

# **Liberalism, Tolerance and Multiculturalism: The Bounds of Liberal Intervention in Affairs of Minority Cultures**

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## **I. Introduction**

Minority cultures in democracies are demanding greater public recognition of their distinctive identities, and greater freedom and opportunity to advance their distinctive cultural practices. This paper discusses some of the issues raised by such demands, focusing in particular on the difficulties that arise in North America, Europe and Israel when the minority seeking accommodation is illiberal.

Virtually all liberal democracies contain some degree of ethno-cultural diversity. They can all be described, therefore, as “multicultural” in essence. However common citizenship rights may not be sufficient to accommodate all forms of ethno-cultural diversity. In some cases, certain “collective” or “group-differentiated” rights may also be required. Indeed, there is a clear trend within liberal democracies towards the greater recognition of such group-differentiated rights. 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?

Immigrant groups and national minorities are, in different ways, seeking legal recognition of their ethno-cultural identities and practices. These demands are often described by their defenders and critics in the language of “group rights”. What is the relationship between individual rights and group rights? Are they mutually reinforcing or mutually antagonistic? To answer these questions we need to consider the different claims that are involved.

## **II. Self- v. other-regarding conduct**

First, a distinction has to be made between cases in which one is inflicting pain or death upon oneself, and cases in which one is inflicting damage upon others. This

distinction is made in the framework of the traditional liberal dichotomy between self- and other-regarding conduct.

Consider in this context the Jainas practice in relation to the dying.<sup>1</sup> Firmly refusing any form of violence and believing in the importance of not injuring living beings, the followers of this ancient ascetic religion resort to a peculiar practice when it comes to the dying. The members of the community – in fact – are allowed, under certain circumstances, to terminate their own lives, or more accurately, to actively welcome impending death in a non-violent manner. Persons in the late stages of their lives, therefore, may decide that they want to die and undertake the vow of terminal fast.<sup>2</sup>

Another relevant conduct involves scarring parts of the body as part of initiation rites that is common in some African cultures. Traditionally, scarification can mark one's status as a civilized being, an adult, a member of a specific ethnic group or initiation association. Otherwise, scars can be seen as marks of beauty. Let us assume that some immigrants bring these rituals to a liberal democracy. The liberal state has no strong case for interference. These customs of self-starvation and scarring should not be promoted and encouraged by the liberal state, but since the sub-cultures possess historical claims and strongly believe in their traditional practices and norms, they should have a right to cultural autonomy.

The case is different when it concerns other-regarding conduct. Now the issue revolves around practices such as suttee, female infanticide, female circumcision, or murder for family honour. Should a liberal state tolerate these practices?

To answer this question, let us 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

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1 Vardhamana Mahavira (599 BC to 527 BC) was the proponent of the philosophy and belief of the triumvirate of tirthankaras, or the founders of the path. Rishaba, Ajithanatha and Aristanemi, the three find mention in the Yajurveda. Those who follow this ideation of a religion are called the Jainas. The Jaina philosophy is based on *naya* or the mode of perspective. Knowledge is composition of things as they stand in itself and are conceivably provable or *pramana* or on the mode of perspective. *Naya* is an assemblage of knowledge of a thing from angles of things as they are seen from or relative views from which they are perceived to deduce the actuality of things. For a comprehensive analysis of this philosophy, see Schubring (1962).

2 See Bilimoria (1992), 331-355, esp. at 333.

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 destabilizing 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, Will Kymlicka calls the first “internal restrictions”, and the second “external protections”.<sup>3</sup>

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.

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.

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, frequently honour is 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 (Kressel, 1981). Violation of the sexual norm by a married woman automatically calls for her murder.<sup>4</sup> 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 the partner in intercourse. By murdering their daughters or sisters the men prove the control that the natal family has over its women (Cohen-Almagor, 1996: 178).

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3 The distinction between these two kinds of collective rights is developed in depth in Kymlicka (1995), Chap. 3.

4 For an analysis of murder for family honor in Israel, see Glazer (1994), 269-288.

Some things lie beyond the ability of liberal democracies to tolerate. Some norms are considered by liberal standards to be intrinsically wrong, wrong by their very nature. Such are norms that result in physical harm to women and babies like widow burning, female infanticide, harsh forms of female circumcision (like the Pharaonic circumcision, see Liu 1998, Ab. Rahman 1999, Islam 2001, Ciminelli 2002, Igras 2004), and murder for family honour.

That is to say that the right of a group against its own members is not absolute. Sometime 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.

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 ethno-cultural groups involve internal restrictions or external protections, and what are the grounds for each claim.

The more difficult cases concern groups that 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. Let us probe the difficult issues involving some restrictions on group members but which do not amount to severe physical harm.

