CHAPTER VI: MULTICULTURALISM, ETHNIC MINORITIES AND THE LIMITS OF CULTURAL DIVERSITY

1. INTRODUCTION

The renewed interest in nationalism has been crucial for showing the political and moral relevance of cultural conflicts and for exposing significant shortcomings in the orthodox liberal position on minorities. Three values are generally invoked in this strand of thought: freedom, equality and identity. These occupy a central role in the articulation of the different approaches which, as I have argued, should be combined within a single comprehensive theory of group rights as basic rights.

This last chapter examines more closely the role played by these values within two different patterns of diversity: national minorities and immigrants (or ethnic groups). Certainly, these two categories of groups do not exhaust the universe of cultural groups making rights-claims—either at the infra-state or at the supra-state level. For this reason, the discussion that follows seeks neither to present a complete typology of groups nor to distinguish the whole range of policies and demands at issue. However, as Kymlicka claims—rightly, in my view—national minorities and immigrants generally represent the main sources of multiculturalism in modern democratic societies. Hence, the clarification of the normative basis of an extensive range of policies and rights to accommodate both kinds of diversity should be helpful in assessing similar claims made by other groups. For instance, the basic justification for claims made by indigenous peoples might be quite similar to that supporting the demands of linguistic national minorities, even though the rights or entitlements needed to accommodate these types of groups might be, in practice, quite different.

Some brief conceptual observations might be important to clarify the scope of the following discussion. Although in its most generic sense the term “immigrant” refers to a person who resides in a different state from the one in which she was born—or, more precisely, different from the state of which she was originally a national—this chapter will only consider the demands of immigrants who have been legally admitted into the society where they reside and who aspire to consider it as their new home, more or less permanently. So I will not deal with the discussion of what immigration policies should a liberal egalitarian order adopt in a world afflicted by poverty and massive injustice such as ours. On the other hand, the expression “ethnic minorities” comprises the descendants of immigrants who are born in the country where their parents have settled (whether they have the...
nationality or not), together with successive generations who perceive their identity as closely related to these groups. For this reason, the terms “immigrants” and “ethnic minorities” are often used in the literature synonymously. As explained at the beginning of this book, the expression “ethnic minority” refers to a group with a common origin or background (real or imagined) that goes beyond strict family genealogies. Although it may appear inappropriate to use the term “immigrant” in referring to the second or third generation descendants—Chinese-Americans, Latin-Americans, Ukrainian-Canadian and so forth—the notion of ethnic minorities does not assume that the links of the members of these groups to their original languages or cultures are necessarily due to recent emigration. Nevertheless, one should bear in mind that sometimes the identification of these national groups also entails reference to a common background. Thus, along with Kymlicka, it may be held that what best distinguishes ethnic minorities from national groups are their different demands. Whereas national minorities usually call for separate institutions in recognition of their aspirations to self-government, most immigrant groups, or ethnic minorities, claim a higher role or presence within the common social institutions, reacting against models of integration based upon complete cultural assimilation.

The second-half of the chapter explores the delicate issue of the limits of cultural diversity in a liberal democratic society. To sharpen the focus, some contemporary disputes that involve contested cultural claims will be revisited—in particular, claims by non-liberal minorities that will operate as a test to identify different models of multicultural citizenship. This discussion will hopefully contribute to defining how a theory such as Kymlicka’s, which is mainly grounded upon autonomy, differs from that of Taylor, which is primarily concerned with individual and collective identities. Overall, the aim of the discussion is to spell out more precisely the implications and constraints of the different arguments for the justification of group rights examined in previous chapters.

Two broad approaches may be identified in trying to determine which of these theories, or lines of justification, is more coherent or able to shape the debates about contentious claims. The first views one of those justifications as embodying the best set of concepts and universally applicable criteria to inform the political and legal decisions involving group rights in multicultural societies. The second approach is less reductionist. Although it acknowledges that not all views can be integrated into a single coherent theory, which could be used to assess and decide all particular cases, it nonetheless aims at accommodating a wide range of justifications in a more constructivist form. This is the approach adopted in this chapter. Thus, the explicit endorsement of a particular set of values and principles to the detriment of others is considered necessary only at the moment of deciding cultural disputes and rights claims in particular contexts and societies. This approach assumes that none of the previous lines of justifying group rights should be discarded a priori since they all provide a potential basis for a resolution of a wide variety of questions that arise in hard cases. I think it is only in these contexts that their relative significance and constraints can be fully elucidated and balanced. Since the ultimate meaning and implications of philosophical patterns of justification will be shaped by particular disputes at the institutional level, it is important to understand the virtues and flaws of
different approaches—in this case, different justifications of cultural group rights—rather than endorsing only one.

2. NATIONAL AND ETHNIC MINORITIES: A DIFFERENT NORMATIVE STATUS?

2.1. The Challenge of Immigration: Between Assimilation and the "Politics of Multiculturalism"

In the two preceding chapters, the problem of justifying group rights has been mainly illustrated by reference to the case of national minorities. This emphasis is not fortuitous: the literature on group rights has largely focussed on evaluating the claims of this particular type of cultural group, and especially the claims for linguistic and self-government rights. This focus has helped to draw attention to a number of theoretical issues that are now being revisited—from the suitability of prevalent views on political legitimacy to the compatibility of liberalism and nationalism.

However, a central feature of present-day multicultural societies, particularly in the West, is the influence of immigration. Mass migrations have come to constitute one of the human manifestations of the process of globalisation. Partly as a result of the growing differences between rich and poor countries, large numbers of people are struggling to flee poverty by migrating to the Western industrialised world in search of greater social and economic security. Other populations have been displaced by natural catastrophes, wars and internal conflicts. Overall, the United Nations “State of World Population 2004” by the UN Population Fund estimates that approximately 175 million people are international migrants and 10.5 million are refugees.

In human migrations, people with different cultural backgrounds move and intermingle across territorial and political boundaries, a phenomenon that alters the composition of societies and presents specific dilemmas. As Rainer Bauböck points out, although internal migration has been a driving force of fundamental change with decisive consequences for the social fabric, only international migration has the potential to change the sense of historic continuity and shared identity of the members of the polity, so that communities can change significantly. This general hypothesis, however, requires some qualifications. On the one hand, in the case of domestic migrations within multinational states, migrations can provoke challenges similar to those of international migrations, in so far geographical displacements are produced between different cultural or national communities that constitute the state. On the other, collective displacements do not always entail the disruptive alteration of historical continuity to which Bauböck refers: for example, when a Diaspora or a group in exile is reincorporated into the community that they regard as their “national home,” as in the case of Jews.

In any case, the relevant point is that claims by immigrants have generally played a secondary role in the debate about group rights, probably because these groups, in general, do not aspire to political autonomy or have only occasionally insisted on the need for special group rights, as distinct from individual human rights, in order to recreate their languages and cultures in the public sphere. This may be merely circumstantial,
arising from their territorial dispersion or the lack of any political agency or representation in mainstream political parties. It can also be a matter of priorities. The situation of social disadvantage that these groups face in many countries, together with the difficulties of applying for citizenship, means that their associations focus primarily on fighting against discrimination and social prejudice, condemning the violation of individual human rights and fighting for the extension of social and political rights to long-term residents. Quite rationally, the pre-eminent concern for many immigrants who have fled poverty, armed conflicts and dictatorships is to acquire residency status, survive with dignity on a decent salary, and have access to a home and certain basic rights. An additional, but complementary, explanation can point to what Jon Elster calls adaptive preference formation. Immigrants are not only socially subordinated in most societies, but are also taught not to challenge the status quo if they want to be accepted and, in the long run, be able to seek the positions occupied by the dominant majority; hence, they simply try to adapt and not to expect any special recognition of their cultures and languages.

In short, like many national minorities in nineteenth century Europe, ethnic minorities are usually faced with cultural assimilation since this becomes a sine qua non requirement for integration, both legally and socially, as full members of the host political community. Or else, they risk suffering persistent social economic inequality and alienation from public life. Precisely because assimilation can carry costs that are too high, and require cognitive capabilities that not everybody possesses, many immigrants perceive (at least psychologically) their stay abroad as temporary, even if they never take the decision to return to their home countries. In such instances, their main interest is to preserve their relationships and close ties with other members of their national communities to which they wish to go back eventually. With such expectations in mind, claiming cultural group rights and actively seeking to modify the biased or discriminatory character of the public sphere in the host state, is not seen as the main priority.

To be sure, there are significant exceptions to this picture which have progressively acquired a special importance in our contemporary age of migration. Although immigrants do not usually claim political autonomy or independence within a territory, in those Western industrialised states where immigration has been more or less sustained over time (either because these states have traditionally welcomed newcomers or because they have been unable to resist immigrants’ attempts to settle permanently), their degree of political mobilisation has become more prominent and their demands substantially different. Especially the intellectual and political elites of second and third generations of immigrants that, for some reason or another, have been unable (or unwilling) to assimilate have set-up strategies to renegotiate the terms of integration and raise claims, sometimes in the form of group rights, against pervasive social and cultural discrimination.

The transition from immigrants to cultural minorities is usually made possible because of the opportunities (legal, political, economical) that the receiving society offers—even if only because democratic states grant all citizens a number of basic political and social rights that are key in this respect. Ethnicity and identity then come into sight as a political force replacing ideological divergence, a process that is accompanied by a new agenda that places cultural claims in the centre. This has
been the case in many of the so-called “countries of immigration,” with societies that have historically been formed mainly by immigrants such as Canada, the United States and Australia, which experienced a powerful ethnic revival in the 1960s and 1970s. Different ethnic minorities began to draw lessons from past experiences of coercive, but often unsuccessful, assimilation and to advocate the need of a “policy of multiculturalism” as a better model to deal with diversity, implying a positive respect of different cultural identities on the part of the state as a measure to protect them against pervasive discrimination. Their claims basically aim at redesigning the economic and political institutions that lack the real participation of the relevant ethnic groups.

In addition, the politics of multiculturalism entails reconsidering and eventually adapting those rules that may be tacitly justified in a homogeneous society—such as state funding only for some denominational schools or local festivals, the institution of certain public holidays and so forth—but that are likely to diminish the aspirations of ethnic minorities in a multicultural context, relegating their identities to the fringes of society. What ethnic minorities thus start challenging is the typical expectation of most states that immigrants and their descendents will conform (and ought to conform) to the dominant culture and renounce their pre-existing identities altogether. In the end, the goal is to achieve public recognition and to build new forms of interaction and coexistence of different cultural groups. Inasmuch as certain special rights are attributed to individuals on the basis of their membership in certain identity groups, this model of integration brings about another deviation from the traditional concept of liberal citizenship as implying equal rights for everyone.

In the beginning of the 1970s, Canada was the first country to officially adopt a policy of multiculturalism with the main aim of supporting the cultural development of ethnic groups and, therefore, it delineated the basis for an alternative model of integration. Shortly after, the United States and Australia were to follow. Generally, these programmes assumed as a guideline a positive conception of multiculturalism, understood as a political principle requiring the government to act with a view to sustaining cultural diversity. Take, for instance, the policy adopted by the Canadian government in July 1988. This included, among other objectives: recognising and promoting “the understanding that multiculturalism reflects the cultural and racial diversity of Canadian society;” acknowledging “the freedom of all members of Canadian society to preserve, enhance and share their cultural heritage;” recognising and promoting “the understanding that multiculturalism is a fundamental characteristic of the Canadian heritage and identity;” promoting “the full and equitable participation of individuals and communities of all origins in the continuing evolution and shaping of all aspects of Canadian society and assist them in the elimination of any barrier to such participation;” ensuring “that all individuals receive an equal treatment and equal protection under the law, while respecting and valuing their diversity;” fostering “the recognition and appreciation of the diverse cultures of Canadian society and promote the reflection and the evolving expression of those cultures;” preserving and enhancing “the use of languages other than English and French.” In addition, the Canadian Multiculturalism Act establishes that all federal institutions shall promote “policies, programs and practices that enhance the understanding and respect for the diversity of the members of Canadian society.”
and “carry on their activities in a manner that is sensitive and responsive to the multicultural reality of Canada.”

In applying these principles, a number of specific measures demanded by ethnic minorities have been taken or discussed in Canada and other countries that have officially adopted similar policies. These include affirmative action aimed at increasing the representation of ethnic minorities in financial and educational institutions, guarantees of a certain number of seats in federal or provincial legislatures, revisions of school curricula to acknowledge the historical and cultural contributions of immigrant groups, and flexible dress codes and work times to accommodate religious beliefs. Each of these programmes developed under the rubric of “multiculturalism” raises specific questions that need to be confronted separately. This chapter will not engage in a systematic exploration of how these multiculturalism policies work in practice, since this analysis should be undertaken on a case-by-case basis. What is important for our purposes is to stress that they are based on a pluralist conception of what it means to be a member of a multicultural state or society that differs considerably from the assimilationist model that requires immigrants to conform almost entirely to the cultural rules and practices of the mainstream society. Moreover, the multicultural model, rather than viewing the varying origins and allegiances of people as a factor of instability that will lead to disloyalty and fragmentation, sees such diversity as a source of enrichment that should be preserved and cherished. Thus, to a large extent, the official endorsement of this model diverts the focus from the view that immigration is mainly troublesome. Admittedly, statements such as those incorporated in the Canadian Multiculturalism Act could be criticised for embracing a complacent rhetoric of values that is difficult to translate into tangible policies and programmes encompassing divisive areas such as education, language or race relations. Yet, by expressing a commitment to respect pluralism, these explicit statements of the principles inspire the accommodation of diversity and provide a solid basis for creating a different type of dynamics between the mainstream society and the new cultural communities formed by immigrants and their descendants.

