

## The Limits of Toleration: Applying Rawls's Public Reason to Multicultural Rights

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In the last few decades, the increasing pervasiveness of Western culture around the globe has tolled the death knell for cultural distinctiveness as we previously knew it. American economic interests, in particular, have done a remarkable job of spreading the symbols of American prosperity around the world. So well, for example, that the world's busiest McDonald's operates not in the United States, but in the tiny Pacific island nation of Samoa. Such incredible hegemonic power has led many in recent years to call for the enactment of political measures in order to protect cultures that are now, in terms of power and incidence, in the minority.<sup>1</sup> The debate concerning the protection of minority cultures, though, has also taken place within the political culture of individual states. Those concerned with the loss of the distinctiveness of minority cultures have often argued for the granting of multicultural rights. On this view, the individual rights of the minority group members are not sufficiently salient to protect the culture as a whole from the pressure of coexisting with more dominant cultures. What is needed, then, are special group rights that transcend the individuals' rights and provide more adequate protection for the culture's practices and traditions, or even for its mere existence. Such rights

<sup>1</sup> The French policy of restricting the amount of foreign media is one example of such efforts.

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could exempt minority groups from certain requirements or restrictions, such as compulsory education, military service, or even parts of the Bill of Rights.

Critics, however, advance a number of arguments against the granting of multicultural rights. I will be considering one such critique here: that special group rights could allow cultural groups to oppress, abuse and discriminate within their own groups that are situated within a larger liberal context. Specifically, women seem to be particularly disadvantaged when groups are allowed to continue illiberal practices. The purpose of this essay, then, is to explore the limits of toleration for multicultural rights. After a discussion of the intrinsic and instrumental value of culture, I shall consider John Rawls's idea of public reason as a means of determining the proper limits of toleration. In short, I am going to argue that limits of toleration for multicultural rights ought to accord with the idea of public reason.

## I. Value of Culture

Omnipresent yet often seemingly innocuous, the value of culture is frequently assumed without proper justification or explanation. I will begin with a discussion of the particular value of culture, be it intrinsic or instrumental. I shall argue that although "culture," generically understood, is intrinsically valuable, the value of any *particular* culture is merely instrumental.

First, a couple of definitional points: for the purposes of this essay, the word *culture* shall be used to refer to the collection of habits, beliefs, customs, activities, history, traditions and symbols of an identifiable social group. Based on this definition of the term there seem to be some homogeneous cultures that comprise entire political entities (like many of the nation-states of Western Europe) and other cultural groups, (like Native Americans), that are subsumed by larger, more dominant cultures.

Culture can be valuable in two obvious respects: intrinsically or instrumentally. Most commentators seem to argue that culture has intrin-

sic value because it is necessary for individual autonomy and the leading of a fulfilling human existence. “Personal autonomy,” according to Marilyn Friedman, “is self-determination by an individual self, a person.”<sup>2</sup> Culture provides individuals with a value set, ideas concerning the purpose of human life, and cultural goods such as customs, religion, and history. Further, culture serves to root the individual human being to the larger social sphere by providing an arena within which to self-actualize through the formation and accomplishing of goals and the creation of social ties. By providing criteria to evaluate what is valuable and an audience of relevant peers, the situation of an individual within a culture is what renders the actions of that person meaningful, significant, and worthwhile.

Culture can never be absent or neutral. Human society necessarily creates and continually modifies cultural norms, goods and associations, a point that was thoroughly articulated by social contract theorists such as Thomas Hobbes and John Locke. All human beings are born into and lead their lives within a cultural context, whatever it may be. Cultural neutrality is an impossibility, since any development of societal norms will necessarily privilege one conception of morality over all others. Even the establishment of a minimalist libertarian state with the express goal of fostering as much cultural freedom as possible would fail to achieve true neutrality, since this political philosophy must make a number of assumptions that not all cultures would accept.<sup>3</sup>

Culture should be properly seen as both a prerequisite for individual autonomy and a logical and inevitable consequence of the exercise of that prerogative. Absent from this conception of the intrinsic value of culture is the idea that any particular culture is necessary for the realization of the aforementioned benefits. When considering that which culture provides—namely, individual autonomy—distinctions between the cultures of Germany, India, and Native American tribes are largely irrelevant, since they

<sup>2</sup> Friedman 4.