In every democracy certain norms and moral codes must be shared by all people despite their cultural differences; hence the range of norms that society can respect has limitations. The most basic norms democracy has to secure are – we argue – respecting others as human beings (in the Kantian sense, see Kant, 1969), and not inflicting harm upon others (under the Millian Harm Principle, see Mill, 1948).

The Respect for Others Argument is founded on the assertions that we ought to respect others as autonomous human beings who exercise self-determination to live according to their own life plans, and that we respect people as self-developing beings who are able to develop their inherent faculties as they choose. At the same time, we insist on the requirement of mutuality. We ought to show respect for those who respect others.

The boundaries of tolerance are determined by the qualification of not harming others, which is added to the Respect for Others Argument. Under the Harm

Principle, restrictions on liberty may be prescribed when there are clear threats of immediate violence against some individuals or groups.<sup>5</sup> The same idea was pronounced in a different phrase by a Jewish sage, Rabbi Hillel, who said: “What is hateful to you do not do unto your fellow people”.<sup>6</sup>

The upholding of the Respect for Others Argument and the Harm Principle safeguards the rights of those who might find themselves in a disadvantageous position in society, such as women; ethnic, religious, national and cultural minorities; homosexuals; and others.

### **III. The limits of liberal democracy in Israel**

At present, some religious practices in Israel are offensive to the sensibilities of women, and involve coercion, which conflicts with the liberal elements of democracy. One of these is the right to follow one’s conscience and to practice one’s beliefs as one sees fit, as long as this practice does not entail harm to others.<sup>7</sup> Democracy is supposed to allow each and every individual the opportunity to follow her or his conception of the good without coercion. Israel today gives precedence to Judaism over liberalism. Arguably, the reverse should be the case.

Israel, being the only Jewish state in the world, should strive to retain its Jewish character. The symbols should remain Jewish with some accommodations in order to make the state a home for its Palestinian citizens as well. Shabbat should remain the official day of rest. Palestinian villages and towns may make Friday their day of rest.

We need to differentiate between the symbolic aspects and the modus operandi aspects. As far as the latter are concerned, separation between state and religion should be achieved. People are born free and wish to continue their lives as free citizens in their homeland. Coercion is foreign to human natural sentiments and desires to lead everyone’s life as free as possible from alien restraints and impediments.

Hence, while Shabbat should be observed, malls and shopping places outside the cities should be available for the many people who work during the week and

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5 To quote Mill, the end for which “mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection”. Power can be rightfully exercised over any member of society, against her will, is to prevent harm to others. See Mill (1948), 72-73. See also pp. 114, 138.

6 Babylonian Talmud, Sabbath 31a.

7 For discussion, see Cohen-Almagor (2000), 45-65.

do their shopping during weekends. Public transportation should be made available for all people who cannot afford having a car and for those who do not drive (Cohen-Almagor, 2005: 263).

The state should cater for the needs of as many citizens as possible. Kosher shops and restaurants should be available and with them non-Kosher shops and restaurants for the secular, agnostic population.

Most importantly, the significant events in one's life: birth, wedding, divorce and death should be handled in accordance of the people's own choices. If they so desire, people may involve rabbinate and other religious institutions in their private lives. But this option should be left to them. If people wish to have secular ceremonies then they should have the ability to conduct them and not to be forced to undergo practices which mean very little to them, if anything. The state should have as little as possible say in family, intimate affairs.<sup>8</sup>

#### **IV. Inter-group and intra-group relationships**

The argument for religious autonomy and against religious coercion leads us to distinguish between inter-group relationships (one group imposing its views on another), and intra-group relationships (a group imposing its views on its own members).

One group has no right to coerce the entire society into following its conception of the good and abiding by its cultural norms. In the event that a religious or cultural group makes such an attempt, other segments of society have to open further channels of communication and resolve the situation by peaceful means. If these means fail, they should resort to authoritative means to draw the boundaries and fight against coercion.

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 tradi-

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8 For further discussion, see Kasher (2005), Ravitzky (2005).

tional customs such as coerced arranged marriages that is common among certain immigrant cultural communities in North America, Europe, and Israel.<sup>9</sup>

Now let us consider a situation in which a cultural minority wants to be left alone to run its own community in accordance with its traditional norms. Respecting one culture could entail allowing members of that culture to show disrespect to some of its members. Suppose, for instance, that a cultural minority exhibits illiberal consensus with regard to women's role in society. Thus it limits the right of women to study at universities and to hold public offices. Kymlicka and Cohen-Almagor argue that if women who dislike this restriction can easily leave the community and enter the larger society, and if the minority group has some historical claim to local self-government, then this may mean that it would be wrong for us to coercively interfere and prohibit that practice (Kymlicka and Cohen-Almagor, 2000). However, the fact that intervention would be wrong does not mean that the practice in question is morally legitimate. On the contrary, from a liberal perspective the practice is unjust. But we do not have legitimate grounds to enforce our moral upon the group.

