

CHAPTER 8

Toleration and its Limits

So far, I have argued that liberals can and should endorse certain group-differentiated rights for ethnic groups and national minorities. But this endorsement is always a conditional and qualified one. The demands of some groups exceed what liberalism can accept. Liberal democracies can accommodate and embrace many forms of cultural diversity, but not all. This chapter will explore the limits of liberal tolerance, and how liberal states should respond when those limits are transgressed.

Liberal principles impose two fundamental limitations on minority rights. First, a liberal conception of minority rights will not justify (except under extreme circumstances) 'internal restrictions'—that is, the demand by a minority culture to restrict the basic civil or political liberties of its own members.¹ Liberals are committed to supporting the right of individuals to decide for themselves which aspects of their cultural heritage are worth passing on. Liberalism is committed to (perhaps even defined by) the view that individuals should have the freedom and capacity to question and possibly revise the traditional practices of their community, should they come to see them as no longer worthy of their allegiance.

Liberal principles are more sympathetic to demands for 'external protections', which reduce a minority's vulnerability to the decisions of the larger society. But even here there are important limits. Liberal justice cannot accept any such rights which enable one group to oppress or exploit other groups, as in apartheid. External protections are legitimate only in so far as they promote equality between groups, by rectifying disadvantages or vulnerabilities suffered by the members of a particular group.

In short, a liberal view requires *freedom within* the minority group, and *equality between* the minority and majority groups. A system of minority rights which respects these two limitations is, I believe,

impeccably liberal. It is consistent with, and indeed promotes, basic liberal values.

Because of these two limitations, a liberal conception of minority rights cannot accommodate all the demands of all minority groups. For example, some cultural minorities do not want a system of minority rights that is tied to the promotion of individual freedom or personal autonomy. Some groups may in fact resist such a system because it might imply that the internal structure of their community should be reorganized according to liberal standards of democracy and individual freedom.

For example, the tribal government of the Pueblo Indians discriminates against those members of the tribe who reject the traditional religion of the group. Similarly, some minority cultures discriminate against girls in the provision of education, and deny women the right to vote or hold office. These measures do not protect the group from the decisions of the larger society. Rather, they limit the freedom of individual members within the group to revise traditional practices. As such, they are inconsistent with any system of minority rights that appeals to individual freedom or personal autonomy. Indeed, restricting religious freedom, or denying education to girls, violates one of the reasons liberals have for wanting to protect cultural membership—namely, that membership in a culture enables informed choice about how to lead one's life. These sorts of internal restrictions cannot be justified or defended within a liberal conception of minority rights.

Given these limitations and qualifications, some defenders of minority rights may think that reconciling minority rights with liberalism is a Pyrrhic victory. To find room for minority rights within liberal theory, they might say, requires qualifying these rights in such a way that they no longer correspond to the real aims of minority groups. I have defended the right of national minorities to maintain themselves as culturally distinct societies, but only if, and in so far as, they are themselves governed by liberal principles. Yet surely what some minorities desire is precisely the ability to reject liberalism, and to organize their society along traditional, non-liberal lines? Is this not part of what makes them culturally distinct? If the members of a minority lose the ability to enforce religious orthodoxy or traditional gender roles, have they not lost part of the *raison d'être* for maintaining themselves as a distinct society? Is the insistence on respect for individual rights not a new version of the old ethnocentrism, found in Mill and Marx, which sets the (liberal) majority culture as the standard to which minorities must adhere?

If a minority is seeking to oppress other groups, then most people would agree that intervention is justified in the name of self-defence against aggression. But what if the group has no interest in ruling over others or depriving them of their resources, and instead simply wants to be left alone to run its own community in accordance with its traditional non-liberal norms? In this case, it may seem wrong to impose liberal values. So long as these minorities do not want to impose their values on others, should they not be allowed to organize their society as they like, even if this involves limiting the liberty of their own members? Indeed, is it not fundamentally *intolerant* to force a peaceful national minority or religious sect—which poses no threat to anyone outside the group—to reorganize its community according to ‘our’ liberal principles of individual liberty?

These are difficult questions, and have given rise to important conflicts, not only between liberals and non-liberals, but also within liberalism itself. For tolerance is itself a fundamental liberal value. Yet promoting individual freedom or personal autonomy seems to entail intolerance towards illiberal groups. I suggested earlier that a theory of minority rights which precludes internal restrictions is impeccably liberal, since it is grounded firmly in the value of individual freedom. Yet others would view my theory as illiberal, precisely because its unrelenting commitment to individual autonomy is intolerant of non-liberal groups.