It would be inaccurate, however, to assert that the phenomenon of post-war mass migration has only caused difficult dilemmas in societies that have been traditionally open to immigration. The increasing migrations to Europe in the last decades have also accentuated the deviations from the model of citizenship predominating in the nation-states. As Brubaker argues, this is a model theoretically defined as egalitarian, sacred (in the sense that it is supposed that citizens are willing to make sacrifices for the state, even to die for it if necessary), based on national belonging (the nation understood as evoking a shared language, culture, history and values), democratic (membership entails political rights and participation in self-rule), unique (to the extent that it is presupposed that each individual belongs only to one state) and consequential (it is expressed as a community of well-being that entails certain privileges that distinguish members from non-members, those who belong from those who are outsiders or foreigners). Among the deviations that Brubaker has in mind are the long-term exclusion from access to citizenship of large masses of immigrants with prolonged residency, the acceptance of new citizens who do not see themselves as members of the mainstream cultural community, the rise of the number of individuals with a status of partial or dual citizenship and the loss of “sacredness” in the
idea of membership. These features arise from both the rate of growth of post-war immigration and the changing type of migration—which began as temporary labour migration and slowly turned into settlement immigration, even if belatedly acknowledged by the states.

In brief, present immigration in Europe is increasingly characterised, as in the countries on the other side of the Atlantic, by its progressively permanent residential nature and its diverse cultural origins, two traits that are often at the roots of cultural conflict. The effects of this phenomenon in relation to group rights claims by ethnic minorities are undoubtedly central. For one thing, it is predictable that, sooner or later (depending on particular contexts) European states with self-complacent myths of neutrality will be confronted with similar types of conflicts and claims to those that marked the emergence of multiculturalism policies in North America or Australia. In fact, this is already happening in countries that lack a tradition of incorporating immigrants such as Spain; likewise, cultural conflicts such as the *affaire des foulards* in France have already challenged dominant ideologies of cultural homogenisation through national systems of education and administration (I will come back to this French debate in some detail shortly).

Additional cases could be reported to show that cultural diversity arising from immigration is perceived as challenging some central legal and political practices in Europe. Consider the increase of marriages between persons of different nationalities. International private law regulates the legal relationships of families when there is a foreign element. Initially, the aspiration both to preserve national unity and to look after and control migrants was used to justify the designation of the country of nationality as the personal legal statute. This connection began to lose ground throughout the twentieth century and in secular countries has been progressively replaced by the so-called principle of proximity, which postulates the link of the individual to the legal system of her place of residence. However, increased multiculturalism is also having an impact in this area, as the renewed debate about the place of foreign law in defining the personal legal statute demonstrates. The original trend towards the invocation of foreign law in domestic jurisdictions has regained new adherents among multiculturalists, who see it as the best model for granting immigrants the option of preserving their cultural identities.

The emergence of these controversies shows the current relevance in Europe of questions about the principles that should inform immigration policies. For many, the French assimilationist standard of integration is in crisis, and some sectors of society, including organisations of immigrants, have come to argue that Europe should start on the path of the democracies on the other shore of the Atlantic towards an official recognition of multiculturalism. Hence, social institutions that were originally intended for more homogeneous societies should be closely scrutinised to determine whether the rules, symbols and practices embedded in them disadvantage immigrants or fail to recognise their identities. Of course, the problems arising in the European context present particularities. Despite the public impact of cultural controversies like the ones mentioned, perhaps the fact that in many countries large groups of individuals with long-term legal residency are still excluded from the political community (generally because of restrictive policies of naturalisation and citizenship), remains the main problem in the European scenario, raising serious issues related to
discrimination in the exercise of individual human rights. This concept of citizenship is still equated with full state membership, it makes it impossible for certain categories of persons to exercise basic political rights such as the right to vote. This not only makes the lives of immigrants more difficult, but it also poses substantial difficulties for successful political mobilisation, thus making the expression of their claims harder. Also, there is probably no single formula to simultaneously guarantee both integration and fairness in multicultural societies. Nevertheless, a public commitment to address the legitimate interests of immigrants in a fair accommodation of their identities (even if there is no agreement about what this means and what are the necessary legal measures) can be seen as a gesture toward advancing equality between groups. Furthermore, the official recognition of immigrants’ group rights can be seen as a symbolic act to counter the enforcement of coercive measures of acculturation, thus providing a framework in which particular policies on immigrant integration can be discussed without the ethnocentric bias that has often been at the heart of the assimilationist model.

However, only few European states seem to favour this turn. Although immigrants were a decisive factor in the industrialisation and reconstruction of Europe after World War II, countries such as France and Germany still refuse to think of themselves as “countries of immigration” and, even less, to redefine their policies of integration in a multiculturalist perspective. Moreover, most governments are reluctant to accept immigrants beyond the minimum required by refugee and asylum conventions and try to close their boundaries (often ineffectively) to newcomers. The protection of national identities (assumed to be culturally and linguistically homogeneous in states such as France or Germany) is surely among the dominant reasons behind this trend. Although, officially, hardly any state explicitly appeals to this argument to justify the imposition of strong restrictions to immigration, practical controversies and political discourses show that this is usually seen as a threat for nation-building projects that seek to create a cohesive citizenship based on a shared ethos and the invocation of a common culture. Certainly, many invoke practical limitations to accommodate newcomers, such as unemployment rates or economic recessions; yet, the latest UN reports on population indicate that, in coming decades, only permanent immigration can provide the structural component necessary for demographic growth (which will make it possible to preserve sustained economic growth and preserve welfare systems) in most European countries. Therefore, it seems plausible to understand the general disregard of most European democracies for the advantages of more open immigration policies at least in part as a reflection of their fears of social and cultural disintegration; namely, the idea that opening their borders will force them to reinterpret their cultures, to redefine their identities and reform their political and social institutions to integrate the new citizens.

Several strategies are used to avoid embarking on this enterprise of uncertain results. Some try to limit the continuity of membership by recruiting foreign workers on a temporary basis, “guest workers,” in those economic sectors where such an option is unavoidable, or even desirable. Temporary immigrants do not appear so threatening, since they are not perceived as aspiring to full membership in the state and the situation is viewed as transitory. Another method that is typically employed to minimise the increase of diversity is the selection of immigrants based on national origin.
In general, these political strategies are based on the presumption that, ideally, the incorporation of new members into the political community should be via cultural assimilation, an objective that may be easier to achieve with immigrants of a similar historical and ethnic background. This demonstrates, once more, the thesis that states do not see themselves as formed by mere collections of individuals united under a social contract, but as cultural and historical communities, whose members are inter-generationally related and experience their lives as a contribution to this legacy. Immigration, especially when people come from different cultural backgrounds, threatens this image. Let us pause briefly to revise the events leading to the passing in France in 2004 of a new law that prohibits the display of any conspicuous religious symbols by pupils in public schools—the so-called veil law (la loi contre le voile)—which might illustrate the debate.

2.2. The Foulard Affair: French Schools and the Muslim Headscarf

The view that immigration and greater cultural diversity is widely perceived as a problem for the “national identity” of Western democracies is reflected, as mentioned, in the widespread impact of episodes such as the debate on the Muslim headscarf in France, but also in the debate about “English-only” policies in the United States. This latter dispute has already been reviewed in Chapter IV. The headscarf controversy epitomises some of the core dilemmas arising from multiculturalism in Europe, and thus it will be a helpful starting point for the following discussion.

On March 15, 2004, President Jacques Chirac signed into law a text approved in the National Assembly by a large majority representing a wide range of political opinions (494 votes to 36, with only 31 abstentions). The law prohibits the students in public elementary schools and high schools to wear symbols or clothes through which their religious affiliation is conspicuously (ostensiblement, in the original formulation) displayed. Although it also applies to the wearing of the Jewish skullcap (or kippa), the Sikh turban, and to any Christian cross that is too visible (as opposed to discreet), the law was mainly aimed at ending with the increasing number of Muslim schoolgirls that had been attending public schools with their heads covered. On the whole, it is interpreted as a reaffirmation of laïcisme (or secularism) a core and uncompromising principle of the French Republic involving the separation of state and religion. While the religious beliefs of the students are fully protected by the law, they are seen as a private matter of no relevance for the general curriculum that is taught in public schools.

The proposal to deal with the issue of the headscarf through law making, instead of through a more informal system of accommodation, was the final episode of almost two decades of conflict. Originally, it was a rather local problem in some French public classrooms which sparked off a national and international debate: the expulsion in the Autumn of 1989 in Creil (a working-class city north of Paris) of three immigrant schoolgirls of North African origin who insisted on wearing their headscarves (the foulard or hijâb) in the classroom as part of their clothing. This event highlighted deep discrepancies over the legitimacy of the French assimilationist policies, the meaning of secularism and of freedom of religion and equality. The initial incident was followed by others of a similar nature which triggered bitter
disputes, in part driven by the dissatisfaction of French Muslims with their progressive socio-economic impoverishment and the treatment of their religion (nowadays in numerical terms the second in France) and culture by the state. The conflict created enormous public debate at the time. Many regarded a potential acceptance of immigrant claims as an institutional capitulation that would threaten a central principle of French national identity, namely the principle of *laïcité* which, in the words of President Chirac, “is part of the social contract in France.” In this affair, both the left and the right reacted similarly. Both sides made what Norma Claire Moruzzi describes as “near-hysterical references to a vulnerable national heritage, Moslem fanaticism and fundamentalism;” both emphasised the need for preserving neutrality in the public classroom.

In 1989, the case ended with a ruling by the Conseil d’Etat, the highest French administrative court, acknowledging that to wear a headscarf, or other religious symbols, was not necessarily incompatible with secularism, unless this conduct posed an obstacle for teaching activities or constituted an act of intimidation, provocation, proselytisation or propaganda that could disrupt the normal work of a school or the security and freedom of others. The opinion of the court was mainly based on the need of carefully balancing, on the one hand, the freedom of conscience of students and, on the other, the founding principles of the Republic: freedom and equality. The expression of the opinions, beliefs and religions by the students (also in dress and symbols) ought to be respected by public law; yet these expressions should be restricted if they disrupt the normal order and work in the classroom and intimidate or coerce pupils. The final decision was then left to school principals. The Ministry of Education put the accent on the need of addressing each conflict, and conducting the assessment, on a case-by-case basis. In an official circular promulgated in 1994, the Ministry endorsed the criteria adopted by the Conseil d’Etat that the wearing of any dress or symbols should not be *ostentatoire* (conspicuous or prominent). But public school teachers complained that this was circumventing the problem and, without more specific guidelines, the decisions would largely depend on the particular judgements of the principals—on whether they found some particular garment acceptable or not. Secularism could thus mean different things in different places and, in addition, there was no clear rule about what was to be done with the students that rejected a principal’s decision. Should they be expelled from the class, but allowed to attend private courses? Under what circumstances should drastic measures such as expulsion be applied?

In short, teachers resented the burden imposed upon them by the doctrine of the Conseil d’Etat. In fact, the wide majority (educated in a deep commitment to the secularism of French schools) found that wearing a headscarf was an unacceptable expression of a religious background that infringes upon neutrality. This was primarily because they thought that children had to be protected against religious proselytism and that public elementary schools should remain indifferent towards the ethnocultural affiliations of the pupils. In addition, headscarves in schools were seen as the beginning of a movement to demand an exceptional status for French Muslims (as regards polygamy, exceptions from other elements of the public curriculum like mixed swimming classes, etc.). This accommodation was not seen as neutral, but rather as an unacceptable move towards multiculturalism or communitarianism,
which, in France, is widely perceived as a threat for social cohesion. In the best Republican tradition, egalité ensures “that all students should be treated in the same manner and have access to the same resources and opportunities,” and this is interpreted since the nineteenth century as disallowing any exemptions or rights for particular groups.

Despite the general dissatisfaction with the method, the approach promoted by the Conseil d’État seemed to work quite well throughout the 1990s. However, by the end of the decade, the number of schoolgirls that were wearing the headscarf increased, as did the conflicts and the media attention to incidents related with what was commonly perceived as a provocation or defiance of the secular state. Dealing with the controversial issue by adopting a general law became increasingly important, for reasons related to both international and national politics: September 11 and the invasions of Afghanistan and Iraq exacerbated fears of a radical indoctrination of French Muslims by Islamic networks, and then the unanticipated results of the first round of the French presidential elections of 2002 came about, with Jean-Marie Le Pen, the extreme right candidate for the National Front, shockingly winning the second position with a radical anti-immigration discourse with racist undertones.

In August 2003, President Jacques Chirac decided to appoint a commission (with Bernard Stasi, a former cabinet member, as its chairman) to address the complex questions raised by the principle of secularism. The nineteen members nominated were chosen from a wide spectrum of views—among them three Jews, six women and three Muslims—but they all shared the beliefs in the separation of church and the state. The commission’s report, which was made public in December 2003, covered a broad range of issues and formulated a number of recommendations to avoid compromising the neutrality of the republic. Among them was the need of issuing a law to ban “conspicuous” religious symbols or clothes, including the headscarf in public schools (except universities). The immediate official response was then to introduce the law previously mentioned which forbids wearing them—other recommendations were simply ignored.

For our purposes, the headscarf case is interesting because, on the one hand, it points to the complex problem of distinguishing between religion and cultural identity, especially when it involves immigrant communities, and, on the other hand, it raises a number of issues related with the meaning of neutrality in a multicultural state, which has been the main focus of the preceding chapter.

As regards the first matter, although from the French perspective the controversy was officially presented as a challenge to the separation of church and state, more than this seemed to be at stake. The incidents can also be described as a struggle for recognition and identity by the French Muslim community that called into question central pillars of French identity. This may also explain that both the Christian Catholic tradition and the Republican one coincided in the idea that “wearing a headscarf in class was militantly anti-French and should not be tolerated.” More than religion and headscarves were involved. What the so-called veil law incorporated is not only a statement on secularism, but also the reaffirmation of French national identity through the rejection of multicultural modes of integration involving separate policies for different groups. For the very notions of group rights and multiculturalism are seen as incompatible with the founding myths of the (one and indivisible)
Republic: “to be French is to be Républicain, is to be laïque, is to be committed to égalité” in the sense described above. The loyalty to a neutral educational system is seen as a natural derivation of these values, another constitutive element of French identity. The central message of the new law, therefore, was not only that God and public education should not be mixed but, more importantly, that there was no place for exceptionalism in a secular, neutral, state. Hence, no ethnic group should receive official support or any kind of special recognition.

