liberal democracies today is the politicisation of ethnocultural diversity. Minority cultures are demanding greater public recognition of their distinctive identities, and greater freedom and opportunity to retain and develop their distinctive cultural practices. In response to these demands, new and creative mechanisms are being adopted in many countries for accommodating these differences. This chapter discusses some of the issues raised by these demands, focusing in particular on the difficulties, which arise in North America and Israel when the minority seeking accommodation is illiberal.

Historically, liberal democracies have hoped that the protection of basic individual rights would be sufficient to accommodate ethnocultural minorities. And indeed the importance of individual civil and political rights in protecting minorities cannot be underestimated. Freedom of association, religion, speech, mobility, and political organisation enable individuals to form and maintain groups and associations, to adapt these groups to changing circumstances, and to promote their views and interests to the wider population.

However, it is increasingly accepted that these common rights of citizenship are not sufficient to accommodate all forms of ethnocultural diversity. In some cases, certain 'collective' or 'group-differentiated' rights are also required. And indeed there is a clear trend within liberal democracies toward the greater recognition of such group-differentiated rights. Yet this trend raises a number of important issues, both theoretical and practical. How are these group rights related to individual rights? What should we do if group rights come into conflict with individual rights? Can

a liberal democracy allow minority groups to restrict the individual rights of their members, or should it insist that all groups uphold liberal principles?

These are genuinely difficult questions. Ethnocultural relations are often full of complications, which defy simple categories or easy answers. However, we can make some progress if we draw some distinctions between different kinds of groups, and different kinds of 'group rights'. In this essay we first make a distinction between two forms of cultural pluralism: multination states and polyethnic states, and then make a further distinction between internal restrictions and external protections. The concept of internal restrictions concerns the rights of a group against dissenting members of the same group; whereas the concept of external protections concerns the rights of a group against the society at large. We proceed by probing the nature of liberal tolerance and then delineate the limits of state intervention.

Two Kinds of Minority Cultures

Virtually all liberal democracies contain some degree of ethnocultural diversity. They can all be described, therefore, as 'multicultural'. But the patterns of ethnocultural diversity vary dramatically between countries, and these variations are important in understanding the claims of minority cultures. A complete typology of the different forms of ethnocultural diversity would be an immensely complicated task, but for the purposes of this paper, we outline a very basic distinction between two forms of cultural pluralism: 'multination' states versus 'polyethnic' states.

(a) Multination States: In everyday parlance, we often describe independent countries as 'nation-states'. But many countries are in fact multinational; they contain more than one nation. By 'nation' we mean a historical community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and culture. A 'nation' in this sociological sense is closely related to the idea of a 'people' or a 'culture'—indeed, these concepts are often defined in terms of each other.

If a nation's homeland becomes incorporated into a larger state, then it becomes what we will call a 'national minority'. The incorporation of national minorities into a larger state has typically been an involuntary process. Some national minorities have been invaded and conquered by

another nation; others have been ceded from one imperial power to another; yet others have had their homeland overrun by colonising settlers. But some multination states have arisen voluntarily, when different cultures agree to form a federation for their mutual benefit.¹

Israel is a binational state. It is comprised of Jews and Palestinians who try to live in coexistence. The liberal formula they seek to advance is 'live and let live'. Israeli-Jews are mostly concerned with their security. Once they feel that the Israeli-Palestinians do not threaten their very existence they would allow Palestinians to further their own conception of the good.² With the exception of a few cities where we may find Jews and Palestinians living together, the two groups do not strive to intermingle. They live in their own communities and, generally speaking, do not try to overcome the dissimilarities. Both nations have different interpretations of history regarding the events that brought about the current situation. While most Jews claim that they took over the land via just means, many of the Palestinian people complain of colonisation and deportations. With regard to the current state of affairs, Palestinians often claim that they are being discriminated against, and that they do not feel 'at home' in Israel.³ Israeli-Jews argue in response that the Palestinians are equal citizens. In this context a distinction could be made between *formal* and *full* citizenship.

The notion of citizenship is commonly perceived as an institutional status from within which a person can address governments and other citizens and make claims about human rights. All who possess the status are equal with respect to rights and duties with which the status is endowed. The Israeli-Jews can be said to enjoy full citizenship, *i.e.*, they enjoy equal respect as individuals, and they are entitled to equal treatment by law and in its administration. The situation is different with regard to the Israeli-Palestinians, who constitute today some 19 per cent of the population. Although formally the Israeli-Palestinians are considered to enjoy equal liberties as the Jewish community, in practice they do not share and enjoy the same rights and burdens. Moreover, they have to live with some limitations on their freedoms, which the Jewish majority does not.⁴

In North America national minorities include the American Indians, Puerto Ricans, and descendants of the Mexicans living in the Southwest before 1848 in the United States, and the Aboriginal peoples and the Quebecois in Canada. In Europe some countries are multinational, either because they have forcibly incorporated indigenous populations (*e.g.*, Norway and Finland which contain communities of Lapps, known also as Sami. In Norway the Sami community is considerably larger), or because

they were formed by the more or less voluntary federation of two or more European cultures (*e.g.*, Belgium and Switzerland). However they were incorporated, national minorities have typically sought to maintain or enhance their political autonomy, either through outright secession, or through some form of regional autonomy. And they typically mobilise along nationalist lines, using the language of 'nationhood' to describe and justify these demands for self-government.

While the ideology of nationalism has typically seen full-fledged independence as the 'normal' or 'natural' end point, economic or demographic reasons may make this infeasible for some national minorities. Moreover, the historical ideal of a fully sovereign state is increasingly obsolete in today's world of globalised economics and transnational institutions. Hence there is a growing interest in exploring other forms of self-government, such as federalism. Indeed, some commentators argue that we are currently witnessing a 'federalist revolution' around the world, precisely because federalism has proven the most effective way to accommodate minority nationalisms within larger states.⁵

(b) Polyethnic States: A second source of diversity is immigration, particularly where large numbers of individuals and families are admitted from other countries, and allowed to maintain some of their ethnic particularity. An increasing number of countries now contain sizeable immigrant communities, but it is the New World 'countries of immigration' which have the greatest experience in this area—particularly Australia, Canada, and the United States.

Until the 1960s, all three of these countries adopted an 'Anglo-conformity' model of immigration. That is, immigrants were expected to assimilate to existing cultural norms, and, over time, become indistinguishable from native-born citizens in their speech, dress, leisure activities, cuisine, family size, and so on. However, beginning in the 1970s, it was increasingly accepted that this assimilationist model was unrealistic and unjust. All three countries gradually adopted a more tolerant or 'multicultural' approach, which allows and indeed encourages immigrants to maintain various aspects of their ethnic heritage. Immigrants are free to maintain some of their old customs regarding food, dress, recreation, religion, and to associate with each other to maintain these practices. This is no longer seen as unpatriotic, 'un-American', or 'un-Australian'.

