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Liberalism and the Limits of Multiculturalism

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One of the most pressing issues facing liberal democracies today is the politicization 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 difference. This essay discusses some of the issues raised by these demands, focussing in particular on the difficulties that arise when the minority seeking accommodation is illiberal. Undoubtedly, ethnocultural relations are often full of complications that 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. This essay probes the nature of liberal tolerance and then delineates the limits of state intervention by looking at some troubling practices and analyzing pertinent court judgements.

L'une des questions les plus pressantes à laquelle doivent faire face les démocraties libérales d'aujourd'hui, c'est la politisation de la diversité ethnoculturelle. Les cultures minoritaires exigent une plus grande reconnaissance publique de leur identité culturelle, ainsi qu'une plus grande liberté et davantage d'occasions qui leur permettent de conserver et de développer leurs pratiques culturelles distinctives. En réponse à ces demandes, on adopte, dans de nombreux pays, de nouveaux mécanismes créatifs afin de composer avec cette différence. Le présent article traite de certaines des questions que suscitent ces demandes, en particulier les difficultés qui surgissent lorsque la minorité recherchant une adaptation n'est pas libérale. Il ne fait pas de doute que les relations ethnoculturelles sont souvent compliquées, et que ces complications dépassent une catégorisation simple ou les réponses faciles. Cependant, il nous est possible de progresser si nous savons faire la distinction entre les différentes sortes de minorités et les différents types de droits de ces minorités. Nous examinons la nature de la tolérance libérale, et nous déterminons ensuite les limites de l'intervention étatique en jetant un regard sur certaines pratiques troublantes ainsi qu'en analysant des jugements judiciaires pertinents.

One of the most pressing issues facing liberal democracies today is the politicization 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 difference. This essay discusses some of the issues raised by these demands, focussing in particular on the difficulties that arise in North America when the minority seeking accommodation is illiberal. How should liberal societies approach illiberal, but non-violent, minorities?

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 also are required. Indeed there is a clear trend within liberal democracies towards 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 that defy simple categories or easy answers. Virtually all liberal democracies contain some degree of ethnocultural diversity. They can all be described, therefore, as "multicultural."

This essay probes group rights and the nature of liberal tolerance. I proceed by delineating the limits of state intervention. The article will draw from the philosophy of John Rawls in order to examine the limits of liberal tolerance. Then, a distinction is drawn between internalized and designated coercion and, finally, the *Hofer v. Hofer* case is analyzed, illustrating the appropriate liberal approach to face the problem of dissenters who wish to leave their religious community.

Probing 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 threaten basic liberal democratic principles.

The relationship between individual rights and group rights is not a simple one and we need to take into account the different claims that are involved. First, we have to distinguish 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. The practice permits a member of the community, under certain circumstances, to terminate his or her own life, or more accurately, to welcome impending death in a non-violent manner. Thus persons in the late stages of their lives may decide that they want to die and undertake the vow of terminal fast (Bilimoria 331-55).

Another relevant conduct involves scarring parts of the body as part of initiation rites, which is common in some African cultures. Let us assume that some immigrants bring these rituals to a liberal democracy. I argue that 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 be granted cultural autonomy in these regards.¹

Of course, all forms of government restrict 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. Sociological analysis of various societies reveals that many groups seek the legal right to restrict the freedom of their own members in the name of group solidarity or cultural purity. When one examines rituals around the globe, it is almost always the case that women are being discriminated against: suttee (widow burning), arranged marriage, female infanticide, as well as female circumcision and murder for family honour are such examples.² 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 a danger that claims for group rights may 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 injustices take place.

In our view, such internal restrictions are almost always unjust.³ 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

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of its members. Furthermore, members of cultural groups should enjoy the liberty to leave their groups upon deciding that they no longer want 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.

It is our contention that some things lie beyond the toleration of liberal democracies. 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 by their very nature. These are norms that result in physical harm to women and babies, such as widow burning, female infanticide, harsh forms of female circumcision (like the Pharaonic circumcision that involves the excision of the clitoris, the labia minora and parts of the labia majora)⁴ and murder for family honour (Cohen-Almagor "Female Circumcision").