<sup>3</sup> Such as assumptions about the proper role of the state, the priority of individual liberty, and the importance of toleration itself.

all seem to provide a sufficient arena in which their members may exercise autonomy. Particular manifestations of cultures have mere instrumental value in the achievement of the goals of individual autonomy and the leading of a fulfilling human existence.

I am cognizant of the potentially paradoxical nature of granting culture as a concept intrinsic value while only assigning instrumental value to culture in the particular case. The point is less problematic if we keep in mind that the end worth striving for here is individual autonomy; since this goal and culture are so inextricably bound, it would be impossible to grant intrinsic value to one without extending it to the other. Though one must have a culture to achieve autonomy, any *particular* culture is merely instrumental in achieving the end of individual autonomy.

Note one consequence of giving such a dominant role to individual autonomy in the valuation of culture: when cultural practices seem to restrict or impede the development of autonomy, it looks as if it would be difficult to justify them. The pulling apart of the plethora of cultural factors and competing relevant values can make judgments concerning whether or not a particular cultural practice is detrimental or beneficial to individual autonomy very difficult to make with any amount of certainty.

The primarily Islamic tradition of females covering themselves with the head-to-toe coverings of the burqa is an example of the inherent difficulty in evaluating the extent to which cultural practices foster individual autonomy. Critics of the burqa and similar practices, especially critics from Western cultures, argue that they are physically oppressive with their weight; psychologically oppressive in that they seem to make women devoid of distinctiveness; and emotionally oppressive in that they are another manifestation of the efforts of men to perpetuate the subordination of women. On this view, there is no doubt that such practices would be unjustified in that they greatly restrict the ability of women to become autonomous.

Defenders of this practice, such as Leila Ahmed, argue the opposite view: coverings like the burqa actually foster autonomy and liberate women

for a number of reasons.<sup>4</sup> Burqas seem to preclude women from being viewed as sexual objects, they encourage solidarity with other Muslims, and they promote the appearance (and perhaps even reality) of piety. Azizah Y. Al-Hibri, in her discussion of Muslim practices deemed repressive by Westerners, asks the pointed question, “Why is it oppressive to wear a head scarf but liberating to wear a miniskirt?” The answer, according to Al-Hibri, “lies in the assumptions each side makes about the women involved and their ability to make choices.”<sup>5</sup> If our assumptions concerning such practices are indeed wrong, and the donning of the burqa and the variants on this practice are actually matters of choice, then they would be completely justified as a legitimate manifestation of individual autonomy.

Though some are less than sympathetic to the arguments advanced in defense of the burqa, the example illustrates the inherent difficulty in judging the effects a cultural practice has on individual autonomy. Such an evaluation requires careful analysis of both the theoretical arguments and empirical evidence in order to reach a sufficiently reasonable decision, including input from cultural insiders. One factor that will undoubtedly play a large role in such decision-making is consent. Intuitively, it seems as if our toleration for such cultural practices will be proportional to the degree of voluntariness. If the donning of the burqa is done voluntarily, it should be seen not as a restriction on autonomy, but rather a manifestation of it. Of course, determining how voluntary an action is presents its own array of empirical difficulties, particularly in the presence of strong forces of indoctrination or the lack of viable alternatives; nonetheless, voluntariness remains a crucial factor in evaluating the effects of cultural practices on individual autonomy. I will pick up this theme of voluntariness again later in my discussion of the importance of viable exit options in any granting of multicultural group rights.

<sup>4</sup> Okin 37.

<sup>5</sup> Ibid. 46.

