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0521603943 - Minorities within Minorities: Equality, Rights and Diversity

Edited by Avigail Eisenberg and Jeff Spinner-Halev

Excerpt

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Introduction

Avigail Eisenberg and Jeff Spinner-Halev

Groups have had a role in liberalism since its inception. John Locke argued that churches ought to be voluntary associations, with members freely choosing to join or leave. Tocqueville celebrated the associations he found in America, contending that they were a crucial site where citizens learn democratic virtues. James Madison argued that factions were an important element in maintaining democratic freedom. The existence of factions, along with the protection of freedom of association, ensured that no enduring majority would dominate over any minority because, in order to advance their interests, factions constantly form and re-form alliances with other factions. As Robert Dahl put it some years later, democratic governance was a matter, not of majority rule, but of “minorities rule” (Dahl 1956: 132). The groups celebrated by these classical liberals are open-ended: people presumably join or leave them as they please.

In contrast, ascriptive groups – groups whose membership is not open-ended, such as racial, ethnic, and sometimes national groups – were traditionally not a focal point of liberal thinking until the late 1980s. At that time, the attraction of communitarian thinking, the increased political activism in the United States of religious conservatives, and the rise of nationalism in Eastern Europe after the fall of the Berlin wall in 1989, all contributed to an increased interest in the role that ascriptive groups play in liberal theory and practice. Since then, political theorists have become increasingly interested in a whole range of groups, in the group-based nature of society, in the status of groups rights, and in the sorts of rights groups should be granted.

Both the success of groups at attaining autonomy and the more recent attention directed at the justness of their claims, often in the name of freedom or the protection of their identity, have given rise to a crucial question: what happens to individuals or minorities within protected minorities who find that their community discriminates against them? Traditional family law systems often discriminate against women. Indigenous groups have been criticized for discriminating against women and, in some cases, Christians. Religious groups, too, have been accused of

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discriminating against women and homosexuals and mistreating children. Many groups prize group obedience and loyalty over independent thinking and thereby have been accused of damaging individual autonomy in a way that jeopardizes the ability of some members, particularly children, to choose the sort of life they want to lead. These issues – the issues raised by minorities within minorities – are the focus of this volume. To what extent should minorities be shielded from majority laws whose aim is to protect individual rights, but whose effect is also to interfere with practices, values and traditions which are integral to minority communities? To what extent and under what circumstances should the liberal state accommodate minority groups which discriminate or appear to mistreat some of their own members? Under what circumstances ought the state to interfere in the internal affairs of a protected minority group when such discrimination takes place? And does it make a difference that some of these minorities have been oppressed by state interference in the past?

These are new issues for political theorists, but in practice most countries have accommodated cultural and religious minorities for decades or even centuries. Many indigenous peoples around the world enjoy limited forms of self-government. Some formerly colonized peoples have systems of compulsory religious or tribal family law that apply only to their communities. Religious minorities often enjoy special rights that exempt them from general laws. National and linguistic minorities sometimes also enjoy special rights that assist them in maintaining their language or culture to protect them from the pressures of assimilation. For other groups, the protections offered by the right to freedom of association, which is guaranteed by most liberal constitutions, is sufficient to ensure their accommodation.

The reasons that have motivated countries to institute minority accommodation vary significantly. In some places, minority accommodation is based on historical arrangements, such as the accommodation of linguistic minorities in Belgium and Canada. Sometimes, group rights are recognized in an effort to correct past injustices, as in recent arguments for the expansion of the rights of indigenous peoples. Other times, identity claims are at work: Catalonia and Scotland have each made arguments for more autonomy as a means to help preserve their identity. Economic concerns can also be at play. In British Columbia, for example, the majority's motivation to negotiate indigenous land claims is driven partly by the need to address investor uncertainty about the costs of development in the absence of settled treaties. Colonialism has also left its mark on group rights. As Susan Okin points out in her essay in this volume, the British codified and institutionalized traditional family law systems within their

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colonies partly as a means to have a freer hand in westernizing contract law – the law they really cared about. Once these colonies became free states, they often kept these laws out of a need to keep peace, since minorities often cling to their family laws as a safeguard against assimilation into the larger culture. And sometimes accommodation is the result of extending to communities of new immigrants, or immigrants whose freedoms were previously restricted, such as Sikhs or Muslims, the established values of tolerance and individual rights which have been enjoyed by the mainstream within the state. Extending rights to these new groups has given rise to new and unanticipated challenges to the traditional liberal concepts of freedom of association and freedom of religion.