That is to say that the right of a group against its own members is not absolute. Sometimes society is justified in interfering and imposing restrictions on certain cultural practices. The more difficult cases, however, concern groups that are illiberal – that is, groups that are concerned with controlling internal dissent, and which seek to impose internal restrictions short of inflicting physical harm on their members. Let us probe the more difficult issues that involve some restrictions on group members, but which do not amount to severe physical harm.

Some Pueblo Indian communities in the United States enjoy extensive rights of self-government and discriminate against members who have abandoned the traditional tribal religion in the group's distribution of housing. They also discriminate against women who have married outside the tribe.⁵ Under tribal personal status law, children of male Pueblos who marry outside the tribe are extended tribal membership, whereas children of female Pueblos who marry outside the tribe are excluded from membership. 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 they will leave the community; or the right to continue traditional customs, such as compulsory arranged marriages, which are common among certain immigrant cultural communities in North America and in other places around the globe. 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? The next section probes the nature of liberal tolerance while availing ourselves of Rawls's theory of justice as fairness.

Liberal Tolerance and the Rawlsian Conception

It is easy for liberal states to accommodate the demands of groups that are themselves liberal, but surely what some minorities desire is precisely the ability to reject liberalism and to organize their cultural communities along traditional, non-liberal lines. Is this not part of what makes them culturally distinct? If the members of a minority lose the ability to enforce religious orthodoxy or traditional gender roles, have they not lost part of the *raison d'être* for maintaining themselves as a distinct society? Is the insistence on respect for individual rights not a new form of ethnocentrism, which sets the (liberal) majority culture as the standard to which other cultures must adhere? Indeed, is it not fundamentally intolerant to force a national minority or religious sect to reorganize its community according to our liberal principles (Chaplin)?

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 quintessentially 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 (Cohen-Almagor, *The Boundaries* ch. 4; Cohen-Almagor, "Israeli"; Kymlicka, *States* 41-42)?

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 (Rawls, *A Theory* 216-21). Reflecting on the dilemma of whether or not all conceptions may have a place in liberal democracies, Rawls concedes that no society can include within itself all forms of life. He argues that, in a democratic culture, a workable conception of political justice must allow for a diversity of doctrines and the plurality of conflicting, indeed incommensurable, conceptions of the meaning, value and purpose of human life affirmed by members of existing democratic societies.⁴ But given the profound differences in beliefs and conceptions of the good, we must recognize that, just as on questions of religious and moral doctrine, public agreement on the basic questions of philosophy cannot be obtained without the state's infringement of basic liberties (Rawls, "Justice" 225-30). Rawls explains that conceptions in direct conflict with the principles of justice, or that wish to control the machinery of state and practices so as to coerce the citizenry by employing effective intolerance, should be excluded. The assumption is that these principles of justice underlie any conception of the good. By "conception of the good" is meant a conception that encompasses both personal values and societal circumstances. It consists of a more or less determinate scheme of ends that the doer aspires to carry out for his or her own sake, as well as of attachments to other individuals and loyalties to various groups and associations.

Rawls further asserts that if a conception of the good is unable to persist and gain adherents under institutions of equal freedom and mutual toleration, we must question whether it is a viable conception of the good, and whether its passing is to be regretted.⁷ He explicitly argues that no social world exists that does not exclude some ways of life that realize in special ways some essential values. Rawls ("The Priority" 265-66; *Political Liberalism* 197) maintains that by virtue of its culture and institutions, any society will prove uncongenial to some ways of life.

In *Political Liberalism*, Rawls (58-66) reiterates that some conceptions will die out in a just constitutional regime. He further clarifies his position by distinguishing between comprehensive doctrines and *reasonable* comprehensive doctrines. Rawls explains that comprehensive doctrines include conceptions of what is of value in human life, as well as ideals of personal virtue and character, of friendship and of familial and associational relationships. While reasonable comprehensive doctrines cover the major religious, philosophical and moral aspects of human life in a fairly consistent and coherent manner, they organize and characterize recognized values so that they are compatible with one another and express an intelligible view of the world, and they normally belong to, or draw upon, a tradition of thought and doctrine.