A similar statement on identity, which goes beyond the free expression of religious beliefs, underlies the claims of French Muslims who defended the right of schoolgirls to wear the headscarf. For them, more than symbols were involved, too. Many French Muslims, especially those from the Maghreb and other North African regions, are part of a big post-colonial labour migration that has not been especially welcomed in Western European societies—even if, as indicated in the previous section, certainly required by their markets. In France, as in other countries, they have become significantly disadvantaged in social terms: heavily concentrated in metropolitan suburbs or cités made up of tower blocks, afflicted by high rates of unemployment and with deficient forms of organisation and public visibility though representation (there are no Muslim candidates in the big political parties, not even at election districts). It is in these communities that a young generation of French Muslims born in France (many of them the sons or daughters of French Algerians who maintained their loyalties to the state and tried to assimilate rapidly in order to conform to the secular imperatives of France), have become increasingly resentful at the treatment received from the state. Some of them are attracted by local Islamists that exploit their feelings by offering them help and protection and, overall, the adoption of a secure identity and purpose in life. To a great extent, this explains that, while in the 1980s and the beginning of the 1990s Muslim women rarely wore the headscarf, today there are many more that use it as a way of asserting not only their faith but also their identity.

It might be important at this point to elaborate a bit on the complex issue of the meaning of the headscarf. In all Islamic cultures, hijab (meaning modesty) refers to female modest dress, and this may include the sort of garment that the French call foulard or veil, although commentators and the media in the West often refer to it as “chador,” “bandanna” or even “burka,” inaccurately. Terminological laxity is far from irrelevant here; as Shadid and Van Koningsveld rightly note, this defective selection prevents us from distinguishing different practices and attaching them certain meanings when we try to assess their symbolic legitimacy and public repercussion. Islamic normative sources prescribe that women ought to dress modestly, but the female modest dress code is interpreted in a great variety of ways in the Islamic world. A number of women in Western Europe understand it as requiring a full covering of the body, with the exception of the face and hands; but what most schoolgirls were occasionally wearing in France was not a gown but a headscarf (khimār), simply covering their hair, sometimes tied under the chin to conceal the neck, resembling a nun’s wimple. It was this headscarf that they refused to take off in the classroom. From a strictly religious basis, most Muslim scholars, in line with the opinion of the European Council for Fatwas and Research, think that the headscarf is not just a religious symbol (as commonly understood in the West) but a duty prescribed for the
public social space by the Islamic law. So, by forcing them to remove the headscarf, not only freedom of expression but also the freedom of conscience of Muslim women might be affected.

The religious status of the headscarf as a genuine obligation seem thus clear, despite the recurrent attempts at linking its use only to an expression of radical fundamentalism. Indeed, the widespread view that there is “something aggressive” in veils or headscarves that the secular state should not tolerate has continued to be expressed strongly and frequently in different political circles and in the media. Underlying most of these arguments, there is the rejection of Islam and of Muslim social groups. Very often, the strong attitude against the headscarf is based on religious and social stereotypes. Thus, wearing a headscarf is seen as an act of Islamic propaganda, instead of as genuine compliance with religious duties and one’s own beliefs; also, common stereotypes relate the female modest dress code to women’s oppression, a judgement that, for many, is also based on a reductionist stereotype—feminist reactions in this respect will be briefly discussed at the end of this chapter. But most of all, the headscarf is widely associated with an unwillingness of immigrants to integrate in their new society and to a lack of loyalty to the state. Moreover, the perception of the headscarf as an issue deserving central political attention in France and other European states is surely linked to the idea that the headscarf is a symbol of alienation and of lack of integration.

However, it seems to me that this affair is primarily illustrating a demand for an alternative model of integration for ethnic minorities, one that is more political than cultural and respects the plural identities and ways of belonging to the state of people with different cultural and religious backgrounds. This is how we can make sense of the fact that, for many young female Muslims, wearing the headscarf in public has become a primary form of asserting their identities, sometimes against the views and practices of their own families. If this is accepted, the strong reactions against these demands by the state can also be interpreted as a way to impose a certain definition of the national identity. It is in this sense that during the intense public debates that took place in France before the adoption of the new law, some commentators referred to the dispute as one between secular fundamentalism against religious fundamentalism.

Let us finally turn to the questions of neutrality involved in this case. Initially, it might seem that the solution finally adopted is fully consistent with this principle, which is at the core of the French secular tradition but also of liberalism, as this book has tried to demonstrate. In support of this conclusion, it could be recalled that the sphere of application of the veil law includes public state schools and not private schools or universities. It is not a law on people at work or in other public spaces and, as mentioned, it also bans conspicuous symbols and clothes from other religions, and not just the headscarf. Hence, if the case is only seen through the lens of the separation of church and state, one could conclude that the religious beliefs of school pupils are treated with an equal “benign neglect” and are equally respected as a private matter.

Yet such an assessment obscures many important factors in this controversy. In general, these factors have to do with the way in which secularism has been inconsistently applied in practice in France—as in most other liberal states. For instance,
many French official public holidays are related to Christian holidays and the fact that Sunday is the weekly holiday does not have “neutral” effects in all religions. On the other hand, the 1905 law that consolidated the victory of anti-clericalism and, with it, the rule that no religion should be officially recognised or supported through public funds has never been fully applied. As Harry Judge recounts, adjustments were made throughout the twentieth century to apply exceptions to the Catholic Church in the overseas territories and in Alsace-Lorraine after the German occupation. Furthermore, the Fifth Republic expanded substantially the funds for religious schools, most of them Catholic, which were allowed to preserve their “distinctive character” if they followed the state educational programmes and accepted students of all religious affiliations. No Muslim school in France receives such a treatment. In 2003, the demand for Catholic schools among the Muslim community increased substantially, since these schools could not oppose the wearing of the hijab without risking their funding with charges of religious discrimination. Theoretically, state resources should also be given to Islamic schools provided that they meet the same requirements, but most analysts observe that this alternative is likely to encounter many bureaucratic obstacles and political opposition.

It is also significant that most of the recommendations of the Stasi Commission that had the aim to counter the existing imbalance among communities and addressing the social and economic inequalities that French Muslims face were largely ignored. Thus, the final report detected incongruities in the application of secularism and neutrality (for instance, districts where the only schools available were Catholic schools; the special status of religious instruction in the public curriculum in some regions was not applied to Islam, etc.) and had recommendations on housing and urban planning, on the revision of public holidays, on how to deal with religious issues in hospitals and in the work place. Yet only the advice on headscarves was adopted.

So the question arises, once again, as to whether neutrality was the genuine aim of the law, as the French authorities and the deputies that voted for it insisted, or whether the real point was to promote a particular meaning of secularism, one that produces unequal effects among the different religious and cultural groups in France.

3. THE JUSTIFICATION OF THE RIGHTS OF ETHNIC MINORITIES: A PROBLEM FOR LIBERAL NATIONALISM?

The core issues of the debate about the integration of immigrants have been generally described in the first section. It has been suggested that the shift towards what have been called “multiculturalism policies,” which imply a greater accommodation of the sort of cultural diversity that immigrant groups bring about, is central in order to provide a fair system of integration. There is a wide range of policies that could be sanctioned but, in general terms, they all have in common the idea that the host society should be open to reconsidering its basic institutions, rules and practices in order to accommodate the plurality of identities and attachments. In addition, multiculturalism policies are more than anti-discrimination laws that try to grant equality in the enjoyment of the basic individual rights guaranteed to all individuals in liberal democratic states; they also include some level of official
recognition and public support to the distinct practices and identities of ethnic minorities that is meant to be permanent, and hence they can be characterised as group rights.

Yet how can multicultural policies become compatible with the claims of liberal nationalism? Many scholars in the field leave this central question unexamined, and thus the answer remains ambiguous in the literature. Often, defenders of liberal nationalism seem to argue mainly that minority nations also enjoy the right to adopt nation-building policies, as the majority does, leaving aside other sources of diversity within multinational states. Some of these writers are concerned that the gradual decline of the nation-state model in favour of other hallmarks of identity may erode a shared sense of citizenship and solidarity. To the extent that this outcome could diminish the prospects for democracy and the welfare state—which, as some liberal nationalists assert, can be better enhanced in contexts of cultural homogeneity—there would be a trade-off between multiculturalism policies and these other values.67

In addressing this crucial issue, first, it is important to prove that multiculturalism policies can be regarded as rights, and thus required as a matter of justice; that is, we need to show that they are not intended solely to make the integration of immigrants more efficient. If this were the only purpose, assimilation could still be defended as the best model for guaranteeing the sort of social values (cohesion, solidarity, fraternity) that are of main concern to liberal nationalists.

In their quest for increased political mobilisation, ethnic minorities have often used the language of group rights to justify their aspirations to a policy of multiculturalism, with measures such as those described above. But are these rights morally justified as such? As indicated, this question raises a number of complexities when analysed within the framework of liberal nationalism. According to this theory, it is legitimate that nations support policies aimed at promoting their own language and culture in the public sphere as part of their right to self-determination. As Kymlicka and Straehle write, “liberal nationalists are not just defending nation-states as they happen to exist, but also defending the legitimacy of nation-building programmes.”68

This defence could be justified by some of the arguments that have been discussed in the previous chapter: from instrumental reasons, such as guaranteeing the solidarity and trust that are seen as essential to fostering the wide co-operation needed to implement social schemes, to moral reasons related to the value of cultural membership and identity recognition. To the extent that the state is a unity containing one or several national minorities, the most coherent conclusion to be drawn from liberal nationalism—though one not always supported by its proponents—is to grant group rights to these minorities. Hence, “the state must renounce forever the aspiration to become a ‘nation-state’, and accept that it is, and will remain, a ‘multi-national state.””69

However, the former approach in itself does not offer a clear answer as to how liberal states should deal with the demands of immigrants. One could think that the liberal nationalist response clashes with the philosophy that inspires a policy of multiculturalism. In fact, as indicated, most states assume that controlling immigration is a crucial instrument for preserving the cultural structure of the political community. The same usually applies to the case of national minorities. Québec, for instance, secured the right to decide on the choice and integration of immigrants who intended
to reside in this Canadian province with the argument that this is a decisive matter for
the preservation of their cultural institutions.\textsuperscript{70} In this respect, the interests of
national minorities in Western democracies in relation to immigration are very simi-
lar to those of their host states. Demographic and economic considerations undoub-
edly play a key role in this matter.\textsuperscript{71} But, initially, it seems plausible to contend that
a substantial increase in the number of immigrants can only be made compatible
with the preservation and development of a societal culture—in Kymlicka’s terms—
provided that the model of integration is based on assimilationist ideals.

In short, the objection that the policy of multiculturalism undermines the aim of
preserving different national cultures should not be underestimated. The crux of the
matter is whether it is possible to argue that both national and ethnic minorities have
group rights in order to protect their respective cultural interests. In other words, is
the defence of liberal nationalism compatible with the justification of a multicultural
model of integration for immigrants?

3.1. Kymlicka’s Theory and the Rights of Ethnic Minorities

In the light of Kymlicka’s theory of minority rights, this puzzling question could be
answered positively. Rather than aiming to recreate their cultures within their host
state, the main purpose of recognising the rights of ethnic minorities would then be
to facilitate the integration of immigrants into their new society. Two arguments sup-
port this view. First, Kymlicka claims that although immigrants carry their cultures
with them, they lack territorial concentration and an institutional structure—a \textit{sine qua non}, in his view, for making the right to belong to one’s own culture feasible.
Secondly, he contends that, unlike national minorities, immigrants voluntarily decide
to abandon their own cultures. These two distinctive characteristics help to clarify the
kinds of disadvantage that both types of groups experience in relation to their inter-
est in cultural membership. In contrast to the dominant cultural majority, national
minorities usually face greater difficulties in developing their societal cultures. But the
case of immigrants is different: they are disadvantaged whenever \textit{access} to the socie-
tal culture of the territory where they try to settle depends upon conditions that are
too demanding. For this reason, throughout Kymlicka’s work, the discussion of the
rights of ethnic minorities is basically a discussion about whether the usual require-
ments for integration that states impose on immigrants can be regarded as fair.
In other words, his main concern is to identify the best model that will guarantee the
integration of ethnic minorities into the mainstream institutions.

The notion of access is normatively charged. Kymlicka emphasises that it requires
an effective protection against discrimination and social prejudices which make it dif-
ficult to exercise basic individual rights.\textsuperscript{72} But he also argues that the common poli-
cies that try to promote the assimilation of immigrants into the dominant culture do
not respect their legitimate interest in maintaining certain traits of their own cul-
tural identities. For these reasons, Kymlicka defends group rights of ethnic minori-
ties that can take the form of the kind of measures discussed by the Stasi Commission
in the headscarf case: the obligation by the state to adapt public holidays, protocols
and state symbols to incorporate minority traditions, or of subsidising ethnic festi-
vals and even providing part of immigrants’ primary education in their original
vernacular languages. However, it is important to insist that, unlike the rights of national minorities, the purpose of what Kymlicka calls “polyethnic rights” is not the preservation—or recreation, in this instance—of another societal culture. Rather, the public commitment to “multiculturalism” or “polyethnicity” is intended as “a shift in how immigrants integrate into the dominant culture, not whether they integrate.” In this model, immigrants “are no longer expected to assimilate entirely to the norms and customs of the dominant culture, and indeed are encouraged to maintain some aspects of their particularity.” It therefore provides an understanding of integration as a bidirectional process that involves efforts from both parties. Immigrants can legitimately react against those policies aimed at homogeneously shaping their identities so that they fully conform to those of the cultural majority. Kymlicka insists particularly that what is at stake in policies of multiculturalism is access to the dominant culture and not the establishment of separate institutions:

None of these policies encourages immigrant groups to view themselves as separate and self-governing nations with their own public institutions. On the contrary, all are intended precisely to make it easier for their members to participate within the mainstream institutions of the larger society. These multiculturalism policies involve revisions to the terms of integration, not a rejection of integration itself.

However, the reasoning underlying this justification of the group rights of ethnic minorities contains ambiguities. First, the view that members of these groups should, in principle, integrate into the mainstream societal culture, whether that of the state or that of a national minority, is primarily based on the presupposition that migration is a voluntary decision. In Kymlicka’s theory, the premise is that immigrants have chosen to leave their cultures and, therefore, should not have the right to recreate them in other states.