## II. Role of Cultural Pluralism

Next, I would like to focus on cultural pluralism as a vehicle for the benefits of culture. The realization of benefits from culture seems to require some amount of pluralism. A pluralist society is one in which a multitude of different cultural groups exist, each respecting the other cultures but maintaining their own distinctiveness.<sup>6</sup>

If one accepts individual autonomy as the primary benefit of culture, then illustrating the importance of pluralism becomes much easier. There are three ways in which pluralism assists autonomy. First, pluralism provides a measuring stick with which to evaluate one's own culture; second, it supplies cultural goods; and third, it presents viable exit options for the members of society.

The notion of pluralism as an evaluative measuring stick is a rather straightforward one. The mere existence of and interaction with other cultural groups within a society provides a point of reference for members of other groups to use in appraising the value and legitimacy of their own culture. A multitude of value sets, concepts of the good, and norms will prompt the thoughtful individual to compare his or her own culture with others present. This evaluative process will result in either a reaffirmation of one's native culture, its rejection, or, most likely, a compromise position where one both reaffirms aspects while at the same time discarding as inapplicable those practices or beliefs found to be distasteful. No matter what the outcome of this process is in terms of rejection or reaffirmation, merely engaging in it results in a situation of increased individual autonomy, since the subsequent condition is one of choice rather than circumstance.

This idea of pluralism as a prompt to cultural evaluation is akin to the dialectical process articulated by John Stuart Mill's concept of the marketplace of ideas. Various cultural ideas and values are set forth, which are then discussed, defended and debated. The assumption here is that only those ideas that are considered worthwhile by a large number of people will

<sup>6</sup> Musschenga 202.

survive this process; all others will lose supporters and become obsolete. Mill thought that human beings progressed in virtue of this dialectal clash of ideas. This process can similarly assist individual autonomy in a very meaningful way.

The second way that pluralism assists autonomy is by providing a variety of cultural goods such as food, music and dress. This point is very much related to the previous one, in that the fundamental idea is that pluralism creates choice. The difference is that the cultural goods which pluralism provides can be enjoyed—for the most part—without fear of contradiction. The enjoyment of Chinese food, for example, or the beauty of a traditional Native American dance, can be realized by individuals within virtually any culture. The goods of other cultures enrich the daily lives of individuals by presenting them with meaningful choices concerning food they eat, music they listen to, and clothing that they wear. Autonomy here is bolstered by choice; whatever life individuals select for themselves will become more a result of autonomy as the number of options increases. The mere enjoyment of the entertainment offerings of other cultures may seem like a relatively shallow benefit of cultural pluralism. However, how one chooses to live his or her daily existence is not a shallow concern. The existence of a variety of different entertainment offerings—as a source of social commentary, for example—is an important way in which autonomy is facilitated.

The third way that cultural pluralism assists autonomy is by providing viable exit options for members of the society. If, upon evaluation of their native culture, individuals find it to be either too unresponsive to reform or simply so abhorrent that they cannot imagine staying within it, the existence of other cultures provides them with other means to procure the benefits of cultural groups, assuming that the other cultures are relatively open to the receipt of new members. Additionally, the presence of competing cultures may make cultural elites more responsive to the wishes of the group's members out of a fear of defections, which again has a positive

effect on autonomy. The existence of viable exit options obviously strengthens autonomy by making one's membership in a cultural group more a matter of choice.

Though the benefits of cultural pluralism are no doubt best realized through interpersonal contact of members of different groups, some of the same effects can be felt through other means. Increasingly robust and pervasive methods of communication and mass media, for example, mean that news, images, and ideas of far-away cultures can be experienced by people around the world. Granted, the effects will be diminished, the media portrayals will likely be biased and inaccurate, and such technology has not reached all corners of the globe, but it remains a viable secondary method for the actualization of pluralism with a great amount of potential for future growth.

The fact that some amount of pluralism seems to greatly facilitate the realization of the benefits of culture—specifically, individual autonomy—means that pluralism itself takes on intrinsic value. As Raz puts it, “If having an autonomous life is an ultimate value, then having a sufficient range of acceptable options is an intrinsic value.”<sup>7</sup> Ronald Dworkin, for his part, thinks the intrinsic value we grant to pluralism is showcased in the fact that “we even try to preserve cultures we do not especially admire, because they embody processes of human creation we consider important and admirable.”<sup>8</sup> The problem that is presented, then, is that in situations of little diversity it seems as if we should want to grant increasing amounts of value to the cultures that do exist if only for the fact that they are rare. The critical mass necessary for pluralism is quite ambiguous, but it seems as if there may indeed be times when we would want to give minority cultures special protections.