Can a liberal democratic society exclude a minority culture, whose members intend to immigrate to it, on the grounds that its values are incompatible with the liberal values? In such a case, should all paths to pursuing life projects still be left open, or should some be closed to start with, even before entering a liberal society?

A country's unity is expressed in and sustained by its citizens' shared sense of history; by their recognition of national holidays, ceremonies, symbols and myths; by their participation in a range of informal customs covering virtually every aspect of life, including modes of dress, styles of music, patterns of work and leisure, attitudes toward gender, sex and sexuality, and tastes in food and drink. Immigrants arrive with their own histories and cultural traditions, customs and values, habits and ceremonies and they could potentially transform these sources of cultural unity into grounds of contention and conflict (Scheffler, 2007: 93-94).

Let us consider the following case. How should the liberal democratic society react if a considerable number of fascists (or neo-Nazis) were to organize somewhere and then intend to take advantage of their status as European Community

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9 For a discussion of conflicts between some East Asian immigrant groups and the British government over girls' education and arranged marriages, see Poulter (1987), 589-615; Barber (2004), and Ghimire (2006).

citizens and immigrate – say – to England with the aim, known to the authorities, of leading the National Front to new prosperity? Arguably, the nature of fascist movements makes their resorting to violence extremely likely, thus threatening the country’s peaceful coexistence. The use of and incitement to violence plays an integral role in their activities, on which they base their political platform and ideology. Because of the size of their group, the power of the fascists would be strong enough to pose a real threat to democracy and to the minorities to which they object. United as a group under a fascist emblem, they would not be lacking in determination to fight for their convictions. England would be justified in denying entrance to that group on the grounds that the fascist convictions lack a concept of tolerance and respect for others; because fascist ideas stand in striking opposition to the liberal culture of this country; because fascism is hostile to human rights and to the fundamental values which underlie a liberal state.

The business of government is to protect and foster the interests of the public, and allowing entry to this group does not coincide with these aims. Democracy ought to defend itself against threats, even if sometimes the measures include steps which exclude members of intolerant groups altogether from a democratic state. Thus, we have a strong case for exclusion where fascists are concerned, since their ideas are incompatible with a commitment to human dignity and respect for others, and since they are likely to resort to violence to achieve their political aims.<sup>10</sup>

Similarly, what countermeasures should the government of a liberal democracy put in place if a considerable number of radical Islamist zealots were to immigrate in mass to England with the aim of pursuing a political agenda based on the literal application of the Qur-an? We refer here to the verses regarding the relations between Muslim believers and infidels, that – if read in their literal meaning – would escalate the level of inter-faith violence within the country.<sup>11</sup>

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10 For further discussion, see Cohen-Almagor (1994: 79-87).

11 See, for instance, Surah 47, verse 4 of the Qur-an: “Therefore, when ye meet the Unbelievers (in fight), smite at their necks; at length, when ye have thoroughly subdued them, bind (the captives) firmly: therefore (is the time for) either generosity or ransom”; Surah 8, verse 39: “And fight them on until there is no more persecution, and religion becomes Allah’s in its entirety”; Surah 8, verse 60: “Against them make ready your strength to the utmost of your power, including steeds of war, to strike terror into (the hearts of) the enemies of Allah and your enemies”; Surah 4, verse 56: “Those who reject our signs, we shall soon cast into the fire: as often as their skins are roasted through, we shall change them for fresh skins, that they may taste the Chas-

In this case, again, the principles and values characterizing the community of immigrants are not compatible with the preservation of a liberal democratic society. Just as in the case of fascists, England's democratic society would be entitled to defend itself and the bases on which peaceful coexistence in a liberal democracy rest. Access into the country, therefore, could be legitimately denied on the grounds that instigation to violence and inter-faith hatred are not compatible with the rules of a liberal democracy.

Now we turn to discuss a comparatively much more moderate controversy in today's Europe relating to religious freedom: the right of Muslim women to wear headscarves in public places.

### V. The case of Muslim headscarves in France

The headscarf controversy in various European countries – France first of all – during the last decade can be read as an aspect of the wider question of the increasingly difficult coexistence between European liberal democracies and the growing communities of Muslim immigrants.

The debate about the right to wear the Muslim veil in schools and other public places started in France in 1989, when the principal of a high school in Creil refused to admit to school three young girls because they were wearing the traditional headscarf (*hijab*).<sup>12</sup> Whereas, according to the traditional liberal thought, it can be argued that the right to wear religious symbols in public places is an expression of religious freedom and, therefore, is compatible with the rules of a secular liberal democracy, many in France saw the wearing of the Muslim headscarf as an act of proselytism, interfering with other students' freedom and thus contrary to the principles of French secular society.