In Israel, too, we find a gradual adaptation of the multicultural approach regarding the different Jewish cultures that came to live in the

newly established state from all corners of the world. Israel, established in 1948, is an immigrant society. During the 1950s the aspiration was to create 'a Israeli-Jewish life style' which really meant to create a unified, western life style. Israel's first prime minister, David Ben-Gurion, declared that '[W]e shall not shut ourselves up in our shell. We shall be open to take in all the cultures of the world, all the conquests of the spirit'.⁶ In practice, however, some cultures were rejected during the formative years and efforts were made to curtail their legitimacy, maybe because they were not conceived at that time (the 1950s) as conquests of the spirit of the Israeli-Jew. Instead of encouraging pluralism, cultural pluralism was viewed as a threat to the founding elite. Feelings of ethnocentrism and paternalism, mixed with intolerance, impermeability, and sometimes even pure cruelty brought about the notion of 'us' and 'them'. The Middle-Eastern tradition was looked upon as a threat to progress, development, and to Israeli democracy as such. It was acknowledged that the Middle-Easterners conceived their culture in a positive light and did not realise how harmful it was. In due course, however, the Middle-Easterners will comprehend the western values and then, so it was believed, 'they' will thank 'us' (the Ashkenazi European elite) for helping them to accommodate to the western life style. The enunciated view was that 'we' were benevolent people who brought the Middle-Easterners to an upper stage of development, and that it was for their own advantage to change their culture. As a result, efforts were made to upgrade the 'backward primitives' and to reshape their entire being and thinking in the European image. Those 'primitives' were expected to switch worlds, and to start a new life according to a new set of values that included socialist, modern nationalistic, secular as well as democratic notions and norms. Upon this set of values the legitimisation of the state and the national consensus were to be founded. That many of these values were remote from the Middle-Easterners' conception of the good was not considered to constitute a major obstacle. The thought was that they will have to accommodate themselves, forget their old world and accept values that coincide with the nation-building ideology. The acculturation process left no room for preserving the tradition and culture prior to the ascension to Israel.⁷

In the mid-1960s, the concept of integration through *mizug galuyot*—a euphemism for the assimilation of the Middle-Easterners into the European culture—was dropped by government and Jewish Agency leaders in favour of 'cultural pluralism'. The Israeli culture was no longer to be envisaged monolithically, but as the sum total of numerous subcultures,

Western and Eastern alike, each with its own distinction and legacy. Yet the patronising attitude did not disappear and the trend of thinking that prefers the making of a 'standard' Israeli who bears the Sabra image over cultural pluralism still continued to prevail.

During the 1970s attempts were made to extend the scope of symbols and landmarks of the civil religion. We witnessed a growing emphasis on ethnicity and ethnic celebrations. This development legitimised and celebrated the distinctive customs and traditions of a variety of Oriental ethnic groups, like the Kurdish (the *Saharane* celebrations) and the North African (the *maimounah* celebrations).⁸ Recently voices were heard to include the *maimounah* celebrations within the calendar of national festivals.

In 1977 the Likud came to power. The deprivation of the Middle-Easterners in the cultural sphere and their institutional discrimination in the economic sphere played a significant role in the emergence of the leading opposition party. Many felt that by voting for the Likud they could retain some of their dignity and pride. Although the Likud did not succeed in eliminating economic differences, it did succeed in raising the self-esteem of the Middle-Easterners. The Likud had promoted a sense of psychological equality between the two major ethnic groups in Israeli society, Ashkenazim and Middle-Easterners. It had done so, *inter alia*, by giving an institutional legitimisation to traditional norms and to folklorist behaviour. People of Middle-Eastern origin who were previously ashamed of certain expressions of traditional beliefs, and who were made to feel uncomfortable in regards to them, no longer felt a sense of uneasiness in performing them in public. Thus, for instance, since 1977 we increasingly witness the revival of cults that praise saints and of *hiluloth* (celebrations) at tombs and sites consecrated to these saints.

From a psychological perspective, this constituted a fundamental difference. Traditional behaviour, technological modernism as well as the appeal to the west, emerged as legitimate factors that could be sustained one alongside the others. It was not that Israel had to decide between modernism and traditionalism, and that one should come at the expense of the other in all times at all spheres through the implementation of coercive means. Rather, one could be compatible with the other if a balance was drawn through the promotion of tolerance, understanding of different needs of different sectors, and the making of compromises. The negative attitude to multiculturalism that prevailed in the 1950s was replaced in the 1980s by

a positive attitude, acknowledging that both western and eastern cultures are legitimate within the society.⁹

In Israel the national divide is far more prominent than the cultural. Though we do not underestimate the feelings of hostility and mistrust that still prevail among Middle-Easterners against Ashkenazim for years of deprivation and discrimination, still considerations of security are the most prominent. The first and foremost worry is to secure the Israeli borders and mitigate the Israeli-Palestinian conflict in a way that would accommodate the interests of both sides. We should also note that the cultural character of Israel is in the process of change as a result of waves of immigration that continue to arrive in Israel, especially from eastern Europe and more particularly from the former republics of the Soviet Union. It is estimated that since 1989 more than 750,000 people arrived in Israel from the former Soviet republics.

In the Anglo-Saxon societies considerations of security are far less dominant. Here some people worry that the 'multicultural' approach to immigration is encouraging immigrant groups to develop the same attributes and ambitions as national minorities—*i.e.*, to start thinking of themselves as 'nations' with the right to govern themselves, and to develop a more or less full set of separate institutions operating in their own language.¹⁰ But this is neither the intention nor the effect of existing policies in the three major immigrant countries. In public life, immigrant groups still participate overwhelmingly within the institutions of the larger society. They mix with native-born citizens in common educational, economic, legal, and political institutions, all of which operate in the majority's language. Their distinctiveness, therefore, is manifested primarily in their family lives and in voluntary associations. Because they lack separate institutions operating in their own language, and because they do not occupy homelands, few if any immigrant groups think of themselves as 'nations', or claim rights to self-government.

Multiculturalism for immigrants, therefore, is best understood not as a rejection of linguistic and institutional integration, but as a change in the terms of integration. Immigrants are still expected to learn the majority's language, and to integrate into common institutions. Indeed, learning English is a mandatory part of children's education in Australia and the United States.¹¹ Similarly, in Israel the Hebrew language is mandatory in Jewish schools, and in Canada children must learn either of the two official languages (French or English). Multiculturalism holds that it is neither necessary nor fair to insist that institutional and linguistic integration be

accompanied by a more extensive cultural assimilation. On the contrary, for the government to require linguistic and institutional integration is only fair if, in return, these common institutions are reformed so as to accommodate the identity of immigrant groups.¹²

As a result of extensive immigration, combined with the increased toleration of ethnic identities, the United States and Australia have a number of 'ethnic groups' as loosely aggregated subcultures within the larger English-speaking society, and so exhibit what we will call 'polyethnicity'. Similarly, Canada has a number of ethnic groups as loosely aggregated subcultures within both the English and French-speaking societies. In Israel we find this phenomenon especially among Ethiopian and Russian immigrants who made *aliya* (came to live in the Jewish state) during the past fourteen years or so. Many of these immigrants prefer to live in their own cultural communities. Living together answers some of their most basic needs: it gives them a sense of familiarity, of unity, and of security. They also share their financial problems and could consult in their own language with people they know, people who belong to the same community and could understand, sympathise, and identify with their difficulties.

To summarise: Some countries are 'multinational' (as a result of colonisation, conquest, and confederation), others are 'polyethnic' (as a result of immigration), and some countries, like Canada, the United States, and Israel are both. Of course, there are other kinds of ethnocultural diversity; many groups are neither immigrants nor national minorities (*e.g.*, African-Americans;¹³ gypsies;¹⁴ Turkish guest-workers in Germany;¹⁵ guest-workers from all over the world in Israel¹⁶). But we will focus on these two types, partly because they are the most common in liberal democracies, and also because liberal democracies have, over the years, learned a great deal about how to accommodate these forms of diversity. Both immigration and minority nationalisms continue to raise many conflicts and challenges for liberal democracies. But we can also see some familiar patterns in how these conflicts and challenges are dealt with, and we can begin to trace the outlines of a liberal-democratic approach to the rights of these minority cultures.