At no time, of course, should we coerce or compel individuals to adopt or maintain a specific way of life merely for the sake of pluralism. Additionally, even in situations of little pluralism, the desire for diversity

<sup>7</sup> Quoted in Tamir 30.

<sup>8</sup> Dworkin 75.

for its own sake should not give minority cultures absolute multicultural rights. The rationale for both not coercing individuals into a culture and not giving minority cultures a *carte blanche* is the same: both situations seem to work against the end of culture—the fostering of individual autonomy. Instead, those who wish to practice a minority culture ought to be given multicultural rights that accord with the dictates of public reason, which I shall discuss in the next section.

### III. Dictates of Public Reason

I propose that the procedures of public reason, as articulated by John Rawls, ought to be employed to determine the proper limits of toleration for multicultural rights. Though initially intended as a procedural mechanism for deciding the fundamental political questions of justice, the important concepts of public reason can be applied to the multicultural rights debate as well. In particular, the reasoning used to justify claims for multicultural rights ought to be public in ways consistent with Rawls's public reason. The important points are that the discussion must take place between free and equal citizens who satisfy requirements of reciprocity; reasons must take into account the public good; and the nature and content of such reasoning is public.<sup>9</sup> The essential idea here is that claims for multicultural rights must be made with some concern for the public good and willingness to act reciprocally using justifications that the rest of society would consider reasonable.

The idea of voluntariness is again invoked by the requirement that the discussion take place between free and equal citizens. Specifically in regards to cultural groups, this component of public reason seems to demand that individuals ought to be able to leave those groups without incurring unreasonable costs, noting that exiting a group will probably always involve at least some loss of rights. For example, if individuals decide to denounce their membership in their Native American tribe, doing so

<sup>9</sup> Rawls 133.

will inevitably result in a forfeiture of the rights to use the resources of the tribe or the right to participation in the decision-making process of the group. In contrast, I would count as unreasonable costs things such as exit fees, where one would have to pay to leave a group, or losses of liberty that would deprive exiting individuals of rights that are guaranteed to them as members of the larger society.

The amount of social cost to the exiting individual that should be permissible is a much more difficult case. Social cost here means the psychological, emotional, and spiritual losses incurred by the leaving of one's cultural group. In some instances, it seems as if those costs would be so high to some individuals that they would be willing to endure situations quite detrimental to their well-being because of the fact that they feel as if exit simply is not a viable option for them. If and when such a situation occurs, the lack of a truly viable exit option should lower our threshold of toleration because of the fact that the harmful situation is likely not a product of consent nor does it foster autonomy. I will talk more about this idea in section four when discussing the consequences of public reason on multi-cultural rights.

Those exiting their native cultural groups cannot go into cultural limbo, so to speak, but rather they require the ability to join other cultural groups or, alternately, the right to establish competing groups, lest they be denied the benefits of autonomy that culture affords. Given that many cultural groups are either based on rather rigid characteristics that are considered constitutive of their members, such as familial ties or ethnicity, or have high costs of entrance, in the case of some religious groups, culturally unaffiliated individuals will no doubt sometimes find it difficult to gain membership in the groups that they would like to join. Or it may be the case that individuals dissatisfied with their native group are similarly unhappy with what all the other groups have to offer. Both situations seem to present problems for the notion of voluntariness, since the individual dissatisfied with the cultural offerings of society seems destined to remain unfulfilled.

I believe that a liberal society that respects all people as free and equal citizens, as demanded by Rawls's public reason, will take measures to prevent this possibility by guaranteeing the right of individuals to establish and maintain competing groups in order to satisfy their particular needs. The exercise of this right is perhaps best illustrated by the fragmentation of various religious groups within the United States. Those raised within a Hasidic Jewish family, for example, now have various options for practicing their faith if they become dissatisfied with the ultra conservative leanings of their native cultural group, Conservative and Reform synagogues having all been established out of discontent with the existing religious offerings.