Three kinds of concerns, in particular, were raised by the use of Muslim headscarves in French public schools (Laborde, 2005: 306):

- First of all, the Muslim veil undermined the ideal of separation between state and religion, one of the fundamental pillars of French society and collective identity since the 1789 Revolution, namely the “*laïcité*” of the state.

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tisement: for Allah is Exalted in Power, Wise”. See *The Holy Qur-ān: English Translation and Commentary* (1993).

12 For a comprehensive analysis of the French debate on this issue, see Brems (2006), Wiles (2007).

- Secondly, headscarves were widely seen as symbols of the subordination of Muslim women, thus questioning the ideal of equality between sexes.
- Finally, by emphasizing the difference between Muslim and non-Muslim girls, headscarves were seen as a sign of the unwillingness of Muslim – particularly Arab – immigrants to integrate into the French society.

In 1994, the Minister of Education asked schools to prohibit any religious sign that could segregate students from the wider school community, or that could be read as a symbol of proselytism, thus representing a nuisance to the regular school life. The *Conseil d'Etat* (Council of State) – France's Supreme Court for administrative justice – refused the Minister's line of reasoning that qualified the Muslim veil as ostentatious by nature. Quite the opposite, it stated in a series of sentences that a decision on the admissibility of headscarves in public schools had to be made on a case-by-case basis. The Council of State decided that only when the wearing of the headscarf caused disturbance of the ordinary school life it should be prohibited. The wearing of the headscarf during sport classes, for instance, represented a nuisance to the ordinary course of school activities, threatening the students' own security: it could therefore be legitimately prohibited.<sup>13</sup> In another decision the Council of State noted that students' behaviour aimed at using the headscarf issue to exacerbate inter-faith conflict posed a threat to normal school life: the wearing of the headscarf could therefore be legitimately prohibited.<sup>14</sup> Protests against the headscarf ban and the display of the veil in the attempt to radicalize the conflict were seen as a serious nuisance to school life: thus headscarf prohibition – the Council of State decided – was conceived to be legitimate also in this context.<sup>15</sup> A general ban on headscarves was admissible for teachers in public schools: in this case, the teachers' right of free expression had to be contrasted with the students' right to a non-confessional education.<sup>16</sup>

These rulings of the Council of State led to widespread uncertainty, forcing teachers and school principals to decide on the admissibility of the Islamic veil. The headscarf controversy, therefore, remained central in the French political debate: tension increased and ethnicity-related violence grew, finally forcing

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13 See Conseil d'Etat, *Unal*, Nr. 172725, October 9, 1996.

14 See Conseil d'Etat, *Aoukili*, Nr. 159981, March 10, 1995.

15 See Conseil d'Etat, *Tlaouziti*, Nr. 172685, November 27, 1996; Conseil d'Etat, *Boutakrout en Atouf*, Nr. 170210, November 27, 1996; Conseil d'Etat, *Chabou et autres*, Nr. 170207 and 170208, November 27, 1996.

16 See Conseil d'Etat, *Marteaux* (Avis), Nr. 217017, May 3, 2000.

President Jacques Chirac to act. In 2002, he appointed a “commission of wise men” (the Commission-Stasi) with the task of analyzing the applicability of the principle of “laïcité” in contemporary France.

The conclusions the Commission-Stasi drew in 2003 were alarming: French secularism – it stated – is under the threat of growing claims of cultural and religious nature. The “laïcité” of the state is challenged by a sort of “communitarian withdrawal” that puts at risk the very survival of the social contract underpinning the French society as we know it. The secular state, consequently, is called to take a pro-active stance, fulfilling its duty to protect individuals from religious pressure.<sup>17</sup>

The advice of the Commission-Stasi was instrumental in leading to the formulation of Article L. 141-5-1 of the *Code de l'Éducation* (Education Code), passed on March 15, 2004. It stated that “in public schools, the wearing of symbols or dress by which the students ostensibly manifest religious membership is prohibited”.<sup>18</sup> A subsequent circular of the Minister of Education explained that “the prohibited signs and dress are those by which the wearer is immediately recognizable with regard to his or her religion, such as the Islamic veil, whatever its name, the kippa, or a crucifix of manifestly exaggerated dimensions”.<sup>19</sup>

Faced with what Kymlicka defines as the classical dichotomy between “integration” of the minority into the larger society and “accommodation” of the minority culture into the majority (Kymlicka, 2008: 1), France resolutely picked the former.

The fact that schools were involved in the controversy played a crucial role in urging French authorities to act: Muslim headscarves symbolized religious divisiveness in a particularly delicate environment such as the community of young people. They infringed on equality between students, thus undermining one of the core goals of the French educational system, namely the creation of equal and free citizens.