Many minority groups have also become more assertive in demanding autonomy or state assistance to preserve their identity. Ignoring these demands all too easily leads to violence and instability. This was made especially apparent in the last thirty years, when the rise of ethno-national conflict, following the collapse of the Soviet Union, led to concerted efforts, within and between nation states, to renew or reinvent legal and political arrangements for accommodating ethnic and national minorities. As is often the case, attempts to solve problems in one part of the world spark demands in other parts to revisit arrangements for the accommodation of minorities and to recognize new groups claiming minority rights. These demands have led to redrawing national boundaries, such as that between the Czech Republic and Slovakia, or, after considerable bloodshed, in the Balkans. It has led to rethinking and reframing the purposes of federalism in Canada, in Belgium and in Spain. It has required that numerous countries revisit the meaning of freedom of religion and, in this context, review the extent to which their public institutions can or ought to accommodate religious minorities. It has also required that numerous states rethink and revise their legal and political relations to indigenous peoples and develop a means of accommodating forms of internal self-determination.

As minority groups have become more vocal in demanding some form of accommodation, political theorists have increasingly taken an interest in issues raised by both voluntary and ascriptive minority groups. Yet few have paid much attention to the problem of minorities within minorities. This might seem surprising since the nature and limits of minority accommodation have been the focus of so much attention, especially in liberal political thought. But for the most part, efforts to develop reasons why political relations between mainstream majorities and minorities ought to be renegotiated tend to present contending interests as though they are uncontroversial within the groups that hold them. The issue of minorities within minorities is left unaddressed.

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Perhaps nowhere is this made more evident than in the scholarship which viewed the problem in terms of “individual vs. collective rights” and which focused, for the most part, on whether minorities were threatened by the individualism of the liberal majority (Glazer 1983; Kymlicka 1995: ch. 3). One consequence of viewing the problem as a competition between fundamental values of the majority and minority communities is that the complex relations within minority groups were largely ignored. Instead, most arguments either took for granted the fact that individual rights were culturally alien to minority groups by focusing on groups for whom this assumption seemed to fit, such as indigenous peoples (see e.g. Svensson 1979; Turpel 1989–90), or argued that individual rights were a means by which the solidarity of minorities was easily sabotaged (see e.g. Kukathas 1992a; McDonald 1991; Sandel 1990), as was typical of many discussions of insular minorities such as the Amish, Hutterites or Doukabours.¹ In both ways, the putative cultural gulf between liberal and illiberal groups tended to obfuscate the complex politics and pluralism of interests within minority communities.

Multicultural theories of citizenship offer another set of principles and options to consider in relation to why and how minorities ought to be accommodated, which are more complex than the simple “individual vs. collective rights” formula. But for the most part these theories also do not tackle the questions related to minorities within minorities. At best, multiculturalists focus on whether measures for group-based accommodation could justifiably violate individual rights. For example, Will Kymlicka argues that strong group-based protections should not be secured at the price of violating rights fundamental to individual well-being. According to Kymlicka, the aim of multicultural citizenship and minority rights is to provide groups with *external protections* and not to protect minorities in imposing *internal restrictions* on their members (1995: ch. 3). This distinction is helpful in highlighting the fact that often at stake in protecting minority rights is the internal relations within minority groups; protecting minorities from mainstream influences (external protections) potentially has the effect of altering relations internal to the community.

While the distinction between external protections and internal restrictions raises the issue of minorities within minorities, it provides limited

¹ For example, most discussions in political theory of the Amish focus on the famous case of *Wisconsin v. Yoder* which is helpful mainly in highlighting the zero-sum nature of individual and collective interests. See, in particular, the treatment of this case in Arneson and Shapiro 1996 and Sandel 1990. Another good example of a similar phenomenon is *Hofer v Hofer* which involves the communal property ownership in Hutterite communities in Canada. The case is employed mainly in discussions that seek to highlight the “individual versus collective rights” dilemma of minority–majority values. See Janzen 1990 and Kymlicka 1995: 158–63.