Two Kinds of Group Rights

Both immigrant groups and national minorities are, in different ways, seeking legal recognition of their ethnocultural identities and practices. These demands are often described, by both their defenders and critics, in the language of 'group rights'. Defenders, however, typically describe group rights as *supplementing* individual rights, and hence as enriching and extending traditional liberal principles to deal with new challenges, whereas critics tend to assume that group rights involve *restricting* individual rights, and hence as threatening basic liberal democratic principles.

What then is the relationship between individual rights and group rights—are they mutually reinforcing, or mutually antagonistic? The answer to this question is not a simple one and we need to take into account the different claims that are involved. Consider two kinds of rights that a group might claim: the first involves the right of a group against its own members; the second involves the right of a group against the larger society. Both kinds of collective rights can be seen as protecting the stability of national, ethnic, or religious groups. However, they respond to *different* sources of instability. The first kind is intended to protect the group from the destabilising impact of internal dissent (*e.g.*, the decision of individual members not to follow traditional practices or customs), whereas the second is intended to protect the group from the impact of external pressures (*e.g.*, the economic or political decisions of the larger society). To distinguish these two kinds of group rights, we will call the first 'internal restrictions', and the second 'external protections'.¹⁷

Of course, all forms of government involve restricting the liberty of citizens (*e.g.*, paying taxes, undertaking jury duty or military service). Even the most liberal of democracies imposes such restrictions in order to uphold individual rights and democratic institutions. But some groups seek to impose much greater restrictions, not in order to maintain liberal institutions, but rather to protect religious orthodoxy or cultural tradition. A sociological look at different societies reveals that many groups seek the right to legally restrict the freedom of their own members in the name of group solidarity or cultural purity. When one looks at rituals around the globe, it is almost always the case that women are discriminated against: suttee, arranged marriage, female infanticide, as well as female circumcision, and murder for family honour are such examples. Women are required to pay a high price for the norm of male dominance. Group rights are invoked by theocratic and patriarchal cultures where women are oppressed and religious orthodoxy enforced. This obviously raises the

danger of individual oppression. At the same time there is also a danger that claims for group rights might override law and order. In the name of preserving culture and protecting a sense of community, a demand is raised against society not to interfere even when the most atrocious things take place.

In our view, such internal restrictions are almost always unjust. Groups are free, of course, to impose certain restrictions as conditions for membership in *voluntary* associations, but it is unjust to use governmental power, or the distribution of public benefits, to restrict the liberty of members. From a liberal point of view, whoever exercises political power in a community must respect the civil and political rights of its members. Furthermore, members of cultural groups should enjoy the liberty to leave their groups upon reaching the conclusion that they no longer wish to associate themselves with the group. People in democratic societies should be free to move in and out of their cultural communities and should not be coerced to stay in order to serve the partisan interests of others. This, as we said, is especially true for women who live in a chauvinist, discriminatory environment.

Look, for instance, at the practice of murder for family honour that is employed by some cultural communities in Israel, most notably in the Bedouin and Druze communities, sometimes also in the Christian community. On most occasions its victims are women perceived to be 'misbehaving'. In these communities, honour is frequently more important than life, and culture more important than law. Reports show that women were assassinated because they were accused of not conforming to prevailing moral codes.¹⁸ Violation of the sexual norm by a married woman automatically calls for her murder. As for single women, accusation is always based on the breach of the norm that a girl or unmarried woman who has 'sinned' must be punished by death unless she marries her partner in intercourse. By murdering their daughters or sisters, the men prove the control the natal family has over its women.¹⁹

Many men of these communities conceive such instances of murder for family honour as 'internal matters', meaning that society should not interfere. In these communities, a connection of silence surrounds the issue. Of the victims who escaped death, only a few were prepared to testify against their families. On some occasions, the act of murder is disguised as a suicide, and it needs some investigation to clear things out and resolve the case. When girls do not step forward and acts of murder are committed, often the police are reluctant to interfere, perceiving these crimes as the

decision-makers of these communities want, *i.e.*, as ‘internal affairs’ to be resolved within the specific community. *Ipsa facto*, the result of this outlook might be that an offence against family honour (*intihak el-hurma*) serves as an adequate justification for taking life.

The problem is that in the Muslim and Druze communities no powerful organisations exist to safeguard the most fundamental right: the right to life when ‘problematic’ girls are concerned. Girls who flee for fear because they betrayed their family honour are usually returned to their families by the police or turned over to one respectable personality, a sheikh, qadi, mukhtar, or to a tribal chief. The regime reinforces the patriarchal tradition at the expense of women. Women are left unprotected and a crude rumour might be sufficient to end the life of one suspected of indecent conduct.²⁰

It is our contention that some things lie beyond the ability of liberal democracies to tolerate. Democracy cannot endure norms that deny respect to people and that are designed to harm others, although they might be dictated by some cultures. Some norms are considered by liberal standards to be intrinsically wrong, wrong by their very nature. Such are norms, which result in physical harm to women and babies like widow burning, female infanticide, harsh forms of female circumcision,²¹ and murder for family honour.

That is to say, the right of a group against its own members is not absolute. Sometimes society is justified to interfere and impose restrictions on certain cultural practices. This, however, does not mean that cultural groups do not have rights against the larger society on matters that do not entail considerable harm to others. Let us now examine when external protections are justified.

The second kind of collective rights, external protections, is defensible when groups seek to protect their identity by limiting their vulnerability to the decisions of the larger society. For example, reserving land for the exclusive use of a minority group ensures that it will not be outbid for the land by the greater wealth of outsiders. Guaranteeing representation for a minority on advisory or legislative bodies reduces the chance that the group will be outvoted on decisions that affect the community. Devolving power to local levels enables the group to make certain decisions on its own. These sorts of external protections are often consistent with liberal democracy, and may indeed be necessary for justice. They help put the different groups in a society on a more equal footing, by reducing the extent to which minorities are vulnerable to the larger society.

Some claims for external protections are unjust. Apartheid, where a certain minority takes over the wealth of the country while discriminating against the majority, monopolises all the political power, and imposes their language on other groups is manifestly unjust. Indeed, the South African apartheid, where whites who constituted less than 20 per cent of the population demanded 87 per cent of the land mass of the country, monopolised all the political power, and imposed their language on other groups, was manifestly unjust and made South Africa the second country in history to base its constitution on racism.²² In democracies the minority usually has no ability or desire to dominate larger groups. The external protections they seek would not deprive other groups of their fair share of economic resources, political power, or language rights. As a rule, minorities simply seek to ensure that the majority cannot use its superior numbers and wealth to deprive the minority of the resources and institutions needed to sustain their community. And that, we think, is a legitimate demand.

So whereas internal restrictions are almost inherently in conflict with liberal democratic norms, external protections are not, as long as they promote equality between groups, rather than allowing one group to dominate or oppress another. It is important, therefore, to determine whether the claims of ethnocultural groups involve internal restrictions or external protections, and the grounds for each claim. This is not always an easy question to answer, particularly since self-government rights can be used either to secure external protections or to impose internal restrictions. But it is worth noting that *some* ethnocultural groups are only interested in external protections. Some national minorities and immigrant groups are concerned with ensuring that the larger society does not deprive them of the conditions necessary for their survival, but not with controlling the extent to which their own members engage in nontraditional or unorthodox practices.