There is a large and growing debate amongst liberals about whether autonomy or tolerance is the fundamental value within liberal theory. This contrast is described in different ways—for example, a contrast between ‘Enlightenment’ and ‘Reformation’ liberalism (Galston 1995), or between ‘comprehensive’ and ‘political’ liberalism (Rawls 1993a; Moon 1993), or between ‘Kantian’ and *modus vivendi* liberalism (Larmore 1987). Underneath all these contrasts is a similar concern—namely, that there are many groups within the boundaries of liberal states which do not value personal autonomy, and which restrict the ability of their members to question and dissent from traditional practices. Basing liberal theory on autonomy threatens to alienate these groups and undermine their allegiance to liberal institutions, whereas a tolerance-based liberalism can provide a more secure and wider basis for the legitimacy of government.

Those liberals who emphasize toleration, and downplay autonomy, often wind up with a position regarding minority rights which is quite different from the one I have defended. For example, Chandran Kukathas is more sympathetic than I am to demands by cultural groups to impose internal restrictions on their own members, since he

thinks that liberalism is not committed to the value of autonomy. Yet he is much less sympathetic to demands by minority cultures for any special external protections *vis-à-vis* the larger community. Liberal tolerance, on his view, requires that non-liberal groups be left alone, but it does not require the state to help them in any way, through public funding of schools, language rights, veto powers, or the redrawing of political boundaries (Kukathas 1992a; 1992b).

On this view, liberals should seek to accommodate illiberal groups, so long as they do not seek any support from the larger society, and do not seek to impose their values on others. It is a ‘live and let live’ approach, an ethic of reciprocal non-interference. In short, liberal tolerance allows for some internal restrictions, but no external protections.

I think this is mistaken, not only about the impermissibility of external protections (which I have defended in Chapter 6), but also about the legitimacy of internal restrictions. To be sure, there are important practical and moral limits on the extent to which liberal states can impose liberal values on cultural groups, particularly national minorities, which I discuss below. But there are also real conflicts between liberal principles and the demands of non-liberal groups, and we need to face these conflicts openly.

In this chapter, then, I will try to clarify the ways that liberalism can, and cannot, accommodate non-liberal groups. I will begin with the idea of tolerance, and show why the traditional liberal conception of tolerance is dependent on, rather than an alternative to, a commitment to autonomy (s. 1). I will then consider the extent to which promoting liberal principles can be seen as ‘sectarian’ (s. 2), before concluding with some suggestions about how liberal states should respond to non-liberal groups within their borders (s. 3).

1. *Liberalism and Tolerance*

Liberalism and toleration are closely related, both historically and conceptually. The development of religious tolerance was one of the historical roots of liberalism. Religious tolerance in the West emerged out of the interminable Wars of Religion, and the recognition by both Catholics and Protestants that a stable constitutional order cannot rest on a shared religious faith. According to Rawls, liberals have simply extended the principle of tolerance to other controversial questions about the ‘meaning, value and purpose of human life’ (Rawls 1987: 4; 1985: 249; 1993a: p. xxviii).

But if liberalism can indeed be seen as an extension of the principle of religious tolerance, it is important to recognize that religious tolerance in the West has taken a very specific form—namely, the idea of individual freedom of conscience. It is now a basic individual right to worship freely, to propagate one's religion, to change one's religion, or indeed to renounce religion altogether. To restrict an individual's exercise of these liberties is seen as a violation of a fundamental human right.

There are other forms of religious toleration which are not liberal. They are based on the idea that each religious group should be free to organize its community as it see fits, including along non-liberal lines. In the 'millet system' of the Ottoman Empire, for example, Muslims, Christians, and Jews were all recognized as self-governing units (or 'millets'), and allowed to impose restrictive religious laws on their own members.

Since the millet system has been cited as an important precedent and model for minority rights (Sigler 1983; Van Dyke 1985: 74–5; Thornberry 1991: 29), it is worth considering in more detail. The Ottoman Turks were Muslims who conquered much of the Middle East, North Africa, Greece, and Eastern Europe during the fourteenth and fifteenth centuries, thereby acquiring many Jewish and Christian subjects. For various theological and strategic reasons, the Ottomans allowed these minorities not only the freedom to practise their religion, but a more general freedom to govern themselves in purely internal matters, with their own legal codes and courts. For about five centuries, between 1456 and the collapse of the Empire in World War I, three non-Muslim minorities had official recognition as self-governing communities—the Greek Orthodox, the Armenian Orthodox, and the Jews—each of which was further subdivided into various local administrative units, usually based on ethnicity and language. Each millet was headed by the relevant church leader (the Chief Rabbi and the two Orthodox Patriarchs).

The legal traditions and practices of each religious group, particularly in matters of family status, were respected and enforced through the Empire. However, while the Christian and Jewish millets were free to run their internal affairs, their relations with the ruling Muslims were tightly regulated. For example, non-Muslims could not proselytize, and they could only build new churches under licence. There were limits on intermarriage, and non-Muslims had to pay special taxes, in lieu of military service. But within these limits, 'they were to enjoy complete self-government, obeying their own laws and customs'. Their collective freedom of worship was guaranteed, together

with their possession of churches and monasteries, and they could run their own schools (see Runciman 1970: 27–35; Braude and Lewis 1982: 1–34).