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practical guidance. Partly this is because Kymlicka is unwilling to argue that the state must restrict national minorities which seek to impose internal restrictions on their members; he merely suggests that these groups should not impose internal restrictions, a suggestion with which he hopes they agree.² Beyond this issue of imposition, it is also the case that external protections and internal restrictions cannot be so easily separated. The external protections that minority groups seek are valuable because they allow minorities more power to direct their own affairs, and this usually includes interpreting and imposing traditions and practices on their members – sometimes practices that are oppressive and discriminatory against some of their members. If minority groups were indeed prohibited from imposing internal restrictions on the rights of their members, then drawn into question would be their community rules and practices about membership, governance and participation, marriage and divorce, the distribution of property, and the education of children, all of which are areas of social life over which minorities want some control and protection from the *external* influence of mainstream practices.

The themes

This volume brings together essays about minorities within minorities from key contributors to the debates about multiculturalism in Canada, the United States, Europe and India. The aim of the collection is to address conflicting demands that arise in relation to minorities within minorities. As the contributions to this volume show, there are many different types of minorities, including religious, national, indigenous linguistic, racial and ethnic minorities, and many different types of “minorities within,” including women, children, gay men and lesbians, religious dissenters and linguistic minorities within minorities. The sorts of conflicts examined here also implicate different historical, economic and other contextual considerations, some of which are directly relevant to the sort of resolutions that appear to be attractive or acceptable in any given case. The conflict of minorities within minorities poses particularly taxing problems for political theorists. While no contribution to this volume sets out directly to address the potential gulf between theory and practice, many of the essays indirectly address this tension by discussing case studies and showing how political principles and values work in practice to resolve or exacerbate conflicts. The aim, then, is not to find a definitive resolution to all such conflicts, but to explain the ways in

² For a trenchant criticism of the division between internal and external restrictions, see Kukathas 2003: ch. 6.

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which such conflicts have arisen in a variety of settings and the resources that liberal and democratic theory contain to help resolve these conflicts.

The essays differ in how they view the main problem, in the considerations they view as central to resolving conflicts that involve minorities within minorities, and in the main values of democratic and liberal governance through which they have chosen to explore the conflict. The main themes that inform these essays are toleration, equality, individual autonomy, self-determination and democracy.

Toleration

John Locke, John Milton and other early liberals invoked toleration partly as a means to guide the ways in which different communities can coexist peacefully and justly. People were killing each other over religion and one solution was to persuade people to tolerate religious differences. Yet, many recent liberals have not put toleration at the center stage of liberalism. Amy Gutmann argues that it is individual autonomy, not tolerance, that has primacy in relation to the education of children from insular groups (Gutmann 1995). Eamonn Callan argues that autonomy should be a key aspect of education in liberal democracy (Callan 1997). Steve Macedo agrees, and argues that autonomy is a key liberal virtue (Macedo 1990; 2000). Kymlicka argues that tolerance is dependent on autonomy; although groups should be tolerated, these groups ought to respect the individual autonomy of their members (Kymlicka 1995: 155).

Melissa Williams argues in this volume that, while the ideals of individual autonomy, equality and peace can all lead to tolerance, they all flag limits to toleration as well. Autonomy means allowing people to live as they like. But when people decide to live together in a certain way, their way of life may in fact undermine the autonomy of some members within their group. The same is true for equality: equality may require that minorities be protected from assimilation, but protected groups may seek to undermine the equality of their members. Williams argues that many contemporary liberal theorists, following the logic of equality and freedom, are led down the path of interference in minorities. Without claiming that interference is always wrong, Williams urges us to remember the importance of peace. Groups may jealously guard their practices, and fight any attempts to change them. So the question, Williams suggests, is how do we balance the values of autonomy, equality and peace when we apply toleration to minority groups?