This presupposition is highly controversial: to what extent can one affirm that people willingly opt for emigration? In general, the circumstances that induce migrants to leave their countries make it difficult to describe their decision as free or voluntary. This is obvious not only in the case of refugees and asylum seekers, but also when migration is connected to a persistent lack of goods and resources that are essential for the satisfaction of basic human needs. It is not uncommon for immigrants to affirm that “they were forced to emigrate.” Certainly, in order to make this contention more powerful it would be necessary to support it with empirical research. But for present purposes it should be enough to acknowledge that in a large number of cases the decision to emigrate is taken when the alternative option of remaining implies a situation of despair that nobody should be forced to endure.

In any event, to the extent that members of a certain ethnic group did not voluntarily renounce their own culture, Kymlicka’s theory should presumably grant that this group has the right to recreate its societal culture in another territory (given that this is a theory driven by the Rawlsian commitment to remedy the disadvantages that are beyond the individual's control). Obviously, the institutional implementation of this right may be very complicated in practice. It is likely that the right of immigrants to recreate their own societal culture within the borders of another state would clash with other legitimate interests and rights (from property and land rights to self-government rights). Although finding a balanced solution capable of satisfying the
diverse interests at stake might prove extremely complicated or even unfeasible, this should not obscure the potential problems of Kymlicka's theoretical approach to the demands of ethnic minorities.

Note, too, that this approach not only highlights the element of choice but also the fact that ethnic minorities have already lost their societal culture. Unlike national minorities, they lack an institutional structure to sustain their culture in another state and the necessary conditions, such as territorial concentration, to rebuild it. So their options are basically reduced to integration. However, as Carens asks, “if people’s native societal cultures are so important to them, why shouldn’t immigrants be able to bring their societal cultures with them and establish them in their new home?” I agree with Carens in that, by drawing such a sharp distinction between immigrants and national minorities, Kymlicka undermines the case for group-differentiated rights for immigrants.

Other critics have also objected to this reconstruction of immigration as a source of cultural diversity on similar grounds. Young, for instance, agrees with Kymlicka that a liberal community can and should grant public significance to cultural pluralism, but she objects to the mutually exclusive dichotomy between national and ethnic groups as being too categorical. In her opinion, there are other groups that do not fit into Kymlicka’s categories. African-Americans, for instance, are neither an incorporated national minority nor a group of immigrants, but descendants of slaves who were brutally transported to a new territory, coercively deprived of their original cultures and forced to live segregated lives, marginalised within the state. Similarly, there are other groups such as those comprising members of the former British, Dutch or French colonies to whom citizenship of the states they previously belonged to was promised, but who then were faced with exploitation, and socio-political exclusion once they emigrated there. Based on these and other cases, Young concludes that it would be more appropriate to look at the differences between cultural groups as a matter of degree, as if they were in a “multicultural continuum.” This perspective, she thinks, would fit better with the reality and provide the basis for making finer gradations in our moral arguments.

In short, these objections point to the view that deciding whether a group is or is not a societal culture should be a process of gradual interpretation. The correlation that Kymlicka’s theory establishes between national minorities and institutional separateness on the one hand, and ethnic minorities and institutional integration on the other, thus seems to raise some tensions. Kymlicka himself is aware of the limitations of the theory in relation to hard cases such as those mentioned by Young. Accepting that the classification does not provide an answer to all the problems raised by multiculturalism, he insists on its utility as a tool or a guide in addressing those intermediate instances that, being exceptions to the general patterns of diversity, deserve a separate analysis. Consequently, these cases are not seen as undermining the validity of the theory since “the fact remains that immigrants and national minorities form the most common types of ethnocultural pluralism in Western democracies.”

Kymlicka is probably right in maintaining the appropriateness of depicting a broad distinction between these patterns of ethnocultural diversity. In spite of the grey areas, the claims of immigrants are generally distinct from those of national minorities, even though both are often expressed in the language of group rights. But even if this assumption is accepted, it is still unclear whether the implications that
Kymlicka draws from it on how to deal with ethnic minorities are ultimately coherent. For a set of central normative conclusions are derived from a series of empirical observations: the sort of demands usually raised by immigrants, the unwillingness of most states to grant them the necessary means for recreating their societal cultures and so forth. Still, against this objection, it could be argued that these conclusions are reached not just from *ad hoc* or contingent empirical practices, but after a careful analysis to demonstrate that these are persistent traits and patterns that should be taken into account when assessing normative standards.

In any event, the central claim that, on the whole, ethnic minorities aspire to a form of social integration that grants them certain cultural rights against pure assimilation into the majority culture seems accurate. Whether this is because emigration is voluntary, or because the usual territorial dispersion of immigrants would make any attempt to recreate their own societal cultures unfeasible, is not so relevant. These elements should be seen as factors that explain why the demands of these groups remain different to those of national minorities rather than as normative criteria. Therefore, the key point is that,

> ...while immigrant groups have increasingly asserted their right to express their ethnic particularity, they typically wish to do so within the public institutions of the English-speaking society (or French-speaking in Canada). In rejecting assimilation, they are not asking to set up a parallel society, as is typically demanded by national minorities.

There is a further potential objection to Kymlicka’s defence of polyethnic rights, which emerges from the very justification of multiculturalism policies. In order to formulate it, it is important first to set out in more detail the grounds for these rights. As the argument stands, the main purpose of multiculturalism is to recognise some special rights for ethnic minorities so that their members are better equipped to fully integrate and participate in the mainstream public institutions. In particular, polyethnic rights mainly involve revisiting the terms of integration so as to lessen the risk of alienation of these groups. Thus, in his assessment of the measures adopted in Canada, Kymlicka argues that the adjustment of public holidays, dress codes, etc. to accommodate minority religious beliefs and ways of living has prevented serious social and political tensions such as those that have recently arisen in France. These are conflicts that inevitably produce social fractures, encouraging ethnic minorities to withdraw from public institutions, which they see as biased, and to build their own separate institutions such as private schools.

The same logic of integration is applied to linguistic matters, but here Kymlicka argues that immigrants should be encouraged to learn the official language—or languages—of the state since, otherwise, they will be in a position of serious disadvantage. The question is, therefore, what is the best policy to achieve this goal. Having expressed the issue in these terms, Kymlicka focusses attention on recent studies carried out by socio-linguists and pedagogues, according to which children of immigrants integrate most successfully if they follow bilingual courses that allow them to learn their mother tongue as part of their primary education. In Canada, for instance, this is the case with Chinese immigrants living in Vancouver who attend bilingual schools in Mandarin and English. In addition to integration, Kymlicka offers other reasons in favour of a policy of multiculturalism. In particular, he stresses that assimilation can
only be achieved at the cost of imposing considerable disadvantages on immigrants. Many of the rules and practices regulating institutions that were originally designed by and for a culturally homogeneous society can inflict unfair burdens on immigrants, in the same way that the institutions designed by and for men became oppressive for women. For example, by choosing Sunday as a week holiday most states intended to accommodate Christian religious practices that were those of the vast majority. But in a multicultural society, followers of another religion who wish to comply with its prescriptions will be at a disadvantage. The same reasoning would apply to other traditions that are incorporated in legal rules.

As can be seen, this second argument differs from the ones analysed earlier in that it points to equality. The idea is that the needs and interests of ethnic minorities should be taken into consideration in the same way as the needs and interests of the majority. This view accords with Moruzzi's understanding of what is at stake in the case of the headscarf. In her view, using the defence of secular values in France to prohibit girls with a headscarf from entering schools implicitly legitimises discrimination in the exercise of religious freedom:

When French intellectuals mount a defense of secular values, they are refusing to acknowledge that their version of secularism allows for freedom of religious practice for one hegemonic group – who go with their heads uncovered outside of a sacred space and pursue their community devotions on Sunday – but not for others – who may believe that the head should always be covered and that the Sabbath falls on Friday or Saturday. For members of those religious and cultural communities, French secularism becomes an unequal religious prohibition, and hence a deeply felt political problem.

The essence of the demands of many ethnic groups is, thus, to have the equal chance of practising their customs, traditions and religious beliefs. In principle, this approach is consistent with the justification of the rights of national minorities that Kymlicka offers. As argued in the previous chapter, his argument is primarily focussed on the moral relevance of cultural belonging rather than on the value of cultural pluralism. The basic idea is that ethnic minorities should integrate into the “cultural structure” of the society where they reside. This goal might require learning the official language, but it is nonetheless compatible with the recognition of some traits of their original culture that are reflected in public institutions and rules. The character of a culture, therefore, must also change and adapt so as to accommodate the identities of the new members of the polity. The ideal is to make it an inclusive political community with which all members can identify. Integration (by ethnic minorities) and accommodation (through special cultural rights and policies adopted by the receiving states) are thus two sides of a process that should be comprehended as bidirectional rather than unidirectional. As Parekh argues, in a multicultural society, the shared culture which reconciles the different cultures and fosters unity must grow out of the interaction between them; it is therefore a “multicultural constituted culture,” that leads to a “constantly evolving ‘we.’”

All this suggests that group rights of both ethnic and national minorities are compatible. However, this conclusion is still debatable. Several of the “polyethnic rights” that Kymlicka discusses might indeed be justifiable assuming that they are basically intended for first-generation immigrants. But it is unclear why the policy of multiculturalism should have a permanent role and even become embedded into the
constitutional structure of diverse states. Put another way, why should the so-called
group rights of ethnic minorities be seen as anything more than transitional meas-
ures designed to integrate new immigrants?

It might be thought that, after all, if the purpose is integration, then the policy of
multiculturalism should be understood as a transitory form of affirmative action
aimed at correcting some disadvantages—for instance, in learning an official lan-
guage. However, in this case “polyethnic rights” could not be considered as cultural
group rights \textit{stricto sensu}. Although Kymlicka does not specify whether, for instance,
the members of second and subsequent generations of immigrants would also be
entitled to receive part of their education in their mother tongue, it may be deduced
that this indeed would be so. At any rate the requirement to adapt state symbols
(flags, mottoes such as “in God we trust” written on official documents, etc.) official
ceremonies, public holidays and, above all, school curricula to make students aware
of the different cultures within a society, is envisaged to be permanent.

But if this is so, the question emerges again: what is the basis for polyethnic rights?
If the fundamental interest of ethnic minorities is social integration, then the justifi-
cation for these rights cannot be the preservation of their own particular cultures.
Nor should it be the need to guarantee access to the societal culture that is necessary
in order to exercise autonomy—at least not permanently. However hybrid their iden-
tities might be, for the second and subsequent generations of immigrants it is rea-
sonable to think that the culture to which they belong is mainly that of the country
in which they have been born rather than the one from which their ancestors had
emigrated. To the extent that in these cases multiculturalism policies were merely
aimed at eradicating racism and discrimination, it would be sufficient to appeal to
individual rights and freedoms in order to justify them. The reason is that, in this
case, access to a societal culture (with the exception perhaps of the first generation),
as a basic good that the state should ensure, is already guaranteed. In other words,
most members of ethnic minorities have not \textit{lost} their societal culture. If this is so,
why adopt a policy of multiculturalism that involves the permanent recognition of
group rights? Do these policies unnecessarily and artificially provoke the fragmenta-
tion of society into different cultural groups?

Kymlicka’s argument is somehow ambivalent in this point. Surely, rather than
being based upon the link between cultural belonging and autonomy, these rights
would better be anchored in ideas of equality. Nevertheless, if the ultimate goal is in-
tegration, the justification for the profound transformation of public institutions that
Kymlicka advocates probably demands additional arguments. Beyond furthering
equality, his model of polyethnic rights does not entirely justify why ethnic minorities
should be entitled to preserve certain aspects of their cultural identity and see them
embodied in public institutions. In addition, the compatibility of this standard with
the rights of national minorities is not at all obvious. The problem arises because, as
was shown in the preceding chapter, his theory rests primarily on the connection
between autonomy and cultural belonging. The argument of equality plays an impor-
tant role in guaranteeing access to cultural belonging, but in the case of ethnic minori-
ties, it could be argued that most of their members have this good guaranteed. The
defence of the right to public financing of ethnic festivals, the adaptation of state
symbols, the transformation of institutions and school curricula to better represent the
existing cultural pluralism becomes an easy target for anyone utilising Rawls' *expensive tastes* argument. Except for the type of measures strictly necessary to make social integration easier for recent immigrants (such as linguistic assistance, affirmative action and educational schemes aimed at fighting racism), the policies of multiculturalism could be seen as largely discretionally, and not as implementing genuine rights.

3.2. Identity, Recognition and Group Rights for Ethnic Minorities

The understanding of multiculturalism policies as group rights may find another, probably stronger, basis in Taylor's theory of recognition, especially if we add to it the nuances discussed in the previous chapter. The justification could be basically the following: policies that force ethnic minorities to assimilate entirely into the dominant culture are morally wrong because they do not respect the particular identities of members of those groups. Surely, they may have completely lost access to their societal cultures, as well as the possibility of recreating them in another society. But this is no obstacle to perceiving certain symbols, narratives, customs, languages or histories as constitutive parts of the moral self. In this sense, forceful assimilation may be regarded as unfair; not merely because it makes access to the common institutions difficult, as Kymlicka would say, but, above all, because it deprives the members of ethnic minorities of the liberty to shape their own identities. In a liberal state, cultural assimilation should be only an alternative that immigrants may choose, instead of a condition for integration. The reason is that forcing people to relinquish their own cultures altogether is incompatible with guaranteeing self-respect, a good that, as we saw, is considered essential in most conceptions of liberal justice.

In fact, on occasion, Kymlicka himself suggests that “polyethnic rights” are aimed at the recognition of different ethnocultural identities: “to help ethnic groups and religious minorities express their cultural particularity and pride.” However, as I argued, it is doubtful that the principles that ultimately support his theory are, by themselves, sufficient to justify a duty of the state not only to lessen the disadvantages caused by free competition in the “cultural market,” but also to transform its institutions to adjust to the cultural pluralism that immigration brings about. Membership in an ethnic minority is an important aspect of self-identification for many people and, in this respect, the lack of recognition of these identities may cause failures in socialisation and create segregationist tendencies, as it is progressively happening with Muslims in Europe. On the other hand, as Raz and Margalit maintained, belonging to a group is a matter of mutual recognition. But when recognition depends upon the cultural assimilation into the dominant majority, it imposes an excessive burden on immigrants who wish to join and participate in public institutions and yet preserve their own identities. They then “are made to feel estranged, and their chances to have a rewarding life are seriously damaged.”