This system was generally humane, tolerant of group differences, and remarkably stable. As Braude and Lewis note, 'For nearly half a millennium, the Ottomans ruled an empire as diverse as any in history. Remarkably, this polyethnic and multireligious society worked. Muslims, Christians, and Jews worshipped and studied side by side, enriching their distinct cultures' (Braude and Lewis 1982: 1).

But it was not a liberal society, for it did not recognize any principle of *individual* freedom of conscience. Since each religious community was self-governing, there was no external obstacle to basing this self-government on religious principles, including the enforcement of religious orthodoxy. Hence there was little or no scope for individual dissent within each religious community, and little or no freedom to change one's faith. While the Muslims did not try to suppress the Jews, or vice versa, they did suppress heretics within their own community. Heresy (questioning the orthodox interpretation of Muslim doctrine) and apostasy (abandoning one's religious faith) were punishable crimes within the Muslim community. Restrictions on individual freedom of conscience also existed in the Jewish and Christian communities.

The millet system was, in effect, a federation of theocracies. It was a deeply conservative and patriarchal society, antithetical to the ideals of personal liberty endorsed by liberals from Locke to Kant and Mill. The various millets differed in the extent of their enforcement of religious orthodoxy. There were many periods during the 500-year history of the millets in which liberal reformers within each community pushed for constitutional restrictions on the power of the millet's leaders. And in the second half of the nineteenth century, some of the millets adopted liberal constitutions, in effect converting a religious theocracy into a secular system of liberal-democratic self-government for the various national groups in the Empire. Liberal reformers sought to use the millets as the basis for a system of federal institutions which provided external protections for national minorities—by limiting the power of other groups over them—while still constitutionally respecting the civil and political rights of individual members.²

But, in general, there were significant restrictions on the freedom of individuals in the Ottoman Empire to question or reject church doctrine. The Ottomans accepted the principle of religious tolerance, where that is 'understood to indicate the willingness of a dominant religion to coexist with others' (Braude and Lewis 1982: 3), but did

not accept the quite separate principle of individual freedom of conscience.³

The Ottoman millet system is perhaps the most developed model of non-liberal religious tolerance, but variations on that model can be found in many other times and places. And, as I noted in Chapter 3, this is the sort of system desired by some non-liberal minorities today. It is often demanded in the name of 'tolerance'. But it is not the sort of tolerance which liberals historically have endorsed. These groups do not want the state to protect each individual's right to freely express, question, and revise her religious beliefs. On the contrary, this is precisely what they object to. What they want is the power to restrict the religious freedom of their own members.⁴

So it is not enough to say that liberals believe in toleration. The question is, what sort of toleration? Historically, liberals have believed in a very specific notion of tolerance—one which involves freedom of individual conscience, not just collective worship. Liberal tolerance protects the right of individuals to dissent from their group, as well as the right of groups not to be persecuted by the state. It limits the power of illiberal groups to restrict the liberty of their own members, as well as the power of illiberal states to restrict the liberty of collective worship.

This shows, I think, that liberals have historically seen autonomy and tolerance as two sides of the same coin. What distinguishes *liberal* tolerance is precisely its commitment to autonomy—that is, the idea that individuals should be free to assess and potentially revise their existing ends (Mendus 1989: 56).

2. *Is Liberalism Sectarian?*

Is liberalism's commitment to autonomy an acceptable basis for government in a modern pluralistic society, given that some groups do not value autonomy? Should liberals try to find some alternative basis for liberal theory that can accommodate such groups—that is, find a form of tolerance that is more tolerant of illiberal groups?

Many liberals have started searching for such an alternative. In his more recent work, for example, Rawls distances himself from a commitment to autonomy, on the grounds that some people do not see their ends as potentially revisable, and to defend liberal institutions on this basis is therefore 'sectarian' (1987: 24; 1985: 246).⁵ This objection is echoed by other 'political liberals' (Larmore 1987; Galston 1991; Moon 1993). They want to defend liberal institutions in a way which

will appeal even to those who reject the idea that people can stand back and assess their ends.