The traditional liberal approach focusing on the principle of “live and let live” was seen as inadequate to effectively protect core liberal and democratic

17 See Commission de réflexion sur l'application du principe de laïcité dans la République, *Rapport au Président de la République* (December 11, 2003).

18 “Dans les écoles, les collèges et les lycées publics, le port de signes ou tenues par lesquels les élèves manifestant ostensiblement une appartenance religieuse est interdit”; see L. 141-5-1 Code de l'Éducation (2004).

19 Quoted in Brems (2006), 121-22.

values. The state acted in order to protect the very identity of the French society, based on the separation between state and religion while emphasizing on the secular nature of the state.

The preservation of “laïcité” at the expense of traditional liberalism attempted to preserve a non-sectarian, neutral public sphere by forcibly privatizing every public demonstration of religiousness and replacing it with a sort of national civic ethos. It aimed at de-politicizing religion in a political phase in which inter-religious relations seemed to be increasingly tense.

## **VI. The case of Muslim headscarves in other European countries**

The French solution is by no means the only strategy implemented in Europe in order to square the circle of relations between liberal democracies and “group differentiated” rights. The balance between “integration” and “accommodation” has been interpreted in various ways and with different nuances across Europe. And, if it is inappropriate to see the French decision on the headscarf issue as another sign of the current crisis of liberal democracy, in which “democracy is invoked to legitimate violations of individual freedom and liberty” (Motha, 2007: 145), nonetheless there are countries in which this problem has been effectively solved without resorting to legislation. And on a delicate subject such as inter-cultural coexistence in public schools – we argue – more informal and less ideological tools can prove at least as effective as the strategy implemented in France.

In Belgium, the controversy on the Muslim veil in public schools has put the country’s politicians and analysts under pressure as well.<sup>20</sup> Despite the heated political debate, however, the legal situation in Belgium remains completely different from that of France. No ban on headscarves has been put in place. Conflicts arising in schools on this issue, quite the opposite, are effectively solved through dialogue, outside the legal system.

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20 In 2004, for instance, Belgian Foreign Minister Louis Michel denounced the Muslim veil as a symbol of the submission of women, warning of “the development of a sort of pseudo-fundamentalist trend which could end up encouraging a miniature clash of civilizations in Belgium”, quoted in Islam (2004). In the heyday of the debate on the headscarf ban in France, moreover, Belgian Interior Minister Patrick Dewael argued, “We should do as much in our country... It should be equally clear that public school students cannot wear veils or other ostentatious religious symbols”, quoted in Browne (2004).

In Germany, the presence of a large Islamic community notwithstanding, the controversy about Muslim students' right to wear the veil in public schools has hardly become an issue for legislators. No ban on headscarves is currently in place, neither is it likely to be passed in the future, since dialogue and accommodation have managed to avoid excessive tensions with the Muslim minority on this subject. Conflicts have arisen on the right of Muslim female students to be exempted from sport classes for religious reasons, a right that was finally granted by a decision of the *Bundesverwaltungsgericht*, Germany's Supreme Court for administrative justice.<sup>21</sup> A much more heated debate has been going on with regard to teachers' right to wear the headscarf in public schools. In this case, the teacher's individual right to freedom of religion has to be contrasted with the students' right to a religiously impartial education.<sup>22</sup> A ban on the use of headscarves by teachers, therefore, was passed in nine German states. Most recently, finally, the Court of Appeal of Mannheim stated that "the directive issued by the school administration for those working at the school not to wear such a head covering is lawful," adding that the headscarf ban passed by the state of Baden-Württemberg complies fully with the German constitution.<sup>23</sup>

In the Netherlands – yet another country with a large Muslim community – the headscarf issue is not treated as a matter of freedom of religion, but rather as a matter of non-discrimination. Controversies are solved by means of non-judiciary procedures: the so-called Equal Treatment Commission was created in order to deal with anti-discriminatory legislation and is thus also in charge of all headscarf-related complaints. Following a classical liberal approach, students are allowed to wear religious signs in public schools (the Muslim veil among them), the only limit being the preservation of their own safety, for example in case of sport classes during which the headscarf can represent a danger.<sup>24</sup> The headscarf

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21 *Bundesverwaltungsgericht, Urteil BVerwG 6 C 8/91*, August 25, 1993, quoted in Brems (2006), 123.

22 So went the reasoning of the German Constitutional Court (*Bundesverfassungsgericht*), that, in a 2003 sentence, stated that a headscarf ban for teachers can be constitutional, when it is aimed at the preservation of constitutionally protected values and when it is supported by a precise legal basis. See *Bundesverfassungsgericht, Ludin*, 2 BvR 1436/02, September 24, 2003.