The substance of the objection to Taylor's argument on the moral relevance of recognition can now be grasped more clearly. Let us recall that, unlike Kymlicka, Taylor rejects the assumption that liberalism presupposes state neutrality regarding citizens' conceptions of the good and justifies the desire of national minorities to preserve their specific ways of life. For this reason, it is plausible to assume that his view on nationalism is hardly compatible with multiculturalism policies. Although Taylor
points out that communal goals, along with individual rights and respect for other cultures, must be balanced, the result of this assessment in a particular case may well yield a prevalence of the dominant conception of the public good over the exercise of some individual right. In contrast, when the moral relevance of recognising identity is emptied of all essentialism, it is possible to make the ideal of state neutrality compatible with rectifying the different kinds of disadvantages related to the public expression of their identities that members of any cultural minority may suffer.

The recognition of cultural rights for immigrants will obviously transform public institutions and even change the nature of the dominant culture. This should not be seen as bringing about the decline of its cultural structure, but rather the transformation of its character. In general, multiculturalism policies have undermined neither the common political institutions nor the wish of ethnic minorities to participate in, and be loyal to, these institutions. For instance, in Canada, since the official enactment of that policy, naturalisation has increased notably—an indicator that can be partly interpreted as a reflection of the growing desire of members of ethnic minorities to become full members of the political community.

A further implication of a multicultural model of citizenship that honours the principle of state neutrality needs to be stressed. Under this model, the cultural rights of ethnic minorities are not primarily directed at promoting a particular religion but, more generally, at cherishing the expression of minority identities under the same conditions as that of the majority or dominant culture. Of course, cultural identities often involve religious connotations, as the headscarf case illustrates. Muslim women may cover their head with a scarf, just as Catholic women wear a crucifix around their necks. Nevertheless, to interpret such practices or customs as a sign or a statement of firm adherence to religious orthodoxy is not necessarily accurate, as the previous section suggested. In any event, although it could be argued that neutrality ideally requires that no religion should be recognised in the public sphere, in practice most states have historically contravened this principle because the characteristic idiosyncrasies of religions are often embedded in the cultural symbols and functioning manners and rituals of the public institutions. For this reason, neutrality would be better interpreted here as consequential neutrality, which, \textit{prima facie}, would require equal recognition for all religions in the public sphere in most contexts. In the case of the prohibition of the headscarf in France, we could argue, inline with Moruzzi's observations quoted above, that, since complete secularism has never been practised, the measure adopted targets Muslims and Jews more than Catholics (for Catholicism does not have specific dress codes) and is therefore not neutral. Religious minorities, then, do not stand for “exceptionalism,” as the majority in France thinks, but they demand the same level of recognition that the majority obtains by seeing their common practices and identities already reflected in the public sphere. If the state partially subsidises schools aimed at Catholic education, permits crucifixes (even small ones) in the classrooms, and, like in Spain, expects its army to perform out religious ceremonies and pay homage to holy figures, it is not surprising that the members of other religions should aspire to the same kind of public support in a democratic society. It is precisely because, unlike cultural neutrality, religious neutrality could be theoretically achieved through a policy of non-intervention that liberal states often oppose some of the demands of ethnic minorities. Nevertheless, it is important to
realise that previous infringements of the principle of neutrality by the state suggest that the best implementation of this ideal might be better achieved by extending the privileges that the dominant religion enjoys. Normally, the problem is that these privileges are often so embedded in the normal life (for instance, the fact that Sunday is a holiday) that they are not seen as such anymore.

The main idea that underlies the approach I am suggesting can then be summarised as follows. Historically, the building of social identities has been affected by certain beliefs about the meaning of being a woman, Jew, homosexual, black, etc. If we lived in societies that were truly neutral and had not institutionalised these beliefs—non-sexist, non-anti-Semitic, non-racist and non-homophobic—the need to reshape these identities, to obliterate non-egalitarian conventions underlying the stereotypes behind existing rules and practices, and the claims for recognition would probably never be raised. But identity politics has always been present, and since these goals subsist as ideals, the claims, too, should be expected to persist, as people need to express and make sense of their own, socially constructed identities.100

In conclusion, although an approach like Kymlicka’s tends to assimilate the treatment of social minorities and that of ethnic minorities, it is important to insist on the relevance of this distinction because it captures important elements of the justification of polyethnic rights. As this section has argued, the validity of Kymlicka’s argument is doubtful beyond the first generation of immigrants. This deficit could be overcome by stressing the moral relevance of the recognition of cultural identity for the self-respect and dignity of people. Certainly, as in the case of belonging to a national minority, self-identification as a member of an ethnic minority is seen partly as a matter of circumstance and partly as a question of choice. However, the way in which ethnic minorities experience their identity is usually very different from that of national minorities (in the long run, the temptation of assimilation suggests more plausible scenarios and the original ethnic identity takes on a rather symbolic nature). Accordingly, multiculturalism policies have to be sensitive to their particular contexts.

4. LIMITS TO CULTURAL PLURALISM: THE JUSTIFICATION OF “PARTIAL CITIZENSHIP”

Jeff Spinner explains that in 1991, David Dinkins understood that a liberal society cannot accept all cultural practices and values merely because they are part of someone’s identity. As the Mayor of New York, Dinkins criticised the Irish-American community for excluding gays and lesbians from participation in St. Patrick’s Day celebrations. Dinkins decided not to take part in the parade since his participation would not have been a private matter and could thus have been interpreted as a public endorsement of that exclusion. Although some members of the community complained about what they perceived as the mayor’s attempt to change their traditions, in Spinner’s view the decision was correct:

liberal principles, while flexible enough to incorporate many ethnic practices, are not infinitely malleable. Sometimes they will clash with cultural practices in public and in civil society, and, when this happens, these practices need to change.101
Liberal principles, indeed, are not infinitely malleable. For liberals, the question of the limits of cultural pluralism represents an enduring concern, as pointed out in various parts of this book. As indicated, the reluctance towards, or the rejection of, group rights is usually justified on the grounds that their recognition may seriously undermine individual rights. Moreover, some liberals oppose group rights claiming that their recognition would lead to uphold these rights over and above the individual rights of the members of the group.

For the reasons laid out in Chapter II, this objection is intimately linked to the dominant conception of group rights as rights that are held by the group itself, which, as explained, is not the best way of understanding this category. Nevertheless, the underlying concern about the conflict between group rights and individual rights is still central, especially if we bear in mind that not every cultural minority would find acceptable the line of justification for group rights developed throughout the preceding chapters. Thus, some cultural minorities make claims in terms of group rights for reasons unrelated to individual autonomy, recognition or equality. This is the case for illiberal groups that either do not value these principles at all, or interpret them in a way that is radically different from the liberal tradition. Think, for instance, of certain religious sects or indigenous groups whose particular traditions and customs contravene basic liberal principles. Sometimes the demands of these groups demonstrate their desire to live, to some extent, outside the mainstream society. The acceptance of a more or less secluded way of life is common to certain religious sects, whose theology demands the avoidance of any contact with the modern world. That is why they demand from the state exemptions that allow them to keep their community closed and so preserve their ways of life. Sometimes such communities are concentrated in small territories and their level of internal institutionalisation is such that they could be regarded as truly “societal cultures,” in Kymlicka’s terminology.

In these cases, claims of group rights often focus on cultural survival, understood as a value in itself: that is, the aim is to continue achieving collective aims such as the preservation of a certain religion and other traditions and customs over time. Problems arise when these groups do not follow some basic liberal norms and principles internally—for instance, the freedom of women—because they tend to view the lives of individuals as instrumental, as a means to serve the community and safeguard its particular nature. For instance, the Amish in North America want to preserve a special legal status not in order to integrate into the mainstream society without assimilating to the mainstream culture, like many immigrants, nor to participate in the political life on an equal footing or to preserve their cultural structure from decay, such as the Flemish, Catalan or Quebecois peoples. Rather, their main purpose may simply be to stay at the margins of society, avoiding the effects of liberal citizenship on their identities. This is the main idea underlying the expression “partial citizenship.” It suggests that the state should protect the social isolation necessary to allow the development of certain ways of life that are based on conceptions of the good at odds with liberal rights and freedoms.

This is, in part, what was at stake in the famous case Wisconsin v. Yoder, decided in 1972 by the United States Supreme Court. The facts were as follows. In 1968, three Amish parents were arrested in Wisconsin because they refused to send their 14- and 15-year-old children to high school. They did not have any objection to their
attendance at primary school. However, as the rest of the members of this sect, they wanted to prevent their children from going to high school because they were afraid that under the influence of their classmates, they would abandon their traditional lifestyle and beliefs. The Old Order Amish is a Christian sect descending from the European Anabaptists of the sixteenth century. This order rejected the alliance between the church and the state since it believed that Christianity meant a spiritual link among a community of believers, and it opposed children's baptism, violence and oaths. Like other dissenting sects, the Amish were expelled from various countries and they began to migrate to America at the beginning of the eighteenth century. Most of them settled in Lancaster County in Pennsylvania (U.S.) and in Ontario (Canada). Religion still guides all spheres of life within these communities. For example, it regulates in detail the conduct of their members, their diet, their social relations and their clothing.

The arrest of the parents was justified by the U.S. government by reference to the aim of ensuring that every child receive the necessary level of education to succeed in the modern world. Such incidences were not new, though previously school authorities and the members of these groups had reached agreements under which, generally, Amish children were exempted from attending classes regularly and allowed to combine their education in vocational subjects with their work on the farms. Before the court, the Amish argued that sending their children to high school would radically transform their identities to the extent that they would stop being members of the group. The state attorney, instead, held that were the Amish children educated in their communities, they would only be able to live in a certain way and their choices would be very limited. The Court was not convinced by this argument. Justice Burger, in his opinion for the Court, upheld the Amish claim and exempted them from abiding by the general law that makes education compulsory until the age of sixteen. The Court argued that pressure to assimilate to the dominant life-style and norms of American society would be very strong and would draw the children physically and emotionally apart from their community.

As I have explained above, within contemporary liberalism, the predominant line of argument to defend the rights of cultural minorities is based upon the connection of cultural belonging and the value of freedom, mainly understood as autonomy. From the point of view of a neutrality-based liberalism, a decision like the one of the United States Supreme Court can be hardly justified because granting a status of "partial citizenship" to the Amish cannot consistently be based upon this value. Amish children learn that they should not follow their own will or preferences if they want to live as true Amish and be children of God. These are groups that do not value individuality; on the contrary, they try to dilute it within the community and, as Chapter IV concluded, in justifying group rights, neutrality has a limit when the fundamental rights of the individual are at stake. With regard to the Amish case, most of its members did not decide to join the community but were born into it; hence, there is no room left for the argument that, in exercising their autonomy, they freely decided to endorse values that are incompatible with the notion of freedom and choice. Moreover, it could be argued that if the state allowed parents to restrict their children's education beyond a basic level, their future autonomy could be seriously undermined. In fact, the Amish are overtly concerned with ensuring that their
children are not exposed to alternative views of the world that might lead them to question their own beliefs and values. The children's capacity to choose between renouncing or confirming their membership in the group will also be limited by their lack of resources to succeed outside the community. Even if they possessed these resources (and so the right to exit was made more effective through state intervention), the choice would have difficult consequences: by choosing to integrate in the wider society they would face the loss of their original membership in a community that has been a substantial source of their identities.

There is no simple way out of this dilemma; largely because individual freedom is not always compatible with the goal of cultural survival as an independent moral ideal. From the perspective of the Amish, whose conception of the good clashes with some central liberal values, a theory of group rights such as the one discussed in previous chapters does not solve their fundamental problem. So, justifying the recognition of difference on the basis of autonomy and equality only allows for the preservation of a limited range of pluralism in worldview and values. Admitting the incompatibility of his own argument with the demands of non-liberal groups, Kymlicka draws an important distinction between “internal restrictions” and “external protections” that defines the scope of his theory:

The first involves the claim of a group against its own members; the second involves the claim of a group against the larger society. Both kinds of claims can be seen as protecting the stability of national or ethnic minorities, but they respond to different sources of instability. The first kind is intended to protect the group from the destabilizing impact of internal dissent (…), whereas the second is intended to protect the group from the impact of external decisions (e.g. the economic or political decisions of the larger society).

This approach enables us to confront the feminist concern about the potential tensions between group rights and inter-group inequalities. Since many of the internal value conflicts of groups are rooted in gender issues, one central objection—as formulated by Susan Okin in her celebrated essay “Is Multiculturalism Bad For Women?”—is that multicultural accommodation could worsen the situation of women, as the most vulnerable and oppressed members of the communities that are the object of protection (although we can of course extend this criticism to include other “minorities within minorities” such as minors, or dissenters whose basic individual rights as citizens can be jeopardised by group rights). More precisely, to the extent that group rights that involve self-government powers are attributed to identity groups which neglect women’s autonomy, their subjugation could be implicitly legitimised.

This critique of multicultural accommodation thus emphasises the need to be aware of the unintended consequences of well-intentioned efforts to reduce existing inter-group inequalities. This is a genuine concern that cannot be dismissed. It is not clear how such tensions between group rights and intra-group inequalities (particularly women’s inequality) could be resolved. In fact, the way of approaching this problem can serve as a test to sieve the reach, and relative priority, of some central liberal-democratic principles in debates about multiculturalism. If the starting point is an autonomy-based conception of liberalism, as in the case of Kymlicka, only those cultural minorities’ demands that are aimed at protecting their cultures from
the impact of majority decisions are justified. Any requests for self-government or exemptions made by representatives of non-liberal groups to restrict the individual rights of their members would be illegitimate. However, the distinction is not easily applicable. Take again the case of the Amish. Their claims can be seen as having the purpose of applying internal restrictions (involving discriminating patterns) to their members; but they could also be regarded as external protections vis-à-vis the wider society—that is, as an attempt to preserve their rural way of life.