We emphasise this because some commentators assume that if a minority is itself liberal and respects the rights of its individual members, then it has no need for group-differentiated rights.²³ If a minority seeks group-differentiated rights, beyond the common rights of liberal citizenship, then this is seen as evidence that it must somehow be illiberal. But even the most liberal minority can still wish for external protections—such as land claims, guaranteed representation, self-government rights, or exemptions from particular laws in order to limit their vulnerability to the economic or political power of the larger society. There is no inconsistency

in seeking such external protections while respecting the rights of members within the group. Indeed, such groups may adopt internal constitutions, which guarantee civil and political rights for their members.

However, these are the easy cases, at least in principle. Even if many liberal theorists and commentators have historically opposed demands for external protections, there is no reason in principle why liberal democracies cannot accommodate the demands of ethnocultural groups which are themselves liberal.²⁴ The more difficult cases concern groups, which are illiberal—*i.e.*, groups that are concerned with controlling internal dissent, and so seek to impose internal restrictions short of inflicting physical harm on their members. We have mentioned cultural minorities in Israel which exhibit intolerant and harmful attitudes towards their women. Now we wish to probe the more difficult issues that involve some restrictions on group members but which do not amount to severe physical harm.

One example is concerned with some Pueblo Indian communities in the United States who enjoy extensive rights of self-government and who discriminate in the distribution of housing against members who have abandoned the traditional tribal religion. They also discriminate against women who have married outside the tribe.²⁵ Similarly, some immigrant groups and religious minorities use ‘multiculturalism’ as a pretext for imposing traditional patriarchal practices on women and children. Some immigrant and religious groups may demand the right to stop their children (particularly girls) from receiving a proper education, so as to reduce the chances that the child will leave the community; or the right to continue traditional customs such as compulsory arranged marriages that is common among certain immigrant cultural communities in North America and Israel.²⁶

The Nature of Liberal Tolerance

How should liberal states respond to these cases in which immigrant, cultural and national groups demand the ‘right’ to protect their historical customs by limiting the basic civil liberties of their members and at the same time refrain from using violence? Some of these cases are hard cases. It is easy for liberal states to accommodate the demands of groups which are themselves liberal, but surely what some minorities desire is precisely the ability to reject liberalism, and to organise their society along traditional, non-liberal lines. Isn’t this part of what makes them culturally

distinct? If the members of a minority lose the ability to enforce religious orthodoxy or traditional gender roles, haven't they lost part of the *raison d'être* for maintaining themselves as a distinct society? Isn't the insistence on respect for individual rights a new form of ethnocentrism, which sets the (liberal) majority culture as the standard to which other cultures must adhere? Indeed, isn't it fundamentally intolerant to force a national minority or religious sect to reorganise its community according to 'our' liberal principles?

These difficult questions have given rise to important conflicts, not only between liberals and non-liberals, but also within liberalism itself. For tolerance is itself a quintessential liberal value, alongside other liberal values like individual freedom and personal autonomy. The problem, of course, is that these values can conflict: promoting individual freedom may entail intolerance towards illiberal groups, while promoting tolerance of illiberal groups may entail accepting restrictions on the freedom of individuals. What should be done in such cases?

If an illiberal minority is seeking to oppress other groups, then most liberals would agree that intervention is justified in the name of self-defence.²⁷ Hence the secular majority in Israel has every right to object to attempts which aim at narrowing its freedom of conscience and to broaden the authority of religious orthodoxy. But what if the group has no interest in ruling over others or depriving them of their resources, and instead simply wants to be left alone to run its own community in accordance with its traditional non-liberal norms? In such cases, some liberals may think that tolerance should take precedence over autonomy so long as the practice in question does not contravene the rule of law.²⁸ If these minorities do not want to impose their values on others, shouldn't they be allowed to organise their society according to their culture and within the general ambit of the law, even if this involves limiting the liberty of their own members?

There is a growing debate amongst liberals about whether autonomy or tolerance is the fundamental value within liberal theory.²⁹ Defenders of tolerance argue that there are many groups within the boundaries of liberal states which do not value personal autonomy, and which restrict the ability of their members to question and dissent from traditional practices. Basing liberal theory on autonomy threatens to alienate these groups, and undermine their allegiance to liberal institutions, whereas a tolerance-based liberalism can provide a more secure and wider basis for the legitimacy of government. On a tolerance-based view, liberals should seek to

accommodate illiberal groups, so long as they do not seek any support from the larger society, and do not seek to impose their values on others.

Defenders of the tolerance-based view often argue that liberalism emerged out of the idea of religious toleration. Religious tolerance developed in the West when both Catholics and Protestants realised that a stable constitutional order could rest on a shared religious faith; liberals have simply extended the principle of tolerance to other controversial questions about the 'meaning, value and purpose of human life'.³⁰

There is some truth to this claim that liberalism is an extension of the principle of religious tolerance, but this connection, paradoxically, does not exclusively support the tolerance-based view. For the sort of religious tolerance which emerged in the West, and which was subsequently generalised, was precisely an autonomy-based conception of tolerance. Religious toleration in the West was based on the idea of individual freedom of conscience. Tolerance was achieved by giving each individual the right to worship freely, to propagate one's religion, to change one's religion, or indeed to renounce religion altogether. Indeed, to restrict an individual's exercise of these liberties is now seen as a violation of a fundamental human right.

There are other forms of religious toleration which are not based on individual freedom and autonomy. They are based on the idea that each religious group should be free to organise its community as it sees fit, including along non-liberal lines. In the 'millet system' of the Ottoman Empire, for example, Muslims, Christians, and Jews were all recognised as self-governing units (or 'millets'), and allowed to impose restrictive religious laws on their own members. This was a group-based form of toleration, which did not recognise any principle of individual freedom of conscience.³¹

So when liberals extended the principle of religious tolerance to other areas of life, they were extending an individual freedom-based notion of tolerance. This is why a genuinely liberal conception of tolerance will deny the legitimacy of internal restrictions, which limit the right of individuals within the group to revise their conceptions of the good. For example, liberalism opposes attempts by a religious minority to legally prohibit apostasy and proselytizing, or to prevent their children learning about other ways of life.³²

Let us reflect on two different examples of this conflict. First, consider the Canadian case of *Hofer v. Hofer*, which dealt with the powers of the Hutterite Church over its members.³³ The Hutterites live in large

agricultural communities called colonies, within which there is no private property. Members of the Hofer family, life-long members of a Hutterite colony were expelled for apostasy. They demanded their share of the colony's assets, which they had helped create with their years of labour. When the colony refused, the two ex-members sued in court. They objected to the fact that they had 'no right at any time in their life to leave the Colony where they are living unless they abandon literally everything...even the clothes they are wearing'.³⁴ The Hutterites defended this practice on the grounds that freedom of religion protects a congregation's ability to live in accordance with its religious doctrine, even if this limits individual freedom.