Rawls (*Political Liberalism* xvi) maintains that a modern democratic society is characterized not simply by a pluralism of comprehensive religious, philosophical and moral doctrines but by pluralism of incompatible yet reasonable comprehensive doctrines. Political liberalism assumes that, for political purposes, this plurality is the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime. Political liberalism also assumes that reasonable comprehensive doctrines do not reject the essentials of a democratic regime.

Rawls believes that the public culture of democracy is obligated to pursue forms of social co-operation that can be achieved on a basis of mutual respect.⁸ This co-operation involves the acceptance of common procedures to regulate political conduct. Citizens should be accorded equal respect in their pursuit of their idea of the good. Rawls's concept of justice is independent from and prior to the concept of goodness in that its principles limit the conceptions of the good that are permissible. He explains that the principles of any reasonable political conceptions must impose restrictions on permissible comprehensive views, and the basic institutions those principles require inevitably encourage some ways of life and discourage others, or even exclude them altogether (Rawls, *Political Liberalism* 195). Rawls's ideal polity would not be congenial towards those who believe that their personal conception of the good involves enforcing others to abide by it. It would exclude some beliefs, such as those that entail coercion of others, causing harm to others or deriving profit at the expense of others.

A concept germane to this analysis is "the original position." Rawls explains that this is the appropriate initial status quo, which ensures that the fundamental agreements reached in it are fair (*A Theory* 17). He clarifies that it is a purely hypothetical situation designed to account for our moral judgements and helps to explain our having a sense of justice. It is, if you will, the basis of the justice-as-fairness theory, a theory of our moral sentiments as manifested by our considered judgements in reflective equilibrium (*A Theory* 120).⁹ The justification for excluding controversial beliefs from the original position lies in the social role of justice, which is to enable individuals to make mutually acceptable to one another their shared institutions and basic arrangements. This justification is accompanied by an agreement on ways of reasoning and rules for weighing evidence that govern the applications of the claims of justice. Mutual respect would enable social cooperation between individuals who affirm fundamentally different conceptions of the good.

The next section provides some clarification regarding the concept of coercion that is pertinent to our discussion.

Internalized and Designated Coercion

When a given subculture in society denies some freedoms and rights from a certain group living in that same culture, we may feel that some form of coercion is being exercised. Rawls, however, seems to have no problem with such instances. For example, if a religious sect denies rights and liberties to its women members, that sect may continue doing so because it is assumed that all members of that group internalize the system of beliefs that legitimizes the exclusion of rights from women. It is further assumed that all members of that group conform to and abide by the particular conception of the good that guides and directs members of the said group. They do not feel that they are being coerced to follow a certain conception. Outsiders may claim that a whole-encompassing system of manipulation, rationalization and legitimization is being utilized to make women accept their denial of rights. But for most cases this view may only be the view of outsiders, not of the persons concerned. If at all, one may argue that women of that sect are experiencing a form of coercion that we would call *internalized coercion*.

Difficulties arise when some women in the said cultural or religious group fail to internalize fully the system of norms that discriminates against them. Upon realizing that they are being denied fundamental rights, they might wish to opt out of their community. If they are allowed to opt out, no question arises. If they are not allowed, then a case arises for state interference to overrule this individualistic, designated coercion that aims to deny the person freedom to leave her community. We call this form of coercion *designated coercion*. Unlike the internalized coercion

it is not concerned with a machinery aiming to convince the entire cultural group of an irrefutable truth; instead, it is designed to exert pressure on an uncertain, "confused" individual so as to bring him or her back to the community. Rawls does not elaborate on this form of coercion. Thus, for instance, there are Muslim communities in which female genital mutilation is being practised and most of the girls in these communities grow to believe that this practice is essential for their integration as women in their communities. Because this cultural norm is backed by the elder women who lead by example, most girls do not object to the practice and accept it as is, as part of their growing up. They are not aware of the system of manipulation and the coercion is internalized into their way of life and conception of the good. When girls object to the practice, however, and wish to protect their womanhood, then designated coercion is employed to safeguard the norms of the community and to "educate" the "stray weeds" (for further deliberation, see Davar; Stern; Gillia; Liu; Kelson; and Messito).