A difficult case for the idea of voluntariness is that of children. Lacking full rationale and the liberty of adults, one would be hard pressed to say that the cultural membership of any individual child is a product of voluntarily given consent. This fact has repercussions for the cultural practices that involve children, practices that we ought to tolerate within a liberal society. Given the stated end of culture discussed earlier—individual autonomy—I propose that the limits of toleration for cultural practices involving children should also reflect this concern for autonomy. I believe that those practices that limit either present or future autonomy in an irrevocable manner ought not to be tolerated. Therefore, the denial of basic education, for example, and any form of physical disfigurement, such as female genital mutilation, would fall outside of the realm of what a liberal society should tolerate because of the long-term restrictions of autonomy that these practices engender.

The next requirement of Rawls's public reason is that of reciprocity. As applied to cultural groups and multicultural rights, the requirement of reciprocity basically amounts to a willingness to allow the peaceful coexistence of and to engage in discussion with other groups, including those that have beliefs and values that are fundamentally at odds with one's own.

Those groups unwilling to act reciprocally would simply not be considered reasonable, since their actions are not conducive to the perpetuation of the liberal, democratic society that allows for the existence of diverse cultural groups in the first place. At the least, this requirement helps “quiet divisiveness and encourage social stability.”<sup>10</sup>

Linked to the idea of reciprocity is the constraint that reasons given to justify multicultural rights must take into account the public good. Because of the ramifications such rights have on both pluralism and individual autonomy, these two subjects should play a prominent role in any discussion concerning the granting of multicultural rights. The demonstration that groups require additional protections to ensure that the autonomous choices of their members are respected will create a *prima facie* case for the concession of those rights because of the public’s interest in having a pluralist society and the development of autonomous citizens. Other interests and considerations, such as third-party effects, will of course also be factored into the final decision, but it is the common interest in promoting autonomy that will be compelling enough to justify the initial claim.

As Rawls explains, the requirements of public reason will push justifications of multicultural rights toward more general principles that all could accept as reasonable and away from group-specific reasons. Thus, claims based on appeals to tradition or specific religious doctrines will likely be excluded since others in society could not be expected to find them reasonable; instead, groups will have to move to broader principles, such as the importance of cultural and religious practices to individual autonomy, that all reasonable people could support, no matter their particular cultural or religious background. If and when groups fail to justify their claims with appeals to principles others support, such claims will not be considered reasonable.

<sup>10</sup> Ibid. 150.

#### IV. The Application of Public Reason

Given that individual autonomy is the end achieved through the various benefits of culture, I believe that the application of Rawls's public reason to the question of toleration for cultural practices will result in a form of multicultural rights that is largely contingent upon autonomy. Those cultural practices that either foster autonomy or are manifestations of it ought to be protected. Conversely, we ought to be skeptical of cultural practices that either restrict autonomy or do not seem to be products of consent. I envision a continuum concerning how much respect and protection ought to be extended to various cultural practices. At the high-respect, high-protection end of the spectrum are (1) those cultural practices that are performed by fully rational and consensual adults, and (2) those practices that are essential to fostering individual autonomy. As one would expect, the other end of the continuum is occupied by (1) illiberal practices that children or similarly irrational human beings are forced to perform, and (2) practices that severely restrict individual autonomy. Of course, there will probably often be cases in which the two different types of effects of autonomy—manifestations and the fostering of—will be present, which would result in an even stronger case for the protection or restriction of the practice, depending on the end of the continuum on which it falls.