According to Lucas Swaine, liberal states have little balance in their approach to dealing with many conservative religious groups (what he calls theocratic communities) and are too apt to interfere in the internal

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affairs of these groups. Liberal states make few attempts to provide insular minorities with good reasons why these minorities ought to follow the dictates of the state. In fact, Swaine argues, these groups often suspect that the liberal state's aim is to undermine groups that seem too radical or too autonomous. Liberalism has retreated, Swaine suggests, from religious tolerance to interference. Since many theocratic communities think that the liberal state wants to interfere in their affairs without good reasons and respectful dialogue, it is hardly surprising that liberalism and liberal institutions appear to them to be purely ideological and that their decisions appear to be based on fiat rather than any form of moral or political consensus. One of the disastrous results of this "failure of liberalism," according to Swaine, is to strengthen the resolve of theocratic minorities against the state and broaden among minority groups the sense that the liberal state is biased and acts illegitimately towards them.

Equality

One way to interpret equality in relation to cultural diversity is to suggest that minority accommodation allows minority groups to receive the kind of cultural support that majority groups receive "free" (Deveaux 2000a; Kymlicka 1995; Parekh 2000; Shachar 2001; Young 1990). Most states conduct their business in a particular language, and thereby privilege speakers of that language. A particular group's religious holidays are often the ones celebrated as official state holidays, which is more convenient for those who follow that religion. If the state conducts most of its business in the dominant language, then, some argue, equality requires that the state support minority languages. If the state has historically supported Christian schools, then equality requires that it support Muslim and Jewish schools as well. Indeed, some theorists argue that all or most cultural groups deserve some state support (Margalit and Halbertal 1994; Young 1990), or deserve some sort of state recognition and respect (Deveaux 2000a; Taylor 1992; Parekh 2000).

A predictable consequence of accommodating cultural and religious minorities in the name of equality is that in some groups vulnerable members, such as women, children, nonconformists and dissenters will be made worse off when their communities are accommodated by the state.³ Accommodation is supposed to empower minority communities. Yet the success of this accommodation sometimes makes it more difficult for vulnerable members to use the power of liberal institutions and the influence

³ This is what Ayelet Shachar calls "the paradox of multicultural accommodation." See Shachar 2000a.

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of mainstream culture to change the oppressive and discriminatory traditions and practices of their communities. Therefore, as accommodation strategies have successfully developed and been put into effect by political leaders, the issue of minorities within minorities has come to the forefront of political and philosophical debates about minority accommodation and has raised some basic questions that go to the heart of how we understand principles of equality, autonomy and justice.

It is surprising how few theorists anticipated this problem (some important exceptions include Phillips 1995 and Green 1995). It was brought to the fore in the late 1990s in a series of essays by Susan Okin and also by Ayelet Shachar, in which both posed one of the most central questions raised by minorities within minorities, which is how the protection of cultural minority rights potentially has an impact on women (Okin 1998; Okin 1999a; Okin 2002; Shachar 1998a; Shachar 1999; Shachar 2000a; Shachar 2001). Multicultural theories attempt to address one form of inequality, namely cultural inequality, but in doing so they undermine the prospects of addressing other forms, such as sexual inequality. The problem of minorities within minorities, on this reading, is a problem of “equality of what?” How ought cultural and sexual equality to be prioritized when they conflict? Getting the answer right is not easy: Okin has been criticized for being too cavalier about the preservation of cultural groups (Perez 2002; Shachar 2001; Spinner-Halev 2001; Herr 2004), while Shachar has been criticized for being too attentive to group preservation (Spinner-Halev 2001), and her solutions are criticized as impracticable or ineffective.⁴

Religious and cultural minorities often seek the right to manage their own affairs with respect to membership in their communities by controlling the customs, traditions and practices around marriage and divorce. Most cultural and religious communities have practices, traditions and customs that treat women differently from men, often by depriving women of access to resources or generally treating them unfairly. It is easy to find agreement amongst feminists that women ought to be treated equally and that sexist practices ought to be reformed. But this tells us very little about how to pursue such reforms within minority communities or whether the goal of such reforms should differ depending on the cultural or religious community in which they are pursued.

Susan Okin’s chapter points out the complexity of the tensions between cultural identity, equality and individual autonomy. Okin suggests that the state can either force groups to become liberal, or it can allow groups to

⁴ Shachar’s proposal for how to combine sex equality and group preservation is also criticized in this volume by Okin, Reitman and Levy.