The Canadian Supreme Court in a six to one decision accepted this Hutterite claim. The majority opinion (Cartwright C.J.C., Martland, Judson, Ritchie, Hall, and Spence JJ.) did not regard this as a case in which the Court can be asked to relieve against a forfeiture, for by the terms of the articles signed by the Hutterite members, the appellant never had any individual ownership of any of the assets of the Colony. Cartwright C.J.C. added that the 'principle of freedom of religion is not violated by an individual who agrees that if he abandons membership in a specified church he shall give up any claim to certain assets'.³⁵

Justice Louis-Philippe Pigeon noted in dissent that the usual liberal notion of freedom of religion 'includes the right of each individual to change his religion at will'. Hence churches 'cannot make rules having the effect of depriving their members of this fundamental freedom'. The proper scope of religious authority is therefore 'limited to what is consistent with freedom of religion as properly understood, that is freedom for the individual not only to adopt a religion but also to abandon it at will'. Pigeon thought that it was 'as nearly impossible as can be' for people in a Hutterite community to reject irreligious teachings, due to the high cost of changing their religion, and so were effectively deprived of freedom of religion.³⁶

Justice Pigeon's dissent is the proper liberal approach. Pigeon starts with the liberal presumption that people have a basic interest in their capacity to form and revise their conception of the good. Hence, he concludes, the power of religious communities over their own members must be such that individuals can freely and effectively exercise that capacity. If we accept this view, then we must interpret freedom of religion in terms of an individual's capacity to form and revise her religious beliefs.

The second example is the *Wisconsin v. Yoder* case in the United States which dealt with the power of the Amish community over its

members.³⁷ The Amish wanted to withdraw their children from the state educational system before the age of sixteen, arguing that formal high-school education beyond the eighth grade is contrary to their beliefs, not only because it places the Amish children in an environment hostile to their beliefs, but also because it takes them away from their community, physically and emotionally, during the crucial and formative adolescence period of life. Undoubtedly, this would severely limit the extent to which the children learn about the outside world. The Amish, like the Hutterite, defended this by arguing that freedom of religion protects a group's freedom to live in accordance with its doctrine, even if this limits the individual freedom of children. The American Supreme Court, led by Burger CJ., accepted the Amish claim, but here again the claim seems inconsistent with basic liberal principles. We should emphasise that our objection to the decision is not to the actual conclusion, but rather to the conception/interpretation, which the Court gave to the right of freedom of religion. The Court defined freedom of religion primarily in terms of the group's ability to live in accordance with its doctrine, rather than the individual's ability to form and revise his or her religious beliefs. This is not to say that the Amish necessarily deny this latter individual freedom. Our point is that the Court never really even addressed that question systematically, since it defined freedom of religion in a non-liberal, group-based way. We are not saying that group-imposed restrictions on education are necessarily inconsistent with individual freedom of choice, but that for a liberal interpretation of freedom of religion, this is what needs to be examined. The demands of the group must be consistent with the real and ongoing capacity for choice by individuals.

Hence, our concern is less with the Amish *per se*, as with the test the Court invoked to assess the Amish situation. Of course, one could argue that the Amish should be exempted from the usual liberal conception of freedom of religion, on the grounds that they, like the Pueblo, do not fall under the jurisdiction of the Bill of Rights. But that was *not* the argument that the Amish made, nor was it the basis for the Court's decision. So long as the Amish appeal to the right of freedom guaranteed in the constitution, the liberal state should interpret that right as one which protects and defends the capacity of individuals to form and revise their religious beliefs.³⁸

In sum, in both the Hutterite and the Amish cases, the courts supported the claims of illiberal groups, in the name of 'tolerance' and 'freedom of religion'. But the courts interpreted these ideals in non-liberal

ways, rather than insisting on a distinctively liberal interpretation of tolerance and freedom. Hence it seems that the appeal to ‘tolerance’ does not resolve the conflict between liberal values and illiberal minorities. Since liberal tolerance is individual-freedom based, not group-based, it cannot justify internal restrictions that limit individual freedom of conscience.

The Limits of Intervention

The question of identifying a defensible liberal theory of minority rights is separate from that of imposing that liberal theory. Internal restrictions may be inconsistent with liberal principles, but it does not yet follow that liberals should impose their views on minorities which do not accept some or all of these liberal principles.

In the case of immigrants who come to a country knowing its laws, we see no objection to imposing liberal principles. This can be seen as part of the terms of admission to a liberal polity, and immigrants have no basis for denying that the state has legitimate authority over them.³⁹ But the situation is more complicated with national minorities, particularly if (a) they were involuntarily incorporated into the larger state (as the Palestinians claim with regard to their incorporation into the Jewish state), and (b) they have their own formalised governments, with their own internal mechanisms for dispute resolution. In these circumstances, the legitimate scope for coercive intervention by the state may be limited.

Recall the case of some Pueblo Indian communities in the United States, whose tribal council violates the rights of its members by limiting freedom of conscience, and by employing sexually discriminatory membership rules. Liberal principles tell us that the Pueblo tribal government is acting unjustly, since individuals have certain claims, which their government must respect, such as individual freedom of conscience. But if the Pueblo government fails to respect those claims, does the American federal government have the authority to step in and force compliance?

Many liberals have assumed that all governments within a country should be subject to a single Bill of Rights, adjudicated and enforced by a single Supreme Court. Hence many American liberals supported legislation to make tribal governments subject to the federal Bill of Rights, even though Indian tribes have historically been exempt from having to comply

with the Bill of Rights, and their internal decisions have not been subject to Supreme Court review.⁴⁰

This legislation was widely opposed by Indian groups, and for understandable reasons.⁴¹ The assumption that all governments within a country should be subject to a single Bill of Rights, enforced by a common Supreme Court, is inappropriate in the case of the Pueblo and other incorporated national minorities. For one thing, the federal constitution and courts may have no legitimacy in the eyes of an involuntarily-incorporated national minority. After all, the American Supreme Court legitimised the acts of colonisation and conquest, which dispossessed the Pueblo of their property and power.⁴² Furthermore, the Pueblo have never had any representation on the Supreme Court. Why should the Pueblo agree to have their internal decisions reviewed by a body, which is, in effect, the courts of their conquerors?

Moreover, it is important to note that the Pueblo have their own internal constitution and courts, which prevent the arbitrary exercise of political power. To be sure, the Pueblo constitution is not a fully liberal one, but it is a form of constitutional government, and so should not be equated with mob rule or despotism. As Graham Walker notes, it is a mistake to conflate the ideas of liberalism and constitutionalism.⁴³ There is a genuine category of non-liberal constitutionalism, which provides meaningful checks on political authority and preserves the basic elements of natural justice, and which thereby helps ensure that governments maintain their legitimacy in the eyes of their subjects.⁴⁴

The non-liberal constitutionalism of the Pueblo is obviously unsatisfactory from the point of view of liberal principles. After all, the Pueblo courts upheld the rules, which discriminated against women as well as Christians. But for the federal courts to overturn the decisions of the Pueblo courts and impose liberal principles is a dangerous move. To impose liberalism on such an involuntarily incorporated and self-governing group is to denigrate the group's own system of government and courts, even though it has high levels of legitimacy in the eyes of its members. The court system has no legitimacy in the eyes of the Pueblo since it has historically justified their dispossession, and has never had a Pueblo member of the Supreme Court. We should emphasise, however, that we would find intervention justified if the Pueblo would inflict bodily harm on women or members of other religions.

For these reasons, imposing liberal principles on self-governing national minorities is not unlike imposing liberalism on other countries. In

both cases, attempts to impose liberal principles by force often backfire, since they are perceived as a form of aggression or paternalistic colonialism. The experience of postcolonial Africa shows that liberal institutions are unlikely to be stable when they have arisen as a result of external imposition rather than internal reform. In the end, liberal institutions can only work if liberal beliefs have been internalised by the members of the self-governing society, be it an independent country or a national minority.⁴⁵

Insofar as it is illegitimate to impose liberalism in these cases, the liberal state and the illiberal national minority will have to come to some sort of *modus vivendi*. This means that the majority will be unable to prevent the violation of some individual rights within the minority community. At the same time the reader should not entail that liberals should stand by and do nothing. There are several things which liberals can do to promote respect for individual rights within non-liberal minority groups. Since a national minority which rules in an illiberal way acts unjustly, liberals have a right—indeed a responsibility—to speak out against such injustice, and to support any efforts the group makes to liberalise their culture. Since the most enduring forms of liberalisation are those that result from internal reform, the primary focus for liberals outside the group should be to provide this sort of support.