Leaving aside the problem of distinguishing in practice between internal restrictions and external protections, this distinction should, in my view, play only a limited role in assessing the morality of demands for group rights. First of all, because it can easily degenerate into an essentialist bias that makes it an easy target from the standpoint of a conception of group rights and identities marked by flexibility and malleability. After all, inequalities that surround gender relations (as well as ethnic relations, etc.) are deeply ingrained in all cultures. Despite the on-going struggle by feminist and human rights movements and the formal prohibition of discrimination, women (and also other minority groups such as immigrants) dramatically fail to enjoy the same status and well-being as men, also in democratic states. Here, gender inequalities (and inequalities among other identity groups) tend to be institutionally embedded, deeply rooted in cultural symbols, legal norms and decision-making processes, so that different statutes are created which produce social subordination.

As explained earlier in this chapter, behind the veil controversy in France there is a wider problem of immigrants’ subordinated status, which generates a deep frustration and sense of alienation in the community that has not yet been confronted.

If this is so, the problem arises as to who should have the power—and, above all, with what legitimacy—to classify a cultural minority as “illiberal,” categorise their demands of rights as mainly involving internal restrictions and target its cultural practices with various sanctions or restrictions in the name of the individual rights of their members. Although in some cases these measures might be justified, a cautionary principle should apply in this context. Perhaps a relevant factor in determining the status that should be accorded to illiberal minorities could be the degree of oppression that some of their members are suffering as well as the repressive nature of their practices. Surely, to identify different standards of oppression (more and less tolerable, so to say) might be difficult. But this criterion might be essential in order to prevent us from drawing rigid, dogmatic lines between “liberal” and “illiberal” groups, instead of regarding this distinction as a matter of degree.

Certainly, some of the rules that groups like the Old Order Amish follow can hardly be regarded as compatible with basic liberal principles. That is why the legitimacy of the exemptions granted by the state to secure their preservation remains contested. However, isolationism is a rather exceptional phenomenon, and I agree with Kymlicka in that most minorities want to participate in modernity while preserving their particular cultures. This, I think, is the perspective that can best depict the aspirations of most ethnic groups such as French Muslims, who are willing to send their children to French public schools (instead of creating their own denominational schools) without giving up their cultural identities and religious symbols entirely. It is the reluctance of the mainstream society to accept the rather innocuous forms of accommodation that are usually demanded which can easily drive a minority
towards isolation and radicalisation. Thus, in the case of France, it is likely that the Muslim community will progressively search for ways of creating their own parochial schools and this will probably lead a segregation of children belonging to different communities, which is what the state, in fact, wanted to prevent.

In any event, it is important to recognise the propensity of the majority, or the most powerful group in society, to treat other groups or cultures as inferior or to judge them in an essentialist way in order to justify the imposition of power. In confronting these cases, we need to apply modesty: we need to constantly remind ourselves, in order to avoid double standards, that the mainstream society in the so-called liberal democracies currently contains a number of illiberal features and practices, including the discrimination against women, homosexuals and other social minorities. It would therefore be unfair to automatically stigmatise certain cultures and deny them any group rights on the grounds that “they are not liberal” or “they can adopt certain internal restrictions.” Furthermore, in some cases (think of indigenous peoples) liberal states can hardly justify the imposition of certain values and ways of life on groups that have suffered at the hands of the majority throughout their history.

All this is not meant to deny the relevance of the insights that feminist such as Okin have contributed to the debate about multiculturalism (in particular, the idea that certain multicultural policies and minority rights may increase the vulnerability of women as subjugated members in some cultures\textsuperscript{109}), but to acknowledge the constraints that should delimit state judgements and decisions. These limits imply that the question of how non-liberal minorities should be treated by liberal democratic states cannot be definitively addressed in the abstract; instead, it needs to be assessed on a case-by-case basis. In this process of evaluation, the following observations should be kept in mind:

First and foremost, although liberal culturalists usually regard as morally unjustified those demands for group rights that involve internal restrictions for members of the group in order to preserve the particular character of a culture, this is not a reason to promote intrusive or compulsory measures against these groups. As Kymlicka himself insists, identifying a theory of justice is one thing and imposing it on others a very different one.\textsuperscript{110} Two arguments support this position. On the one hand, when the individual commitment to a certain conception of the good is strong and deep, the imposition of sanctions will hardly change individual conduct or achieve a deep internal transformation. Thus, state intervention might turn out to be not only ineffective, but also counterproductive. A number of liberal philosophers have specifically emphasised this point. As was pointed out earlier, Locke argued that force and coercion in relation to religion are commonly useless, and his argument can be extended to matters of morality.\textsuperscript{111} Similarly, Hamilton suggested a prudent approach when examining how to deal with opposition to the new Constitution for the United States, “[f]or in politics, as in religion, it is equally absurd to aim at making proselytes by fire and sword,” adding that “[h]eresies in either can rarely be cured by persecution.”\textsuperscript{112}

This is an important guideline in any contextual examination of how a certain non-liberal minority should be treated by a particular state—and perhaps also in considering issues of international intervention in outlaw or non-democratic states, although this is not the focus here. Special regimes of “partial citizenship” enjoyed by
some non-liberal minorities are often granted ad hoc—specifically because of the exceptional character of this kind of measures—without the intention of using them as precedents or models in the general treatment of other minorities. In this sense, the decision in Wisconsin v. Yoder could be justified as a reasonable principle to lay the ground for a modus vivendi between different communities, but perhaps not from the point of view of justice.\textsuperscript{113}

A related consideration is that, ideally, the state should use indirect means to promote the internal transformation of groups. Any group, even the most homogeneous and secluded, has “internal minorities” (in Leslie Green’s terms\textsuperscript{114}) that disagree with some of its practices and beliefs. If this is so, perhaps what the state can do is to facilitate and support internal dissent. As Locke also observed, “it is one thing to persuade, another to command; one thing to press with arguments, another with penalties.”\textsuperscript{115} Admittedly, the boundary between imposition and encouragement may be blurred, but the argument nonetheless retains its power for further reflections on the limits of intervention and imposition of moral and political values.

Secondly, when examining how to deal with non-liberal communities that oppose change, it is important to remember that these cultures also provide their members with a context of meanings and guidance in the world. For this reason, the coercive imposition of liberal values may very well harm members of these groups—precisely the effect to be avoided. As Rawls writes, for some people, it is “simply unthinkable to view themselves apart from certain religious, philosophical and moral convictions, or from certain enduring attachments and loyalties.”\textsuperscript{116} In this sense, coercion from the outside can also degrade or harm the self-respect of members of minority cultures; and, to paraphrase Margalit, a decent society should not humiliate their members.\textsuperscript{117}

Let us briefly revisit the case of the headscarf in France. When feminists claimed that covering the head with a scarf was a clear symbol of female subjugation and that consequently, it could not be seen as an act of political protest and should be banned, this message excluded public discussion on the variety of meanings that this piece of clothing had from different individual perspectives. More importantly, it excluded the possibility of debating this issue with the members of the groups involved.\textsuperscript{118} Some Muslim women argue that they wear the hijab for political reasons but that this does not mean that they agree with other more controversial Islamic traditions, such as polygamy and, in any event, a practice is followed for multiple reasons worth being distinguished.\textsuperscript{119} But even if we reject this argument, could it not be argued that the posters advertising naked women and pornography in kiosks everywhere in Western cities are also symbols of female oppression and subjugation? In our societies, there are corporations that oblige their female employees to wear miniskirts and brassieres; but in spite of this fact, we still perceive ourselves—probably with an excess of complacency—as liberal societies.

If we take this idea seriously, Taylor’s argument about the relevance of recognition is probably more apt to ground a status of partial citizenship such as the one that the Amish enjoy. As we saw, Taylor conceives as plausible a version of liberalism that expresses a commitment toward a certain conception of the good. Yet he also adds that the conflicts between particularly contested claims and individual rights need to be settled case-by-case, through balancing the different values involved.\textsuperscript{120} In this
sense, Taylor does not seem to regard these conflicting values as incommensurable, as some commentators would. In contrast, Kymlicka’s theory draws clear limits of liberal tolerance. However, it can still be criticised for paying insufficient attention to the role of identity recognition in these cases, since the problem of non-liberal minorities is located at the level of the political legitimacy for imposing, rather than defining, a liberal view of justice. Kymlicka admits that there might be other prudential reasons that should be taken into consideration when implementation is at stake. But for him, a minimal moral substantive content, related to the intrinsic value of freedom, cannot be the subject of negotiation.\(^{121}\)

Finally, note that it is inconsistent to argue that since there are certain profoundly non-liberal groups that maintain practices in conflict with human rights, we should reject the idea of group rights altogether.\(^{122}\) This argument assumes that our capacity for reasoning is extremely limited. In other words, it presupposes, even before starting the discussion, our inability to draw the pertinent distinctions between different kinds of demands—those that are more and those that are less justified. On the other hand, the common habit of invoking the most suspicious and controversial practices (genital mutilation, polygamy and so on) as paradigmatic examples of the demands of ethnic or religious minorities is not only reductionist, but also symptomatic of the lack of consideration for the claims of the most moderate members of those groups. The existence of dubious customs, clearly incompatible with all possible interpretations of basic human values, and the need to fight them should not be used as a reason to reject the legitimacy of all claims for cultural group rights.

At this point, it is important to bring out the different approach to the problem of illiberal groups of a conception of liberalism based on tolerance and pluralism instead of neutrality—even if, for the reasons laid out above, this approach has not been adopted in this work. Recall that the theories of Kukathas and Galston can be seen as a counterargument to a critique of an autonomy-based liberalism (and group rights): namely, that this way of reconciling liberalism and multiculturalism runs the risk of reducing diversity to a mere façade. The alternative line of argument defended by this other strand of contemporary liberalism tries to restate the independent value of tolerance in the liberal tradition through emphasising the centrality of values such as freedom of conscience and freedom of association. From this perspective, a case can be made for illiberal groups, even though they uphold values that conflict with individual autonomy. Exit, and not intervention, plays a central role in a theory that is based upon a thinner conception of what it means to be free. As indicated, the idea that a member of a cultural minority should be able to leave the group is central in this conception of liberalism, in part because it is seen as a less intrusive remedy to oppression of vulnerable members.

I have already discussed the important flaws in this position, and I shall not rehearse them here. But it is important to insist on the limitations of the right to exit at this point. At the outset, as already noted, we should note that this alternative perspective is wrong in assuming that entrance into a group is free. In many cases, as with ethnic minorities, one is born into a community and raised with its values, so it is difficult to depict them as associations in which one voluntarily decides to become a member. While accepting this point, theorists like Kukathas insist that the central role should be given to exit; so, presumably, by remaining within the group (and thus not choosing to opt out) one is
implicitly showing his or her adherence to its internal regulations, even if they are indeed oppressive from a liberal perspective. This acquiescence legitimates their authority.\textsuperscript{123}

Yet, on the one hand, a formal, and quite minimalist, interpretation of the right to exit (such as the one favoured by Kukathas) is normally not enough to protect the dissenter. To make it a real option, substantial opportunities to integrate into another group should be provided. Some defenders of exit have been concerned with elucidating specific measures to address the most common difficulties.\textsuperscript{124} This implies that the state needs to get involved in order to diminish existing obstacles but, by doing so, the basic appeal of non-intervention (of the “politics of indifference”) diminishes significantly. But, on the other hand, the main problem is that reliance on exit to guarantee some basic level of individual freedom might be misplaced in many cases. Consider once more the case of the Amish. What would exit mean for younger generations that dissent from some of the dogmatic interpretations of what it means to be Amish? Even if state laws help them face the economic and material obstacles that would otherwise prevent them from leaving the community, this cannot prevent the loss of a sense of belonging and of family and friends, or ostracism by the community. This hard decision might be even harder in the case of married women, as they might find it impossible to leave behind their families and children. Also, it cannot be an option to protect children from attempts at suppressing the development of the basic capacities that one day could allow them to make a choice. So, the state intervenes even if it abstains from interfering. For it implicitly promotes certain essentialist interpretations of minority cultures through upholding dogmatic and authoritarian interpretations of their values and traditions. Those who would like to see reforms only have the prospect of exiting the group and thus renouncing their membership.

But this is not what many minorities within minorities wish. Instead, they seek state support to enable them to contest the patriarchal dogmatic interpretations of their own culture and values; for instance, some Jewish women might want to offer their views on why Jewish divorce should not be the form of dissolving marriage, without seeking to leave the community. Gay Catholics might argue that the orthodox understanding of homosexuals in the Catholic Church is inadequate and should be ruled out. Muslim women may want to declare that there are other forms to show modesty than covering their bodies entirely, but still be committed to their religion and be regarded as Muslim.

If this is so, a more promising avenue to respond to the feminist challenge to multiculturalism (and, in general, to autonomy-related concerns about group rights) would be to shift the focus of the debate towards what might be called a “participatory approach.” This would be a group-conscious approach that acknowledges that public deliberation with the involvement of members of the relevant cultural groups about the justification of their internal practices becomes crucial in a multicultural society. The legitimacy of minority practices and self-regulations would arise not from acquiescence of their members but from discussion with the presence of members of the affected groups. To this end, certain ways of guaranteeing the presence of women (and other minorities within minorities), also within cultural minorities, will be essential to tackle the alienating dynamics that acutely contribute to their subordination and lack of opportunity to shape their own cultures in all kinds of societies. In this sense, this approach bears the promise of a transformation of the status of

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oppressed minorities that is not based on complacent but often biased ways of judging other cultures. At the same time, it allows for a stronger recognition of cultural identities and actual demands of minority cultures than dominant approaches, and is thus better able to preserve the core of the multicultural critique of classical liberalism. Although I cannot develop this suggestion, I think this line of thinking connects better with the virtues of what Parekh and Benhabib call “intercultural” and “cross-cultural dialogue.” This approach can provide the ground for a better understanding of other cultures, which must always start “with a methodological and moral imperative to reconstruct meaning as it appears to its creators and makers.” This is what Benhabib calls “the hermeneutic truth of cultural relativism.”