23 Quoted in "German Court Upholds Muslim Headscarf Ban in Schools," *Der Spiegel Online International* (March 18, 2008), <http://www.spiegel.de/international/germany/0,1518,542211,00.html> [April 3, 2008]

24 See Equal Treatment Commission, 2000-63; Equal Treatment Commission, 2003-40.

issue is largely seen as a problem of individual freedom and dealt with through accommodation and non-legislative means.<sup>25</sup>

In the United Kingdom, Muslim women's right to wear the veil in public places is granted by law, although there have been several attempts at limiting it.<sup>26</sup> Following a classical liberal approach, British authorities deal with the headscarf issue by resorting to non-legal means. According to the governmental Commission on Integration and cohesion, which was created *ad hoc* in 2006, relations with minority cultures must be dealt with by "developing practical solutions for local communities based on the best existing practice", thus "push[ing] further against perceived barriers to cohesion and integration".<sup>27</sup>

## VII. Integration and accommodation

European countries' attitudes towards the headscarf issue differ widely on a continuum that goes from the French integrationist ideal to the multicultural model in the Netherlands and the UK. From a theoretical point of view, the creation of a multicultural society, pluralizing the concept of equality and attempting to "respect difference", "tolerate" heterogeneity, and "accommodate" cultures is the proper liberal approach.

Yet the theorists of multiculturalism have to deal with the complex reality of social alert when it comes to coexistence with the growing Muslim communities in Europe. We have to keep in mind that no "accommodation" is acceptable when it comes to violating the core values of democracy, respecting others as human beings and not harming others. The balance between "integration" and "accommodation" must be handled carefully in order to avoid intra-group tensions and preserve the principles of European liberal democracies.

In this light, it is difficult to agree with the Archbishop of Canterbury, who urged UK authorities to adopt certain aspects of Sharia law in the British system as a means to maintain social cohesion.<sup>28</sup> The cultural relativism underlying the

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25 For a discussion of the ongoing debate in the Netherlands, see Vink (2007).

26 A lawyer wearing a full-face veil, for instance, was told by a judge that she could not represent a client because, he argued, he could not hear her; a teacher wearing the same kind of veil was dismissed from school. See Perlez (2007).

27 Quoted in Brighton (2007), 4.

28 See "Sharia Law in UK Is Unavoidable", *BBC News Online* (February 7, 2007), [http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/uk\\_news/7232661.stm](http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/uk_news/7232661.stm) [February 7, 2008].

words of the Archbishop – who says that Muslim citizens should not be forced to choose between “the stark alternatives of cultural loyalty or state loyalty” – is, we argue, misleading.<sup>29</sup> Citizens, immigrant citizens among them, are entitled to retain their cultural and religious norms as long as they do not contradict state’s laws. Democracies should enable multiculturalism and religious freedoms but it is not incumbent on them to transform their set of laws. At the same time, citizens have both rights and duties towards the state: loyalty to the state, in this context, should be seen as a precondition for citizenship.

If the case can be made, therefore, that dialogue and non-legal procedures can be more effective than legislation to accommodate matters of every-day coexistence in schools, the preservation of the social contract underlying liberal democracy should remain the main focus of European authorities. Islamic political and legal doctrine have traditionally opposed the subordination of Muslims to non-Islamic authorities, and therefore their integration in non-Islamic societies, as well as the creation of bonds of loyalty with non-Muslims, is particularly difficult.<sup>30</sup>

Liberal democracies should show a stronger willingness to find effective informal institutional tools to accommodate the needs of immigrant communities within the larger society in their every-day life. At the same time, they should remain committed to the core values of democracy, freedom, not harming others, and respect for human rights.

As the European Court of Human Rights indicated in 2004 (*Leyla Şahin v. Turkey*),<sup>31</sup> the headscarf controversy should be solved through a careful balance between the individual interest in the right to freedom of religion and the collective interest in the preservation of open, democratic societies.<sup>32</sup> Liberal democra-

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29 *Ibid.*

30 See March (2006), 373.

31 European Court of Human Rights, *Leyla Şahin v. Turkey*, Nr. 44774/98, June 29, 2004.

32 Article 9 of the European Convention on Human Rights and Fundamental Freedoms reads: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice, and observance”. Paragraph 2 adds: “Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interest of public safety, for the protection of the rights and freedoms of others”. The text of the Convention can be

cies, in this perspective, can legitimately limit the public manifestation of religious belief if a threat exists for the right of others or for public order.<sup>33</sup> Whether they prefer to do it by means of legislation (France) or through non-legislative procedures (Belgium, Germany), it is a decision that pertains to the realm of political choice. Some degree of state intervention is needed as Europe is facing a social and demographic change, in an age of growing tension between majority and minority cultures.