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decide upon their rules themselves in some kind of democratic fashion. Which is the best alternative depends on whether the group is oppressed or not. Okin favors the democratic route for oppressed groups, but notes that this still means state involvement in the group's affairs. She favors a liberal response to non-oppressed groups. She does not suggest that illiberal groups be made to liberalize, but she thinks that they should neither have any legal force over their members nor receive any kind of state benefit, like tax-exempt status.

Examining the case of India in some detail, Gurpreet Mahajan is skeptical that groups will reform on their own, but she is also reluctant to endorse direct state intervention in groups, particularly those that are oppressed. Mahajan argues that if the state changes the internal rules of an oppressed group, like indigenous peoples or Indian Muslims, this intervention will be viewed as another form of oppression or imperialism. She also argues that it is not enough to wait for internal reform. Even if all Muslims could vote on their personal laws, there is no reason to think that liberal laws would be endorsed. The heavily religious cast of the society, along with the enmity between the majority and minority, make internal liberal reform unlikely. Mahajan argues that for internal reform to succeed, women within the group need to be organized, external pressure from the international community or community members outside the polity can be helpful, and, most important, the state and its cultural majority must not mark out the minority as the quintessential other.

Anne Phillips argues that the tensions many see between equality and multiculturalism are overblown and that many policies made in the name of multiculturalism can simply be described as matters of equality: if the majority group gets a certain kind of good, like funding for religious schools, then minority groups ought to get the same. To frame an issue as a matter of multiculturalism does not add much to our understanding of it and sometimes leads us to think that problems require far more elaborate solutions than, in fact, they do. Nor is it helpful to think about culture and gender as if they generate competing claims to equality since gender exists within culture, never as separate from it. As Phillips shows by examining three examples of such conflicts, the complexities in resolving conflicts that find minority women disadvantaged by their cultural communities lie mainly in understanding the relevant historical contexts and pragmatic concerns, not in searching for some deep disagreement over matters of high principle. Often at issue, she claims, are the reactions of different groups to proposed policies, or policies that are misguided in the first place. If these issues could be examined in calmer political moments, they would be more readily resolved.

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Equality is also the central value involved when the discussion turns to language and cultural rights. Linguistic minorities enjoy linguistic protection in a variety of jurisdictions in the world and these protections usually mean that the minority's language exists as the official language in a particular province or region of the country. But attempts to protect minority languages may well disadvantage a linguistic minority that lives within its midst. For example, in Quebec and Catalonia, such protective policies have imposed controversial restrictions on the language of education and the language in which public signs may be written. The protection of French in Quebec from the dominance of English in North America partly entails restricting the use of English in Quebec by restricting the language in which one can educate one's own children and advertise one's business. The same is true in Catalonia, where Spanish is restricted so that Catalan can be protected. As Alan Patten shows, the point of such strict policies is to ensure that the linguistic minority is able to maintain or create a critical mass of speakers large enough to ensure that all opportunities necessary for a viable society are available in the minority language. Without the critical mass, schools in the minority language become unviable, industries lose the incentive to cater to minority language speakers, and employers look to hire dominant language speakers. Therefore any efforts to extend protections to linguistic minorities within minorities depends on sustaining this critical mass of speakers and thus ensuring that people have a full range of opportunities open to them in society.

Individual autonomy

Liberals have traditionally assumed that most groups are voluntary associations. Yet the nature and meaning of community began to loom large in the 1980s, as some political theorists charged liberalism with being too individualistic (Avineri and De-Shalit 1992; Mason 2000; Mulhall and Swift 1996). People's membership in religious groups was characterized by Michael Sandel, for example, in terms of conscience, and not in the liberal language of choice. (Sandel 1996: ch. 3). People follow the dictates of their religion, Sandel charged, not because they choose to do so, but because they are obliged to do so. Communitarians generally charged liberalism with underplaying the importance of community in people's lives. Yet the problem of internal minorities rarely if ever entered the discussions between liberalism and communitarianism even though the focus of these theories was the extent to which individuals are constituted by their community membership and obligations.

The degree to which community membership is voluntary, however, is crucial to the discussion of minorities within minorities. At one end of