The next section considers the ability of religious groups to practise their religion and the right of dissenters to exit their group.

Religious Toleration

Let us now consider a situation in which a cultural minority simply wants to be left alone to run its own community in accordance with its traditional non-liberal norms. If this minority does not want to impose its values on others, should it not be allowed to organize its society according to its culture and within the general ambit of the law, even if this involves limiting the liberty of its own members?

There are forms of religious toleration that are based on the idea that each religious group should be free to organize 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 all were recognized 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 recognize any principle of individual freedom of conscience.¹⁰

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 that limit the right of individuals within the group to revise their conceptions of the good. For example, liberalism opposes attempts by legal means of a religious minority to prohibit apostasy and proselytization or to prevent their children from learning about other ways of life.¹¹ For similar reasons Rawls does not exclude religious groups with strong beliefs that may demand strict conformity and allegiance from their members, but he could not endorse the formation of a theocracy, for some people lack such intensity of religious belief.¹²

Let us reflect in this context on a Canadian case, *Hofer v. Hofer*, which dealt with the powers of the Hutterite Church over its members.¹³ The Hutterites live in large agricultural colonies, within which there is no private property. Members of the Hofer family, lifelong 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" (*Hofer v. Hofer* 21). 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 6-to-1 decision, accepted this Hutterite claim. The majority opinion (Cartwright CJC, 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 CJC 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 (*Hofer v. Hofer* 4).

Justice 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 colony to reject its religious teachings, due to the high cost of changing their religion, and so they were effectively deprived of freedom of religion (the quoted passages in this paragraph are all from *Hofer v. Hofer* 21).

Justice 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 or his religious beliefs. Were the Hutterites to accept Rawls's concepts of the person and society as a free and equal being (person) acting in a fair system of co-operation over time between generations (society), in accordance with his account of justice as fairness, then they would also have to accept the view that freedom of religion must be interpreted in terms of an individual's capacity to form and revise his or her religious beliefs. The basic idea is that

by virtue of the person's moral powers (a capacity for a sense of justice and for a conception of the good) and powers of reason (of judgement, thought and inference connected with these powers) persons are free. Their having these powers to the requisite minimum degree to be fully co-operating members of society makes persons equal (Rawls, *Political Liberalism* 18-19). Liberalism puts the individual at the centre of attention. All stems from the individual; all is designed to advance the individual's capacities and development. Pigeon's dissent is the proper liberal approach because he is the only judge who recognized that individuals matter, that individuality matters. People should enjoy the right to revise their ways of life and conceptions of the good as long as they do not harm others. The aggregate interest of a group might come into conflict with the individual interest of some of its members. When this happens, mechanisms of compromise should be employed. Individuals should have the right to exit their community. The enjoyment of this right might be costly but the cost should not override the right of exit. Coercion should not come at the expense of negotiation and compromise.¹⁴

Conclusions and Further Thoughts

The Court in the Hutterite case supported the claims of illiberal groups, in the name of "tolerance" and "freedom of religion." But the Court interpreted these ideals in a non-liberal way, 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 based on individual freedom, not on group freedom, it cannot justify internal restrictions that limit individual freedom of conscience.

Liberals, it is recommended, 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 communities. 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.¹⁵

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 the inflicting of severe bodily harm 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, 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 that base the national minority's claim on some sort of autonomy (Kymlicka, *Multicultural* 165-70; Cohen-Almagor, *The Boundaries* ch. 4). For example, whether it is justified to intervene in the case of an Aboriginal band that restricts freedom of conscience surely depends on whether it is governed by a tyrannical leader who lacks popular support and prevents people from leaving the community, or whether the tribal government has a broad base of support and religious dissidents are free to leave.¹⁶

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

Liberal democracies must explicitly address the needs and aspirations of ethnic and national minorities. It is hoped that this essay constitutes a step in the liberal direction that will help secure liberty and tolerance in democracies and at the same time compel us to acknowledge the need for setting adequate boundaries so as to prevent the likelihood of coercion and abuse.¹⁷

Notes

Gratitude is granted to Fran Olsen and to the referees of the *Journal of Canadian Studies* for their instructive comments. This is a significantly revised version of an article co-authored with Will Kymlicka in R. Cohen-Almagor (ed.), *Challenges to Democracy: Essays in Honour and Memory of Isaiah Berlin* (London: Ashgate Publishing Ltd., 2000).