Important factors in this model are how consensual the act is, its effects on autonomy, and whether or not the actor is a fully rational person. As discussed in the previous section, the availability and plausibility of exit options will have a lot to do with whether or not we consider the practice of a particular culture to be truly consensual. The existence of a great deal of pluralism would seemingly go a long way toward facilitating the goal of having viable exit options, so long as the various groups are relatively welcoming of new members. High costs of exiting or a lack of exit options would lower the threshold of toleration because of the increased power given to cultural elites to impose illiberal policies upon their groups

because the less powerful members lack recourse. Similarly, practices that restrict autonomy or are imposed on irrational members, like children, should be afforded less toleration. Will Kymlicka, a prominent commentator on the debate concerning multicultural rights, argues similarly that we ought not to protect cultural practices that are oppressive because doing so would threaten “the very reason we had for being concerned with cultural membership—that it allows for meaningful individual choice.”<sup>11</sup>

### V. Objections

Some, such as Susan Moller Okin, are skeptical of granting multicultural rights to any groups that practice illiberal policies, no matter how consensual the situation may seem. Okin is specifically concerned with the effects of such group rights on women, since claims concerning “culture” have been often used to justify their subordination and oppression by men. She argues that there are great epistemological problems with determining when an action or a membership in a culture is truly consensual, since, according to her, “the subordination of women is often informal and private,” which makes the gender inequities and the consequent effects on autonomy “less easily discernible.”<sup>12</sup> In summary, because of the historical realities of gender inequalities that could seemingly be perpetuated by the granting of multicultural group rights, and the inherent difficulties in ascertaining individual consent, liberal critics argue that we should extend such rights only quite begrudgingly, with the assurances that groups act liberally both in the private and public spheres.

The difficulty with this view is that it seems to run the risk of unduly limiting individual autonomy rather than fostering it. Okin’s argument concerning the difficulties in determining consent is a good one; however, the solution is not to simply deny individuals the right to choose to participate in cultural practices deemed “illiberal.” In fact, such a stance would

<sup>11</sup> Kymlicka 171–172.

<sup>12</sup> Okin 22–23.

be illiberal in and of itself. John Stuart Mill argues that acts performed amongst consenting, rational adults ought not to be restricted, unless they cause harm to third parties. Note here that Mill was speaking just of rational adults; children, in his view, require protection because they lack proper reasoning ability. This liberal idea is reflected in my own conception of multicultural rights; because children are not at liberty to rationally choose their own living arrangements and cultural practices, they warrant more protection from potentially harmful influences.

However, to not allow fully rational adults the right to choose their own lifestyles, even when we think it to be detrimental, would be an unjustified limitation of individual liberty. As Mill puts it, "All errors which he is likely to commit against advice and warning, are far outweighed by the evil of allowing others to constrain him to what they deem his good."<sup>13</sup> Restricting individuals' rights to partake in activities and persist in situations that we feel are harmful because they violate our liberal sensibilities would breach the very same liberal doctrine in a much more fundamental fashion because we would be denying the right to choose one's own conception of the good, a blatant infringement of individual autonomy. I believe that my view of multicultural rights, which does allow for the continuation of consensual but illiberal practices, does a better job of respecting individual autonomy.

Bonnie Honig, in her essay "My Culture Made Me Do It," explores many of the cultural practices objected to by critics such as Susan Okin. Honig's discussion of the treatment of female sexuality—in the form of creation myths, sexual restrictions, veiling, polygamy, etc.—highlights the fact that it remains difficult to determine which and to what extent practices harm or empower women. "Culture," according to Honig, "is a way of life, a rich and timeworn grammar of human activity, . . . a living, breathing system for the distribution and enactment of agency, power, and privileges distributed among its members and beyond."<sup>14</sup> On this view, attempts to

<sup>13</sup> Mill 140–141.

<sup>14</sup> Okin 39.

categorize any particular situation or practice as categorically harmful or beneficial to its participants will likely run into a quagmire of relevant and complicating cultural factors.

The solution to this problem is to largely leave it to the individual to decide what is best for him- or herself. The concession of multicultural rights to groups comprised of fully consenting, rational adults is the facilitation of the very liberal idea of fostering individual autonomy by giving each individual the opportunity to choose his or her own conception of the good without undue state interference, *even if the group decides to maintain illiberal internal policies*. I think that making multicultural rights contingent on groups being liberal would be to act paternalistically; further, it would be a restriction of individual autonomy, which would frustrate the very end of cultural membership.

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