Moreover, incentives can be provided, in a non-coercive way, for liberal reforms. In this context consider the case of female circumcision as it is conducted among some Bedouin tribes in Israel, involving a minor ritual procedure. On most (if not all) occasions, girls of these tribes experience a very moderate form of circumcision. The ceremony takes place between the ages twelve to seventeen, some time before the girl's marriage. Physical exams of parental women show only a tiny scar on the labia.⁴⁶ Bedouin women believe that this conduct contributes to their tidiness and purifies them. Women who did not undergo circumcision are said not to be good bakers and cooks. Since there are hardly any complaints, on the whole no complications, and the overwhelming majority of girls do not feel they are being coerced, we better leave the matter as it is and not interfere to try and stop it. The state should intervene to help those girls who do not wish to go through this small operation, who feel they are being coerced to undergo it. To eliminate the possibility of infection and severe bleeding (few cases were reported) we may also try to convince the old ladies performing this conduct to use sterilised knives instead of the instruments they use today (often razors but sometimes knives and even

glass). We suggest this restricted pattern of interference only because current data indicates that the possibilities of severe bodily damage (physical and psychological) and the risk of death are low, and we do not think we should hypothesise on that basis. It is almost impossible to refute hypotheses that suggest a very low risk, and we should not waste our time in trying to do so. The reader should not infer from this attitude that we see moderate forms of female circumcision as morally justifiable. We do not. From a principled point of view we find this practice morally repugnant. Thus we justify interference to help those who feel the same. But since in most cases no coercion is involved, and since we are not able to say that our value judgement should prevail over the Bedouins' (*i.e.*, that our liberal view that female circumcision is morally repugnant is truer than the power of tradition), interference in the Bedouin cultural life seems to be more harmful than the performance of female circumcision in its existing form. The state may also take two additional steps: it could send social workers to have discussions with all the Bedouin women about their health. This could be done by approaching the tribe's decision makers, *i.e.*, the men, asking their permission to have access to the women of the tribe in order to find ways to promote their health. The idea is to persuade the men that the health of their families could be improved by such discussions. After gaining permission and access, one or more of the sessions could concern traditional codes that undermine health. The issue of circumcision can be raised in that context, aiming to separate fact from fiction and to show that female circumcision has no bearing—good or bad—on the food, and that it might have a negative effect on the health of women. A sincere and open discussion might help women realise that the ritual does not in any sense improve their position, but rather mutilates their bodies. A careful, well-designed plan, with the cooperation of the people concerned, might bring about change of custom. We stress that the precondition for success is to gain the consent of both men and women. Such educational methods could be useful only if the permission of the tribe is granted.

Another step the state could adopt is to offer to train Bedouin women and grant them official authorisation as circumcisers. The training will include, *inter alia*, study of instrument sterilisation and methods to reduce pain and handle severe bleeding. As an incentive, the government could offer to pay the trained circumcisers for each circumcision just as it pays maternity grants to Bedouin women who have their babies in hospital. Since this grant was made, the number of Bedouin women preferring to give birth in state hospitals has increased significantly. From this we may

infer that the Bedouins may view such a suggestion favourably. This solution may be adopted throughout the world wherever female circumcision is being conducted. Such a moderate suggestion could end the tragedy of mutilation while respecting tribal traditions.⁴⁷ It is necessary, however, to continue research on this issue and review this tolerant suggestion from time to time in order to ensure that the recorded mild form of female circumcision is not being radicalised, and that no significant harm, both physically and psychologically, is involved. The issue has to be put on the public agenda. Upon reaching the conclusion that the best interests of the circumcised girls justify state intervention (because, for instance, complaints about coercion are becoming frequent), then these interests should serve as a trump card to override tradition and cultural considerations. The current lenient attitude is suggested here only because it seems that the girls' best interests are better served by abstention from interference.

Before we close we also wish to recommend that liberals promote the development of regional or international mechanisms for protecting human rights. Many national minorities have expressed a willingness to abide by international declarations of human rights, and to answer to international tribunals for complaints of rights violations within their community. Indeed, minorities have often shown greater willingness to accept this kind of international review than majority groups, which jealously guard their sovereignty in domestic affairs.⁴⁸

There are many ways to strengthen mechanisms for respecting individual rights in a consensual way, without simply imposing liberal values on national minorities. This is not to say that coercive intervention in the internal affairs of a national minority is never justified. Intervention is justified in the case of gross and systematic violation of human rights, such as slavery or murder or inflicting severe bodily harm on certain individuals or expulsion of people. A number of factors are relevant in deciding when intervention is warranted, including the severity of rights violations within the minority community; the extent to which formalised dispute resolution mechanisms exist within the community, and the extent to which these mechanisms are seen as legitimate by group members; the ability of dissenting group members to leave the community if they so desire; and the existence of historical agreements which base the national minority's claim for some sort of autonomy.⁴⁹ For example, whether it is justified to intervene in the case of an Indian tribe that restricts freedom of conscience surely depends on whether it is governed by a tyrannical dictator who lacks

popular support and prevents people leaving the community, or whether the tribal government has a broad base of support and religious dissidents are free to leave.⁵⁰

Conclusion

Liberal democracies have a long history of seeking to accommodate ethnocultural differences. We have focused on two particular aspects of this history. With respect to national minorities, liberal democracies have typically accorded these groups some degree of regional political autonomy, so they can maintain themselves as separate and self-governing, culturally and linguistically distinct, societies. With respect to immigrants, liberal democracies have typically expected that these groups will integrate into mainstream institutions, but have become more tolerant of the expression of immigrant identities and practices within these institutions.

Liberal democracies have been surprisingly consistent in following these general patterns. Yet this distinction between immigrant groups and national minorities remains remarkably unexplored at the level of normative liberal democratic theory. It is difficult to identify a single major liberal political scientist or philosopher who has seriously examined or evaluated these differences in the way that immigrants and national minorities have been treated historically by liberal democratic states. As a result, we do not yet have an adequate theory of the moral justification for, or the moral limitations on ethnocultural rights. Developing such a liberal theory of minority rights is of the utmost importance for the future of liberal democracies, particularly for newly democratising countries in Eastern Europe, Asia, and Africa. At present, the fate of ethnic and national groups around the world is in the hands of xenophobic nationalists, religious extremists, and military dictators. If liberalism is to have any chance of taking hold in these countries, it must address the needs and aspirations of ethnic and national minorities.⁵¹