1. Western revulsion in the case of scarring one's body as part of cultural rituals may reflect squeamishness. It seems hypocritical to object to scarring of certain parts of the body at the time when we in Western countries put great pressure on women to constantly shave body hair. If we allow tattooing so we should allow scarring, although scarring is probably more painful. The extent of pain is not the major consideration; rather, it is the fact that the act is performed by the person's own volition. The case is different when it concerns inflicting pain on young children who regard the scarring ceremony more as a torture than as a sign of maturity. Here substantive grounds exist for liberal interference to override cultural considerations.
2. For discussion about discrimination against ethnic and other minorities, see Cohen-Almagor, "Cultural Pluralism"; Kymlicka *Finding Our Way* 28-32.
3. The distinction between internal restrictions and external protections is developed in depth in Kymlicka, *Multicultural Citizenship* ch 3. See also Kymlicka, *Finding Our Way* 61-63.

4. Cf. Jones-Bibbs; Sussman; Cardenas; LaFrance (856-67).
5. This discriminatory rule was upheld in *Santa Clara Pueblo v. Martinez* 436 US 49 (1978). For further discussion see Resnik. Shachar (303) correctly notes that although the court recognized that the membership rules were no more or less than a mechanism of social self-definition, and as such were basic to the tribe's survival as a cultural and economic entity, it erred in leaving Martinez's daughter and similarly situated children, who were put at risk by the tribe's accommodated traditions, without legal remedy.
6. Rawls acknowledges that it is a disputed question whether and in what sense conceptions of the good are incommensurable. He states that incommensurability is to be understood as a political fact, an aspect of pluralism: namely, the fact that there is no available political understanding as to how to commensurate these conceptions for settling questions of political justice. Cf. Rawls, "The Idea of an Overlapping Consensus" 4.
7. Rawls ("The Priority of Right" 266) speaks only of "just constitutional regimes." He admits that the questions are still left open as to whether the corresponding form of life would be viable under other historic conditions and whether its passing is to be regretted. For further discussion on the connected question of stability in society, see Rawls (Rawls, *Political Liberalism* 140-44).
8. Recently Rawls has broadened the scope of his theory to argue for mutual respect among peoples. See *The Law of Peoples*.
9. For a critique of the original position concept, see Kukathas and Pettit.
10. For a detailed discussion of the millet system as an illiberal form of group-based religious tolerance, see Kymlicka (Kymlicka, "Two Models of Pluralism" 81-105); Shachar (295-96).
11. In Israel, the autonomous education system run by ultra-religious Jews prevents children from learning certain secular teachings and practices and Israel condones this.
12. Cf. *A Theory of Justice*, sects. 33-35; "Fairness to Goodness," sect. VI; "Representation of Freedom and Equality," sect. II; "Political not Metaphysical," sect. VI; "The Priority of Right," sect. VII; *Political Liberalism*, pp. 197-198.
13. *Hofer et al. v. Hofer et al.* (1970), 13 DLR (3d) 1.
14. One of the referees noted that one could argue that the more costly the exit clause, the greater the commitment to the community shown by individuals. This level of commitment is important since the community is unlikely to want members who are not deeply committed. At the same time, if liberalism insists on a form of "life-plan revision insurance," then this would have the effect of undercutting individual responsibility for the decisions individuals make. This complicated question requires, however, a separate analysis. For further deliberation, see Glazer; Green.
15. 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 legitimized the unjust coercion and discrimination against them.
16. The ability of members to leave is a very important proviso. However, unlike some commentators (Svensson 437; Kukathas), I 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 Green; Cohen-Almagor, "Liberalism"; Kymlicka, *Multicultural Citizenship* ch. 8. For further deliberation, see Margalit and Halbertal; Réaume 139-40.

17. For further deliberation on securing liberty and tolerance within a workable framework, see Cohen-Almagor, *Speech, Media and Ethics*.

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