In sum, in a multicultural society public deliberation and discussion with the participation of the relevant cultural groups about the justification of their internal practices becomes crucial. As Waldron points out, in a liberal multicultural society individuals should not expect that the practices of their cultural group be recognised simply because they claim that these practices are central to their identities. For this reason, the decision of the mayor of New York City not to participate in a celebration that excluded certain groups was probably correct. But we should not automatically deny the rightness of certain practices alien to the mainstream culture. To judge these practices requires a prior public debate with the participation of all the parties involved, who will be able to provide their reasons for them. That is why,

Our first responsibility in this regard is to make whatever effort we can to converse with others on their own terms, as they attempt to converse with us on ours, to see what we can understand of their reasons, and to present our reasons as well as we can to them.

Unfortunately, this responsibility is often ignored in many democratic states that are all too frequently dominated by a priori convictions and prejudices about the fundamentalism of those who do not conform to the mainstream culture and who are as a result accused of being unable to live up to basic standards of humanity or rationality.

5. CONCLUSION

This chapter has explored the scope of multicultural policies, and in particular of group rights, in terms of their breadth and depth. It has sought to determine which groups they should cover, and where the limits of multicultural tolerance should lie—two central questions that have raised important challenges to liberal projects of multiculturalism.

Many accounts of multiculturalism focus on national minorities in liberal states, and so have the previous chapters of this book. However, some of the main challenges of cultural diversity today, in particular in Europe, stem from a different source, namely immigration, and I have discussed some of the complexities this raises, in part through a case study of the recent headscarf controversy in France. The situation and claims of ethnic minorities, including immigrants, are often different from those of national minorities, and any political theory will have to take this into account. However, too strong a contrast between both categories is unwarranted, and many approaches of liberal nationalists underestimate the similarities between them,
often by overrating the element of choice in immigration. This is true, in particular, of Will Kymlicka’s proposals, which I examine in greater detail in this chapter. These need to be revised not only to accommodate the gradual rather than categorical differences between ethnic and national minorities, but also because they downplay the importance of the home culture for immigrants of later generations. An approach closer to Taylor’s, with an emphasis on recognition, is better able to cope with this challenge. Drawing on this and insights from previous chapters, I suggest a stronger role for the principle of state neutrality, understood as an ideal of consequential neutrality, in which state interventions in favour of the dominant culture are balanced by similar interventions for the benefit of ethnic minorities, insofar as their particular situation and claims warrants them.

Any liberal theory of group rights needs to define its limits, and in particular its stance towards illiberal groups. From a liberal standpoint, the idea of “partial citizenship,” allowing some groups isolation from the state framework in order to pursue cultural practices that are incompatible with liberal principles, is problematic; as we have seen in previous chapters, cultural survival is not a good in itself and therefore cannot justify violations of individual rights. A stance that, in this vein, limits the range of protected worldviews and values is also able to respond to feminist critiques of multiculturalism that see group rights as potentially contributing to the subjugation of women in illiberal groups. One influential proposal to combine these limits with a general respect for cultural diversity has been to distinguish between “internal restrictions” and “external protections” of groups, favouring the latter but excluding the former. However, apart from practical problems involved in this distinction, it runs a serious risk of essentialising groups and reproducing biases of majority cultures. All cultures contain illiberal elements, and allowing one of them to judge others easily leads to the stigmatisation of “the other” and to a neglect of the importance even of non-liberal cultures for the identity of their members. Any intervention into a minority culture must therefore be subject to a requirement of modesty and must also remain aware of the counterproductive effects it can have. Another common proposal to realise liberal values with respect to illiberal groups is an emphasis on exit rights. This, too, however, raises serious problems as it either drifts into a formal, meaningless right to exit or again into an interventionist enforcement of conditions that make a right to exit meaningful. In contrast, drawing on the internal diversity of cultural groups and the character of claims of minorities within minorities, I suggest a participatory approach to reconciling liberal principles and respect for non-liberal cultural groups. This approach would require deliberation with dissenters inside the groups concerned, and would thus favour a transformation from within rather than interventions from outside, and would also require majority cultures to engage in deliberation with the groups themselves before jumping to conclusions on their practices. Neglecting this duty to deliberate would itself run counter to liberal principles.

NOTES

1 See Kymlicka (1995a, p. 10). It is worth noting at the outset that the plausibility of this claim has been criticised by several commentators, partly because, as I will explain shortly, it has a correlate with different categories of minority rights (Parekh, 1997, 2000, pp. 102–109; Carens, 1997, 2000, pp. 55–56; Young, 1997). These criticisms are explored in more detail later in this chapter.
However, the distinction between these categories can be blurred: theoretically, nothing prevents ethnic minorities from viewing themselves as national minorities with the aim of obtaining some kind of institutional separation or political self-government. Nevertheless, territory has generally revealed itself as an essential element in the self-perception of the groups as national or ethnic minorities. Thus ethnic minorities, even if they are more or less territorially concentrated, do not usually have a nation-type self-image, nor do they claim the kind of group rights that national minorities demand. Yet, as Joseph Carens contends (2000, p. 81) this may generally be true as an empirical matter, but the question of what to do if they did make the same types of claims remains valid.

Bauböck (1998, p. 321). Bauböck’s assertion that internal migrations have often been the motor of historical change is supported by the industrialisation experiences of states, which generally involve mass displacements from rural areas to urban ones.

That is why in countries like Spain, for instance, the term “immigrant” is normally used to refer to both people coming from abroad and people that have settled from another Autonomous Community (from Andalusia to Catalonia, or from the Basque Country to Madrid). In this situation, political debates about immigration are necessarily linked to discussions related to the status and rights of the national or linguistic minority (see Zapata Barrero, 2004, pp. 262–264). In contrast, population movements within the United States or Germany are not generally categorised as “immigration,” since internal diversity is mostly regarded as having a regional or local character, rather than a “national” one. For a volume that includes recent works on the impact of immigration on several European national minorities and also in Quebec, see Aubarell et al. (2004).


Carens (2000, pp. 98–99) reflects on the relevance of this argument to account for the position of African-Americans.

Although this is an issue that cannot be explored in detail, it is important to keep in mind that the category of international migrations is a heterogeneous one, and therefore some relevant distinctions should be made. On the one hand, the displacements of refugees and of asylum seekers should probably be classified as forceful and as prima facie transitory migrations. Moreover, coercive displacements may involve entire cultural communities, such as in the case of diasporas (where a whole community is deprived of the land where they were settled and are relocated to another territory or forced to get dispersed). On the other hand, “guest” workers programmes have been implemented in order to ensure the temporary stay of immigrants (preferably individuals without families) and, therefore, as Lucas argues (2002, pp. 27–28), to deny them the condition of “immigrant” altogether, reducing them to mere “foreigners.” However, this model has clearly not impeded the permanent settlement of many individuals who initially entered the country under this category, as is the case of many Turks in Germany. The following pages will mainly focus on the problem of justifying the rights of immigrant groups whose presence in a given state is the product of individual and family migrations intended to settle more or less permanently, at least in the sense that the group would most predictably continue to be part of the host state. This is clearly the trend in the old and recent immigration societies; i.e., it is the case of Moroccans or Ecuadorians in Spain, Latinos in the United States, Turks in Germany or Chinese communities in Canada. The conclusions reached should thus not be automatically transposed to all conflicts involving ethnic minorities, but may be useful to illuminate cases that are less common or at the margins of categories.

For this characterisation of our contemporary world, see Castles and Miller (1993).

It might therefore be inappropriate to use the term “immigrant” in this case—this is, as explained, why it makes sense to speak instead of “ethnic minorities.”

Bauböck (1998, p. 327) illustrates this development of the late twentieth century by pointing to the transformation of U.S. black citizens into African-Americans.

See Walzer (1997, pp. 30–35). Although the great transatlantic migrations at the turn of the twentieth century often provide the grounds for categorising certain states as containing “societies of immigration,” the dominant myths are not always accurate; thus, even during these “open borders” period there were significant discriminations (or cultural and racist bias in the systems for selecting immigrants) of potential newcomers on the grounds of nationality, gender, race or literacy. In addition, large numbers of overseas migrants returned back to Europe and did not become full citizens. See Bauböck (1998, p. 333) and Carens (2000, pp. 108–109).
The Canadian Multiculturalism Act (R.S. 1985, c 24; available at: www.pch.gc.ca/progs/multi/policy/act_e.cfm) was enacted in 1988. For discussion, see Kymlicka (1998b, Chapters 1–8).

Mainly as a result of the policies adopted after 1945 to promote immigration, Australia is, with Canada and the United States, one of the most diverse democratic countries in the world. Although its population in 1945 was just over 7 million people, today it is more than 20 million people. One of the main reasons for adopting those policies was to build a strong society capable of resisting threats from Asia, after the increasing insecurity arising from the proximity of the Japanese military forces during World War II. The official policy of multiculturalism was adopted in the 1970s and led to the active involvement of the government in the problems of unemployment, discrimination and educational disadvantages suffered by ethnic minorities. Some special programmes were also adopted to recognise and protect their cultural distinctiveness. For further information and discussion, see Poole (1996).

Note, however, that this normative notion of multiculturalism (which incorporates the idea that cultural diversity is a value in itself) is not the one that has been used in this book.

Excerpts from the Canadian Multiculturalism Act. See supra note 13.

For a more comprehensive sample of the policies that are usually discussed under the label of “multiculturalism,” see Kymlicka (1998b, pp. 42–43).

In Kymlicka’s view (1998b, p. 46) the Canadian policy of multiculturalism promotes fair terms of integration because it ensures that “the common institutions into which immigrants are pressured to integrate provide the same degrees of respect and accommodation of the identities of ethnocultural minorities that have traditionally been accorded to British- and French-Canadian identities.”


Brubaker (1989, p. 5). On how the unitary model of citizenship, based on the idea of a nation-state, fails to capture contemporary realities, as can be seen through the increasing phenomena of dual citizenship, see Carens (2000, pp. 162–166).

Brubaker (1989, pp. 5–6). In part, the exclusion of immigrants from equal access to rights and opportunities has not raised the deep concerns that one would think it should provoke in democratic states because of the widespread perception that this is a temporary phenomena. Hence, the debate in countries such as Spain, which only very recently has become a destination for international migrants, often remains focussed on how to restrict access to the territory and protect the basic rights of legal and illegal immigrants, but not about how to fully include them into the political community. Obviously, the debate about integration needs to start form the assumption that most newcomers will indeed stay. On the democratic deficits of an approach to immigration that makes admission of new citizens strongly dependent on naturalisation, see Rubio-Marin (2000).

For a comparative study of the different traditions in Europe and North America as regards citizenship and naturalisation, see Brubaker (1989). For a specific comparison between Germany and the United States, see Rubio-Marin (2000).

For instance, there are increasing conflicts related to the practice of religions other than Catholicism that call into question self-complacent myths of neutrality. For details on this controversy, see Zapata Barrero (2005). Spain has been rapidly transformed in an immigration country. On this transformation and recent data, see Lucas (2003, pp. 49–53).


Although this view, in turn, has been contested on the grounds that resorting to the law of residence makes more sense in a multicultural context: on the one hand, because this rule is based upon a presupposition of the integration of immigrants and, on the other, because applying the law of nationality may imply a de facto legalisation of controversial practices, such as polygamy. On this debate, see Quiñones Escámez (2000, pp. 23–29).

The socio-economic perspectives that commonly guide the policies of immigration in most countries assume a utilitarian view that often leads to instrumentalising immigrants according to the needs of the receiving country. For this reason, Lucas emphasises that, in fact, these policies imply the negation of the immigrant, by overlapping this category with that of a guest-worker. In contrast, human rights approaches to immigration emphasise the need to protect the individual rights of (both legal and illegal) immigrants on the basis of considerations of fairness and democracy. See, for instance, Rubio-Marin (2000) and Lucas (2002, 2003).

An increasing trend in immigration policies within the European Union is to distinguish between temporary immigrants and resident immigrants, imposing different conditions for access depending on
their nationality of origin and the existence of agreements between the states. The category of permanent residency is generally related to proving at least five years of permanent residency. But this legal trend is still far from reflecting the model proposed by theorists who think that, after a certain time of permanent residence, the immigrant should have the right to fully enjoy the citizenship status, including political rights, as native-born citizens. See, in this sense, Carens (1989). Rubio-Marin (2000) calls for “automatic inclusion” as a consequence of residence in a political space, regardless of the specific provisions on naturalisation.

28 Note that this reality also entails a significant contradiction for liberal theories that postulate the universality of human rights, as Rubio-Marin, Lucas and other authors emphasise (see supra notes 26 and 27). To the extent that liberal states legitimise their authority on sections of population that they assume they must protect, practices that exclude resident immigrants from access to basic goods and rights violate this central aspiration.

29 The case of France is paradigmatic in this sense. As both Walzer (1997, pp. 37–40) and Brubaker (1989, pp. 7–8) stress, in numerical terms France is a leading country of immigration in Europe and has even encouraged immigration during some periods of its history for demographic reasons. Yet, despite what the figures show, and unlike states like Canada, cultural diversity is not part of the “national myth,” probably because of the deeply ingrained trust in assimilation. The republican tradition intends to transmit the image of a universal community of citizens, culturally and politically united, based on a common language and adherence to the republic. Ethnic and cultural diversity is tolerated only when its manifestations and development occur in the private sphere.


31 Even sending states tend to encourage their migrants to perceive their situation as temporary and to return “home” when their economic circumstances have improved. Sometimes, the host state will describe as permanent an immigration that is regarded as temporary by the sending state, either because some immigrants are still regarded as members in their countries of origin despite having lived abroad a long time, and even obtained a new citizenship. Today the possibility of preserving multiple attachments has of course increased, mainly due to the rapid enhancement of the means of communication and information, as well as the possibilities of territorial mobility. All these transformations make it possible for immigrants, more than ever before, to keep strong ties with their countries of origin and retain many aspects related with their cultural identities. In this sense, permanent residency might not be sufficient to assume that citizens of foreign origin belong to the community in terms of feeling emotional attachment or identification—namely, in the “psychological dimension” (Carens, 2000, p. 166). The fact that the legal status of citizenship might not coincide with a sense of belonging or integration presents another important challenge to the traditional model of citizenship as described earlier in this chapter.