Notes

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- ¹ For further discussion, see R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance: The Struggle Against Kahanism in Israel* (Gainesville, FL: The University Press of Florida, 1994), pp. 68-76.
- ² By 'conception of the good' it is meant a more or less determinate scheme of ends that the doer aspires to carry out for their own sake, as well as of attachments to other individuals and loyalties to various groups and associations. It involves a mixture of moral, philosophical, ideological, and religious notions, together with personal values that contain some picture of a worthy life.
- ³ See R. Cohen-Almagor, 'The Intifada: Causes, Consequences, and Future Trends', *Small Wars & Insurgencies*, Vol. 2, No. 1 (1991) pp. 12-40, at 34.
- ⁴ See R. Cohen-Almagor, 'The Intifada: Causes, Consequences, and Future Trends', p. 33. For example, Israeli-Palestinians pay more income tax than Jews since they do not enjoy discounts given to those who serve in the army. Palestinians will find it more difficult than Jews to receive licences for extending their flats, or for building new ones. They also find it difficult to buy, or even to rent a flat in a Jewish neighbourhood. Furthermore, budgets of Arab municipalities stand in no comparison to those of Jewish municipalities. There are not enough classes in Arab towns and villages. Arabs who graduate find it difficult to get a job in government offices. In addition, being a Palestinian-Arab in many cases 'guarantees' that a worker's salary would be lower than that of a Jew who is doing the same work.
- ⁵ See D. Elazar, *Exploring Federalism* (Tuscaloosa: University of Alabama Press, 1987); W. Kymlicka, 'Federalismo, Nacionalismo y Multiculturalismo', *Revista Internacional de Filosofía Política*, Vol. 7 (1996), pp. 20-54.
- ⁶ See D. Ben-Gurion, *Rebirth and Destiny in Israel* (London: Thomas Yoseloff, 1959), p. 339.
- ⁷ See R. Cohen-Almagor, 'Cultural Pluralism and the Israeli Nation-Building Ideology', *International Journal of Middle East Studies*, Vol. 27 (1995), pp. 461-484.
- ⁸ See S. Deshen and M. Shokeid, *Predicament of Homecoming: Cultural and Social Life of North African Immigrants of Israel* (Ithaca, N.Y.: Cornell University Press, 1974); also, C. S. Liebman and E. Don-Yehiya, 'Israel's Civil Religion', *The Jerusalem Quarterly*, Vol. 23 (spring 1982), pp. 57-69.
- ⁹ See R. Cohen-Almagor, 'Cultural Pluralism and the Israeli Nation-Building Ideology', *op. cit.*, pp. 461-484.

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- ¹⁰ See N. Bissoondath, *Selling Illusions: The Cult of Multiculturalism in Canada* (Toronto: Penguin, 1994); and A. Schlesinger, *The Disuniting of America* (New York: Norton, 1992).
- ¹¹ The language requirements for citizenship are waived for elderly immigrants.
- ¹² See W. Kymlicka, 'Ethnic Associations and Democratic Citizenship', in Amy Gutmann (ed.) *Freedom of Association* (Princeton: Princeton University Press, 1998), pp. 177-213.
- ¹³ African-Americans do not fit the voluntary immigrant pattern, not only because they were brought to America involuntarily as slaves, but also because they were prevented (rather than encouraged) from integrating into the institutions of the majority culture (e.g., racial segregation; laws against miscegenation, and the teaching of literacy). Nor do they fit the national minority pattern, since they do not have a homeland in America or a common historical language. They came from a variety of African cultures, with different languages, and no attempt was made to keep together those with a common ethnic background. On the contrary, people from the same culture (even from the same family) were typically split up once in America. Moreover, before emancipation, they were legally prohibited from trying to recreate their own cultural structure (e.g., all forms of black association, except churches, were illegal). The situation of African-Americans, therefore, is virtually unique.
- ¹⁴ The situation of gypsies in Europe is also exceptional because their homeland is everywhere and nowhere.
- ¹⁵ Recent changes in Germany's citizenship laws give the children of Turkish guest-workers the right to acquire citizenship, depending on their age and length of residence. However, for older guest-workers, the process of obtaining citizenship is a costly and uncertain process, with the decision left entirely to the discretion of the government officials. They have *no right* to gain citizenship, no matter how long they have lived in Germany, and no matter how fluent their German is. For a comparative discussion of Germany's citizenship laws, see D. Cinar, 'From Aliens to Citizens: A Comparative Analysis of Rules of Transition', in Rainer Baubock (ed.), *From Aliens to Citizens: Redefining the Legal Status of Immigrants* (Aldershot: Avebury, 1994), pp. 49-72.
- ¹⁶ The guest-workers in Israel were admitted solely as temporary workers and have no right to citizenship.
- ¹⁷ The distinction between these two kinds of collective rights is developed in depth in W. Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995), chap. 3.
- ¹⁸ See G. M. Kressel, 'Sorricide/Filiacide: Homicide for Family Honour', *Current Anthropology*, Vol. XXII, No. 2 (1981), pp. 41-58.

¹⁹ See R. Cohen-Almagor, 'Female Circumcision and Murder for Family Honour among Minorities in Israel', in Kirsten Schulze, Martin Stokes, and Colm Campbell (eds.), *Nationalism, Minorities and Diasporas: Identities and Rights in the Middle East* (London: I.B. Tauris, 1996), pp. 171-187, at 178.

²⁰ See R. Cohen-Almagor, 'Female Circumcision and Murder for Family Honour among Minorities in Israel', p. 182.

²¹ We emphasise that we speak of *harsh* forms of female circumcision, like the Pharaonic or Sunna circumcision. Later on we shall observe the moderate ritual that is performed in Israel. Although we do not justify its existence, we nevertheless do not find sufficient reason to ask the state to interfere and prohibit this practice.

²² See H. Richardson, 'Self-Determination, International Law and the South African Bantustan Policy', *Columbia Journal of Transnational Law*, Vol. 17 (1978), pp. 204-213.

²³ For a discussion of how this assumption came to dominate post-World War II discussions of human rights, in opposition to the earlier belief in the need for minority rights, see I. Claude, *National Minorities: An International Problem* (Cambridge, Mass.: Harvard University Press, 1955). Claude notes (p. 211): 'the general tendency of the postwar movements for the promotion of human rights has been to subsume the problem of national minorities under the broader problem of ensuring basic individual rights to all human beings, without reference to membership in ethnic groups. The leading assumption has been that members of national minorities do not need, are not entitled to, or cannot be granted rights of a special character. The doctrine of human rights has been put forward as a substitute for the concept of minority rights, with the strong implication that minorities whose members enjoy individual equality of treatment cannot legitimately demand facilities for the maintenance of their ethnic particularism'.

²⁴ For a discussion of the liberal tradition's hostility to minority rights, see W. Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, *op. cit.*, chap. 4.

²⁵ If female members marry outside the tribe, their children are denied membership. But if men marry outside the tribe, the children are members. This discriminatory rule was upheld in *Santa Clara Pueblo v. Martinez* 436 US 49 (1978). For further discussion see J. Resnik, 'Dependent Sovereigns: Indian Tribes, States, and the Federal Courts', *University of Chicago Law Review*, Vol. 56 (1989), pp. 671-759.

²⁶ For a discussion of conflicts between some East Asian immigrant groups and the British government over girls' education and arranged marriages, see S. Poulter, 'Ethnic Minority Customs, English Law, and Human

Rights', *International and Comparative Law Quarterly*, Vol. 36, No. 3 (1987), pp. 589-615.

27 See J. Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971), pp. 216-221.

28 For examples of liberals who subordinate considerations of autonomy to tolerance, see W. Galston, 'Two Concepts of Liberalism', *Ethics*, Vol. 105, No. 3 (1995), pp. 516-535; also C. Kukathas, 'Cultural Toleration', in Ian Shapiro and Will Kymlicka (eds.), *Ethnicity and Group Rights: Nomos 39* (NY: New York University Press, 1997), pp. 69-104.