### **VIII. Minority rights and human rights**

Liberals should 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 (Kymlicka and Cohen-Almagor, 2000).

There are many ways to strengthen mechanisms for respecting individual rights in a consensual way, without simply imposing liberal values on national minorities. Coercive intervention in the internal affairs of a national minority is justified in the case of gross and systematic violation of human rights, such as slavery or murder or inflicting severe bodily harms on certain individuals or expulsions 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 formalized dispute-resolution-mechanisms exist within the community;

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found at <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf> [04.02.2008].

33 The Court explicitly decided to leave the decision on the headscarf issue to national states, noting that “a margin of appreciation is particularly appropriate when it comes to the regulation by the Contracting States of the wearing of religious symbols in teaching institutions, since rules on the subject vary from one country to another depending on national traditions and there is no uniform European conception of the requirements of “the protection of the rights of the others” and of “public order”. See European Court of Human Rights (2004), § 102.

- 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 (Kymlicka and Cohen-Almagor, 2000: 110).

## **IX. Conclusions**

Developing a comprehensive liberal theory of minority rights is of the utmost importance for the future of liberal democracies, particularly for newly democracies in Eastern Europe, Asia and Africa.

Liberal democracies must explicitly address the needs and aspirations of ethnic and national minorities. They should invest in cultivating tolerance. The key for understanding the other is education, making that is foreign familiar, making that is remote closer. Pluralism can be enriching. Liberal democracies should erect bridges and remove obstacles to the understanding of the other through mechanisms of awareness, of recognition and of legitimacy. At the same time, common grounds for coexistence between liberal and other cultures should be insisted upon and preserved. Continued dialogue and exchange of ideas will be instrumental in contesting boundaries by peaceful means, without resorting to coercion and abuse.

## **Literature**

*Ab. Rahman, Isa, Rashidah Shuib, and M Shukri Othman*, "The Practice of Female Circumcision among Muslims in Kelantan, Malaysia", in: *Reproductive Health Matters* 7, 13, 1999, 137-44.

*Barber, Jennifer S.*, "Community Social Context and Individualistic Attitudes Toward Marriage", in: *Social Psychology Quarterly* 67, 3, 2004, 236-56.

*Bilimoria, Purushottama*, "The Jaina Ethic of Voluntary Death", in: *Bioethics* 6, 4, 1992, 331-355.

*Brems, Eva*, "Diversity in the Classroom: The Headscarf Controversy in European Schools", in: *Peace & Change* 31, 1, 2006, 117-31.

*Brighton, Shane*, "British Muslim, Multiculturalism and UK Foreign Policy: 'Integration' and 'Cohesion' In and Beyond the State", in: *International Affairs* 83, 1, 2007, 1-17.

- Browne, Anthony*, "Belgium Next in Line as Europe's Veil Ban Spreads", in: *The Times*, January 19, 2004.
- Ciminelli, Maria Luisa*, "Le 'ragioni culturali' delle mutilazioni genitali femminili: note critiche sulla definizione di Mgf dell'Oms/Who", in: *La Ricerca Folklorica* 46, 2002, 39-50.
- Cohen-Almagor, Raphael*, *The Boundaries of Liberty and Tolerance: The Struggle Against Kahanism*, in: Israel, Gainesville: The University Press of Florida, 1994.
- "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, 171-187.
  - "Israeli Democracy, Religion and the Practice of *Halizah* in Jewish Law", in: *UCLA Women's Law Journal* 11, 1, 2000, 45-65.
  - "Israeli Democracy at the Crossroads", in: *R. Cohen-Almagor* (ed.), *Israeli Democracy at the Crossroads*, London: Routledge, 2005, 254-275.
- Commission de réflexion sur l'application du principe de laïcité dans la République*, Rapport au Président de la République, December 11, 2003.
- "German Court Upholds Muslim Headscarf Ban in Schools", in: *Der Spiegel Online International*, March 18, 2008.
- Ghimire, Dirgha J., William G. Axinn, Scott T. Yabiku, and Arland Thornton*, "Social Change, Premarital Nonfamily Experience, and Spouse Choice in an Arranged Marriage Society", in: *The American Journal of Sociology* 111, 4, 2006, 1181-218.
- Glazer, Ilsa M., and Wahiba Abu Ras*, "On Aggression, Human Rights, and Hegemonic Discourse: The Case of a Murder for Family Honor in Israel", in: *Sex Roles: A Journal of Research* 30, 3-4, 1994, 269-88.
- "Holy Qur-ān: English Translation of the Meanings and Commentary", Al-Madinah: King Fahd Holy Qur-ān Printing Complex, 1993.
- Igras, Susan, Jacinta Muteshi, Asmelash WoldeMariam, and Saida Ali*, "Integrating Rights-Based Approaches into Community-Based Health Projects: Experiences from the Prevention of Female Genital Cutting Project in East Africa", in: *Heath and Human Rights* 7, 2, 2004 251-71.
- Islam M. Mazharul, and M. Mosleh Uddin* (2001) "Femal Circumcision in Sudan: Future Prospects and Strategies for Eradication", in: *International Family Planning Perspectives* 27, 2, 2001, 71-76.