32 As Poole recounts (1996, p. 408), in Australia, the repopulating programmes provided opportunities that were initially limited to inhabitants of states who were considered politically and ethnically similar. In fact, migrants themselves often take into consideration cultural similarities associated with a common history or language when choosing a country of destination.

33 The same reasoning applies to sending countries. As mentioned, most states are interested in promoting the return of their citizens abroad, who are constantly reminded of their origin. The combination of various criteria, *ius sanguinis* and *ius soli*, to have access to full citizenship can be seen as an example of this. *Ius sanguinis* is used to grant the children of immigrants that are born abroad the nationality of their parents; hence, from the perspective of the state, the emigration of their citizens is not normally seen as an irreversible loss of population and many assume that their citizens abroad will maintain social and economic ties as well as political loyalty. That is perhaps why dual nationality is still seen as an irregular category that should be granted only exceptionally, since it gives rise to potentially conflicting loyalties and identifications. For a critical account of this trend, see Carens (2000, p. 164) and Rubio-Marin (2000).

34 Of course, there are other movements that oppose immigration and the politics of multiculturalism on overtly racist grounds. For instance, the association *Americans for Immigration Control*—see www.immigrationcontrol.com—one of the largest lobbies for immigration reform, defends higher border controls and restrictions, together with a highly selective philosophy of immigration that privileges white immigrants of European origin on the basis that they offer less resistance to assimilation. Likewise, the Federation of *Americans for Immigration Reform* (available at: www.fairus.org) calls for
more restrictions on immigration so that national security and cultural assimilation can be secured. Republican extremists in the United States have insisted over the last decade that America was founded by white, Christian Europeans and that Asian immigration, for example, threatens the supremacy of Western Christian civilization. For this and other similar declarations by members of the Anglo-conformity model, see Ong Hing (1993, pp. 870–876). In France, the discourse of Jean-Marie Le Pen and his extreme right party against immigration also share this racist undertone and they had the opportunity to agitate the Islamophobic sentiment and attract an enormous number of new voters in the first round of the Presidential elections of 2002.

35 Officially Article 141-5-1 No. 2004-228 of the National Code of Education.

36 I deal with questions related to terminology later in this section.

37 The debate between defenders of secularism and supporters of the right to wear the Islamic veil in state schools was extensively covered in Le Monde (November 4–6, 1993). The case also made the headlines of The New York Times of December 5, 1993. Two opposed perspectives on the conflict are defended in Galeotti (1993, pp. 585–605), who applies to this case the liberal doctrine of tolerance in order to defend multiculturalism, and Moruzzi (1994, pp. 653–672) who criticizes this approach as insufficient to protect the rights of minorities.


41 Although this freedom, according to the Conseil d’État, is not enjoyed by teachers because, as public servants in a secular institution, they must be seen as neutral.

42 The decision of the Conseil d’État also insisted that, before formal sanctions could be implemented, principals should make efforts at dialogue with the children and their parents (which was often done through an official mediator) in order to achieve a compromise and cordially resolve the dispute. But it was still unclear how this process had to be conducted and which should be the time for dialogue and compromise. On these and other problems arising from this general lack of guidance, see Judge (2004, p. 19).

43 See Kramer (2004).


45 For an account of the reforms in public elementary schools promoted by the father of French secular education, Jules Ferry, and the 1905 law that consecrated the separation of the church from the state, see Judge (2004, pp. 1–5).

46 According to commentators (see Kramer, 2004; Judge, 2004) the increasing number of French Muslim girls that tried to enter the classroom draped in traditional Islamic clothing had less to do with the places where their families came from than with the frustration of their living conditions in the deteriorated suburbs or cités, their feeling of being alienated from French politics and culture and the rising of a global movement to regain their pride by conforming through orthodoxy. On the influence of these events, see Kramer (2004) and Judge (2004).


48 On the complaints by some members of the Stasi Commission about this result, see Kramer (2004, p. 62).


52 On the negative perception of “exceptionalism” or “multiculturalism,” as destructive of the integrity of society, see Judge (2004, p. 17) and Kramer (2004, p. 60).

53 However, it is estimated that the number of Muslims in France approaches 5 million. In addition, they constitute almost 50% of the prison population and only a small percentage of University students are Muslims. See on these and other significant data, Kramer (2004) and Judge (2004, pp. 7–8).

54 As Kramer explains (2004, p. 66) most people that fled to France immediately after the independence of Algeria (and also in the following decades) were made many promises by the French government that were never fulfilled; yet, they remained faithful to the French state in gratitude and tried to assimilate, accepting, for instance, that religion is a private matter in France. However, the Muslim
generations that were born in France need not accept their circumstances of social exclusion and the French cultural and political rhetoric in the present.

According to Kramer (2004, p. 60), in 2003 more than 3000 girls were going to school with some sort of veil.


In Shadid and Van Koningsveld's opinion (2005, p. 38), the lack of understanding of the meaning and variation of the Islamic dress in the West usually gives way to tendentious interpretations and stereotyping. *Chador*, for instance, is a Persian word referring to a particular piece of clothing that covers the hair and part of the face. This garment is characteristic of some regions of the Arab world (especially in Iran), but it is unfamiliar in Algeria, Tunisia or Morocco, the countries of origin of many of the girls initially implicated in this affair.

Shadid and Van Koningsveld (2005, p. 36).

This was part of the opinion of the French *Conseil d'Etat* in the early 1990s.

For the policies adopted in Belgium and the Netherlands, as well as the role played by the ECHR, see Shadid and Van Koningsveld (2005).

See Shadid and Van Koningsveld (2005, p. 38) and Judge (2004, pp. 12–13). There is a similar reaction among Jews in France and other countries were anti-Semitism is gaining ground. See Kramer (2004, p. 70).

Judge (2004, pp. 5–8).

For an excellent book that includes works that examine this potential conflict, see Van Parijs (2004b).

Kymlicka and Straehle (1999, p. 74). Not all liberal nationalists agree with this conclusion. Miller, for instance, suggests that two ideal options are available to national minorities: on the one hand, assimilation and, on the other, secession and the creation of a new state. Along with the classical liberal nationalism of Mill and others, Miller remains sceptical as to the possibility of an equal coexistence of different cultures and languages in the same polity: “even if the commitment is made in good faith,” Miller writes (1995, p. 88) “the likely effect is that such states will offer weaker protection to each culture taken separately than would be expected in a culturally homogeneous state, since measures taken to protect one culture will be resisted by adherents of the other.” For some complementary arguments in support of the same conclusion, see Schnapper (2004). In contrast, as we saw earlier, Tamir, Kymlicka and Taylor have defended (even if on different grounds) the possibility of a multicultural state, and they all maintain that national minorities should have a significant level of self-government or political autonomy within the state in which they live.

The Quebec Government negotiated with the Canadian federal government the transfer of most responsibilities concerning immigration, and has almost complete authority over immigrants arriving in Quebec. See Carens (2000, pp. 108–109).

With this assertion, I do not suggest that immigration policies inspired by economic and demographic interests are morally justified. Exploring in depth the morality of open borders would require a separate inquiry; yet, it is important to realise that the thesis maintained in the previous chapter about the value of cultural belonging could be interpreted as a reason against the idea of a general human right to migrate. My main interest, however, is merely to stress that both national minorities and the wider majority tend to invoke similar reasons in supporting restrictions to immigration. Therefore, if this type of policy is seen as legitimate for states (whether for the sake of cultural preservation or for reasons of a more instrumental nature), it is hard to see why national minorities should not be allowed to benefit from the same prerogatives.


In *Multicultural Citizenship*, Kymlicka refers to these rights as “polyethnic rights,” but in recent works he also uses the expression “accommodation rights.” Contrast Kymlicka (1995a, p. 31 with 1997a, p. 73).
Indeed, Kymlicka claims that the cases to which Young refers are exceptional precisely because the “will” requirement is not met (Kymlicka, 1995a, pp. 24–25).


The Spanish Constitutional Court expressed a different view in the 1980s (STC 19/1985, in the case of the Seventh Day Adventist Church). The Court had to decide about the possible incompatibility between religious duties and labour obligations concluding that the conflict between Article 16 (that recognises the right to religious freedom) and Article 14 (that recognises the right to equality) of the Spanish Constitution has to be settled by following Articles 31.1 and 17.1 of the *Estatuto de los trabajadores*. The Court argued that the recognition of a different week holiday would imply an exemption from the *Estatuto*, which cannot be imposed on the employer, although of course the employer can grant this exemption discretionarily. The interesting point for the present discussion, however, is that this reasoning was partly justified on the grounds that the choice of Sunday as a day of rest has to be interpreted nowadays as a secular tradition (despite the fact that it is precisely this tradition which is contested by minorities who feel deprived of the opportunity to comply with their religious faith). But, in practice, the separation of Church and State has been hardly achieved in Spain (as in many other supposedly secular countries) and we could find many examples of failures to live up to this liberal ideal. Take, for instance, another judgement of the Spanish Constitutional Court (STC 177/1996, November 11). Here, the Court asserted that state secularism assumes a principle of neutrality that forbids any kind of confusion between religious and civil functions; however, it considered that this value does not prevent the military from celebrating religious festivities or participating in ceremonies of religious nature. This decision settled an appeal (recurso de amparo) submitted by a general who was punished to sixty days of arrest when he refused to participate in a tribute ceremony in Valencia, on the occasion of the fifth centenary of the Virgin of helpless people. When the general realised that this was a religious procession he requested to be relieved from attending it for reasons of conscience. He also requested, as a subsidiary option, to be allowed to abandon the troops when the tribute to the Virgin would take place. Since his request was dismissed, he left anyway the ranks and was punished for this action. Although the Constitutional Court acknowledges that the appellant had the right to exercise the religious freedom in this form, and could thus not be obliged to participate in acts of a religious nature, the judgement implicitly accepts the legitimacy of this kind of military celebrations. For a more recent case that was resolved analogously, see STC 101/2004, June 2.

Muslim religious requirements, for instance, involve several demands that are directly prohibited or obstructed by the legal norms in Western societies. We do not need to refer to practices that dramatically show the incompatibility of liberal democratic principles with some religious prescriptions. Take, for instance, consumption of *halal* meat, which requires the existence of butcheries and slaughterhouses warranting that the killing of the animal has been produced respecting certain ritual. In Spain, the Royal Decree 54/1995, which updated the Spanish legislation in accordance with the European regulations, includes an explicit reference to animal sacrifices in relation to religious practices. The provision establishes that in case of animals that are the object of particular methods of sacrifice commanded by certain religious rites, the rules requiring dazing an animal before killing it do not apply. This is a clear instance of an exemption from the general regulation in order to respect the interests of certain minorities; yet not all countries adopt provisions to facilitate the exercise of freedom of religion. Similar problems can be found in funeral regulations. Following with the same example, Muslims prefer that the body of the deceased must be buried before...
24 hours and not in a coffin. These religious constraints raise the need for building cemeteries that are suitable for Muslim immigrants. We could cite many other aspects in which European regulations reflect, and give priority to, the mainstream cultural tradition (religious education paid with public funds, curricula contents and so on). Taking up again the case of Spain, the inclusion in the income tax form of a section where people can opt for a voluntary donation to the Catholic Church (an option that is not open to other religions) is another example of this bias, although, as regards marriage, this same country endows the Muslim marriage celebrated on Spanish territory and by a qualified Islamic authority with automatic civil effects. For further discussion, see Quiñones Escámez (2000, pp. 20–22).

The same happens with police or army uniforms. These uniforms do not prevent wearing a wedding ring or a chain with a crucifix—both significant religious symbols for Christians. In contrast, for a Sikh or an orthodox Jew, complying with this public duty might imply renouncing to express their religious identity.

In modern anthropological studies, religion is often treated as a cultural system that generates particular idiosyncrasies. Geertz (1973, pp. 89–90) for example, writes that sacred symbols have the purpose of synthesising the ethos of a people, its character and ways of life, as well as setting out its moral and aesthetic style.

I am borrowing this expression from Spinner (1994, p. 95), who uses it to refer to religious sects like the Amish, that reject full integration into the wider society and are willing to maintain a partial form of belonging to the political community on the grounds that such status is crucial for developing their illiberal ways of life.

Wisconsin v. Yoder, 406 U.S. 205 (1972). Other tribunals, domestic and international, have confronted similar cases in which the underlying problem can be interpreted as the compatibility between cultural group rights and individual rights and freedoms. For instance, in 1970, the Canadian Supreme Court had to decide on the legitimacy of the power held by the Hutterite Church over its members (Hofer vs. Hofer, 1970, SCR 958). The Court had to deal with a situation in which some Hutterite members joined another church and, after being expelled from membership in the colony, their share of the assets was denied. The Court, however, held that they were not entitled to this property. Likewise, the United Nations Committee on Human Rights has decided on several analogous issues (see, for instance, Sandra Lovelace v. Canada, No 24/1977).

This is indeed a central argument of Locke's Letter Concerning Toleration. For a critical account, see Waldron (1993).
Kukathas and other defenders of the tolerance approach would argue that, in order to satisfy liberal standards, the only guarantee that the state is supposed to enforce is the right of exit from the group by those members that so wish. For the reasons developed in Chapters IV and V, this perspective is unsatisfactory. See also, Reitman (2005). In any event, it is important to realise that there are clear discrepancies about how to deal with illiberal groups within liberal theory.

Green (1994).


Rawls (1993, p. 31).

Margalit (1996). The argument put forward by Margalit compares a decent society with a just one, although these conceptions are not necessarily rival conceptions but can be complementary in most cases.

On this and similar reactions in the late 1980s and 1990s, see Moruzzi (1994).

More on feminist views in the case of the headscarf can be found in Kramer (2004, pp. 68–70).

See supra Chapter V.


See Kymlicka (1999), who argues that, in general, multicultural and feminist sensibilities should be seen as complementary rather than opposed.

Kukathas (2003, p. 25). See supra Chapter IV, Section 2.2.