29 The autonomy-based view is often described as the 'Enlightenment', 'comprehensive', or 'Kantian' conception of liberalism, in contrast to the 'Reformation', 'political', or 'modus vivendi' conception which is grounded on the value of tolerance. For these contrasts, see W. Galston, 'Two Concepts of Liberalism', *Ethics*, Vol. 105, No. 3 (1995), pp. 516-535; C. Larmore, *Patterns of Moral Complexity* (Cambridge: Cambridge University Press, 1987); and J. Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

30 See J. Rawls, *Political Liberalism*, pp. XXV-XXIX.

31 For a detailed discussion of the millet system as an illiberal form of group-based religious tolerance, see W. Kymlicka, 'Two Models of Pluralism and Tolerance', in David Heyd (ed.), *Toleration: An Elusive Virtue* (Princeton: Princeton University Press, 1996), pp. 81-105.

32 In Israel, the autonomous education system that is run by ultrareligious Jews prevents children from learning certain secular teachings and practices, and Israel condones this.

33 *Hofer et al. v Hofer et al.* (1970) 13 DLR (3d) 1.

34 *Ibid.*, p. 21. For further discussion, see William Janzen, *Limits of Liberty: The Experiences of Mennonite, Hutterite, and Doukhobour Communities in Canada* (Toronto: University of Toronto Press, 1990), p. 67.

35 *Hofer et al. v Hofer et al.* (1970), p. 4.

36 The quoted passages in this paragraph are all from *Ibid.*, p. 21.

37 *Wisconsin v. Yoder* 406 US 205, 92 S.Ct 1526 (1972).

38 For a detailed discussion of the Court's (divided) reasoning on this case, see R. Arneson and I. Shapiro, 'Democratic Autonomy and Religious Freedom: A Critique of *Wisconsin v. Yoder*', in I. Shapiro and R. Hardin (eds.), *Political Order: Nomos 38* (New York: New York University Press, 1996), pp. 365-411; and the reply by S. Burt, 'In Defense of *Yoder*: Parental Authority and the Public Schools', in I. Shapiro and R. Hardin (eds.), *Political Order, ibid.*, pp. 412-437.

39 Things are more complicated if an immigrant group was exempted from liberal requirements when it arrived, and so has been able to maintain certain illiberal institutions for many years or generations (*e.g.*, the Amish

in the United States). These groups were given certain assurances about their right to maintain separate institutions, and so have built and maintained self-contained enclaves that depend on certain internal restrictions. Had those assurances not been given, these groups might have emigrated to some other country. It is not clear how much weight, morally speaking, should be given to these sorts of historical arguments, but it seems that these groups do have a stronger claim to maintain internal restrictions than newly-arriving immigrants.

⁴⁰ See F. Svensson, 'Liberal Democracy and Group Rights: The Legacy of Individualism and Its Impact on American Indian Tribes', *Political Studies*, Vol. 27, No. 3 (1979), pp. 421-439.

⁴¹ It was opposed even by Indian groups, which were liberal in their basic outlook. Many Indian leaders argued that Indian governments should be exempt from the Bill of Rights, not in order to impose illiberal internal restrictions within Indian communities, but to defend the external protections of Indians vis-à-vis the larger society. They feared that their rights to land, or to guaranteed representation, which help reduce their vulnerability to the economic and political pressure of the larger society, could be struck down as violating the equality rights of the Bill. Also, Indian leaders fear that white judges may interpret certain rights (e.g., democratic rights) in ways that are culturally biased. Hence many liberal Indian groups seek exemption from the Bill of Rights, but affirm their commitment to the basic human rights and freedoms, which underlie the American constitution. For a more detailed discussion, see D. Schneiderman, 'Human Rights, Fundamental Differences? Multiple Charters in a New Partnership', in Guy Laforest and Roger Gibbins (eds.), *Beyond the Impasse: Toward Reconciliation* (Montreal: Institute for Research in Public Policy, 1998), pp. 147-185.

⁴² The basic attitude of the American Supreme Court towards Indian sovereignty was determined by Chief Justice John Marshall's judgement in *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823). In this judgement, Marshall said that 'Conquest gives title which the courts of the conqueror cannot deny', the validity of which 'has never been questioned by our courts' (pp. 587-588). Marshall's approach continues to determine the Court's approach to Indian rights, not just in the United States, but also in other settler societies, such as Canada and Australia. On this, see D. E. Wilkins, '*Johnson v. M'Intosh Revisited: Through the Eyes of Mitchel v. United States*', *American Indian Law Review*, Vol. 19, No. 1 (1994), pp. 159-181, esp. pp. 161-168; and R. Williams Jr., 'Sovereignty, Racism, Human Rights: Indian Self-Determination and the Postmodern World Legal System', *Review of Constitutional Studies*, Vol. 2 (1995), pp. 146-202.

- ⁴³ See G. Walker, 'The Idea of Non-liberal Constitutionalism', in Ian Shapiro and Will Kymlicka (eds.), *Ethnicity and Group Rights*, *op. cit.*, pp. 154-184.
- ⁴⁴ It is important to distinguish these cases from ethnocultural groups which have no formal constitutions or courts, and which therefore provide no effective check on the exercise of arbitrary power by powerful individuals or traditional elites.
- ⁴⁵ For a survey of the arguments against imposing liberalism on other countries, see Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977); and M. Walzer, 'The Moral Standing of States', *Philosophy and Public Affairs*, Vol. 9, No. 2 (1980), pp. 209-229. Virtually all of Walzer's points also argue against imposing liberalism on national minorities, although Walzer himself doesn't always make this connection.
- ⁴⁶ See R. Cohen-Almagor, 'Female Circumcision and Murder for Family Honour among Minorities in Israel', *op. cit.*, p. 176.
- ⁴⁷ See A. Asali, A. N. Khamaysi, Y. Aburabia, S. Letzner, B. Halihal, M. Sidovsky, B. Maoz, and R.H. Belmaker, 'Ritual Female Genital Surgery among Bedouin in Israel' (draft paper); and also H. Belmaker, letter in *Newsweek* (31 January 1994), 5C.
- ⁴⁸ What the Pueblo object to is not external review *per se*, but rather being subject to the constitution of their conquerors, which they had no role in drafting, and being answerable to federal courts, which legitimised the unjust coercion and discrimination against them.
- ⁴⁹ See W. Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, *op. cit.*; also, see R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance*, *op. cit.*, chap. 4.
- ⁵⁰ The ability of members to leave is a very important proviso. However, unlike some commentators [F. Svensson, 'Liberal Democracy and Group Rights: The Legacy of Individualism and Its Impact on American Indian Tribes', *op. cit.*, p. 437; C. Kukathas, 'Are There any Cultural Rights?', *Political Theory*, Vol. 20, No. 1 (1992), p. 133], we do not think it is sufficient to justify internal restrictions, any more than racial segregation in the American South was made legitimate by the fact that Blacks could move north (although some defenders of segregation did make this argument). The consideration of physical harm is no less important. See R. Cohen-Almagor, 'Liberalism, and the Limits of Pluralism', *Terrorism and Political Violence*, Vol. 7, No. 2 (1995), pp. 25-48; L. Green, 'Internal Minority Rights', in Judith Baker (ed.), *Group Rights* (Toronto: University of Toronto Press, 1994), pp. 100-117; W. Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, *op. cit.*, chap. 8.

⁵¹ See Moshe Lissak's contribution to this volume: 'Dominant Political Culture and Political Mutations in Israel'.