- Islam, Shada*, "Headscarf Ban Misses the Point", in: YaleGlobal Online, January 30, 2004.
- Kant, Immanuel*, *Foundations of the Metaphysics of Morals*, Indianapolis: Bobbs-Merrill Educational Publishers, 1969.
- Kasher, Asa*, "A Jewish and Democratic State": Present Navigation in the Map of Interpretations", in: *R. Cohen-Almagor* (ed.), *Israeli Democracy at the Crossroads*, London: Routledge, 2005 165-182.
- Kressel, Gideon M.*, "Sorricide/Filiacide: Homicide for Family Honour", in: *Current Anthropology* xxii, 2, 1981, 141-58.
- Kymlicka, Will*, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford: Oxford University Press, 1995.
- "The Internationalization of Minority Rights", in: *International Journal of Constitutional Law* 6, 1, 2008, 1-32.
- and *Raphael Cohen-Almagor*, "Ethnocultural Minorities in Liberal Democracies", in: *R. Cohen-Almagor* (ed.), *Challenges to Democracy: Essays in Honour and Memory of Isaiah Berlin*, London: Ashgate Publishing Ltd., 2000, 89-118.
- Laborde, Cécile*, "Secular Philosophy and Muslim Headscarves in Schools", 13 *The Journal of Political Philosophy* 13, 3, 2005, 305 -29.
- Liu, Joanne A.* "When Law and Culture Clash: Female Genital Mutilation, A Traditional Practice Gaining Recognition as a Global Concern", *N.Y. Int'l L. Rev.* 11, 1998, 71-95.
- March, Andrew F.*, "Liberal Citizenship and the Search for an Overlapping Consensus: The Case of Muslim Minorities", *Philosophy and Public Affairs* 34, 4, 2006, 373-402.
- Mill, J. S.* "On Liberty", in: *Utilitarianism, Liberty and Representative Government*, London: J.M. Dent, 1948.
- Motha, Stewart*, "Veiled Women and the *Affect* of Religion in Democracy", in: *Journal of Law and Society* 34, 1, 2007, 139-62.
- Perlez, Jane*, "Muslims' Veils Test Limits of Britain's Tolerance", in: *The New York Times*, June 22, 2007.
- Poulter, Sebastian*, "Ethnic Minority Customs, English Law, and Human Rights", *International and Comparative Law Quarterly* 36, 3, 1987, 589-615.
- Ravitzky, Aviezer*, "Is A Halachic State Possible? The Paradox of Jewish Theocracy", in: *R. Cohen-Almagor* (ed.), *Israeli Democracy at the Crossroads*, London: Routledge, 2005, 137-164.

- Scheffler, Samuel* (2007) "Immigration and the Significance of Culture", in: *Philosophy and Public Affairs* 35, 2, 2007, 93-125.
- Schubring, Walther*, *The Doctrine of the Jains: Described after the Old Sources*, Delhi: Motilal Banarsidass, 1962.
- "Sharia Law in UK Is Unavoidable", BBC News Online, February 7, 2007.
- Vink, Maarten P.*, "Dutch 'Multiculturalism' beyond the Pillarisation Myth", in: *Political Studies Review* 5, 3, 2007, 337-50.
- Wiles, Ellen*, "Headscarves, Human Rights, and Harmonious Multicultural Society: Implications of the French Ban for Interpretations of Equality", in: *Law & Society Review*, 41, 3, 2007, 699-736.

### **Court Judgments**

- Bundesverfassungsgericht, *Ludin*, 2 BvR 1436/02, September 24, 2003.
- Bundesverwaltungsgericht, *Urteil BVerwG 6 C 8/91*, August 25, 1993.
- Conseil d'Etat, *Aoukili*, Nr. 159981, March 10, 1995.
- Conseil d'Etat, *Boutakrouf en Atouf*, Nr. 170210, November 27, 1996.
- Conseil d'Etat, *Chabou et autres*, Nr. 170207 and 170208, November 27, 1996.
- Conseil d'Etat, *Tlaouziti*, Nr. 172685, November 27, 1996.
- Conseil d'Etat, *Unal*, Nr. 172725, October 9, 1996.
- Conseil d'Etat, *Marteaux (Avis)*, Nr. 217017, May 3, 2000.
- European Court of Human Rights, *Leyla Şahin v. Turkey*, Nr. 44774/98 June 29, 2004.