I do not think Rawls's argument works. But this is an important issue, and worth exploring in more detail, since it helps clarify the points of conflict between liberal principles and the demands of non-liberal minorities. Rawls's proposal is not to reject the idea of autonomy entirely, but rather to restrict its scope. In particular, he wants to continue appealing to it in *political* contexts, while avoiding it in other contexts. The idea that we can form and revise our conception of the good is, he now says, strictly a 'political conception' of the person, adopted solely for the purposes of determining our public rights and responsibilities. It is not, he insists, intended as a general account of the relationship between the self and its ends applicable to all areas of life, or as an accurate portrayal of our deepest self-understandings. On the contrary, in private life it is quite possible and likely that our personal identity is bound to particular ends in such a way as to preclude rational revision. As he puts it,

It is essential to stress that citizens in their personal affairs, or in the internal life of associations to which they belong, may regard their final ends and attachments in a way very different from the way the political conception involves. Citizens may have, and normally do have at any given time, affections, devotions, and loyalties that they believe they would not, and indeed could and should not, stand apart from and objectively evaluate from the standpoint of their purely rational good. They may regard it as simply unthinkable to view themselves apart from certain religious, philosophical and moral convictions, or from certain enduring attachments and loyalties. These convictions and attachments are part of what we may call their 'non-public identity'. (Rawls 1985: 241)

So Rawls no longer assumes that people's religious commitments are revisable or autonomously affirmed. He accepts that these ends may be so essential to our identity that we cannot stand back from them and subject them to assessment and revision. However, in political contexts, we ignore the possible existence of such 'constitutive' ends. As *citizens*, we continue to see ourselves as having a 'highest-order interest' in our capacity for autonomy, even though as *private individuals* we may not see ourselves as having or valuing that capacity. Rawls's conception of the autonomous person continues to provide the language of public justification in which people discuss their rights and responsibilities as citizens, although it may not describe their 'non-public identity' (Rawls 1980: 545).

Hence Rawls distinguishes his 'political liberalism' from the 'comprehensive liberalism' of John Stuart Mill. Mill emphasized that

people should be able to assess the worth of inherited social practices in all areas of life, not just political life. People should not obey social customs just because they are customs, but only if they are worthy of allegiance. Each person must determine for himself whether these customs are 'properly applicable to his own circumstances and character' (Mill 1982: 122). This insistence on people's right to question and revise social practices was not limited to the political sphere. Indeed, Mill was mostly concerned about the way people blindly followed popular trends and social customs in their everyday personal life. Hence Mill's liberalism is based on an ideal of rational reflection that applies to human action generally, and that is intended 'to inform our thought and conduct as a whole' (Rawls 1987: 6).

Rawls worries that many people do not accept Mill's idea of autonomy as a principle governing human thought and action generally. However, he thinks that such people can none the less accept the idea of autonomy if it is restricted to political contexts, leaving them free to view their non-public identities in quite different ways. People can accept his political conception 'without being committed in other parts of their life to comprehensive moral ideals often associated with liberalism, for example, the ideals of autonomy and individuality' (Rawls 1985: 245).

Rawls's account of our non-public identity is, of course, very close to the 'communitarian' conception of the self defended by Michael Sandel (see Ch. 5, s. 4). And indeed one way to understand Rawls's 'political liberalism' is to say that, for Rawls, people are communitarians in private life, and liberals in public life. But is this a coherent position? The problem is to explain why anyone would accept the ideal of autonomy in political contexts unless they also accepted it more generally. If the members of a religious community see their religious ends as constitutive, so that they have no ability to stand back and assess these ends, why would they accept a political conception of the person which assumes that they do have that ability (and indeed a 'highest-order interest' in exercising that ability)?

Perhaps Rawls thinks that everyone can accept his political conception because those who do not generally value the capacity for autonomy can simply refrain from exercising it in private life. As I noted in Chapter 5, while a liberal society allows rational assessment and revision of one's ends, it does not compel it. Hence even if this view of autonomy conflicts with a religious minority's self-understanding, there is no cost to accepting it for political purposes.

But there is a cost to non-liberal minorities from accepting Rawls's political conception of the person—namely, it precludes any system

of internal restrictions which limit the right of individuals within the group to revise their conceptions of the good. For example, it precludes a religious minority from prohibiting apostasy and proselytization, or from preventing their children learning about other ways of life. The minority may view these civil liberties as harmful. But if, for the purposes of political debate, they accept the assumption that people have a highest-order interest in exercising their capacity to form and revise a conception of the good, they have no way to express their belief in the harm of allowing proselytization and apostasy.

Consider the Canadian case of *Hofer v. Hofer*, which dealt with the powers of the Hutterite Church over its members. The Hutterites live in large agricultural communities, called colonies, within which there is no private property. Two lifelong members of a Hutterite colony were expelled for apostasy. They demanded their share of the colony's assets, which they had helped create with their years of labour. When the colony refused, the two ex-members sued in court. They objected to the fact that they had 'no right at any time in their lives to leave the colony without abandoning everything, even the clothes on their backs' (Janzen 1990: 67). The Hutterites defended this practice on the grounds that freedom of religion protects a congregation's ability to live in accordance with its religious doctrine, even if this limits individual freedom.

The Canadian Supreme Court accepted this Hutterite claim. But it is far from clear that the Hutterite claim can be defended within the language of Rawls's 'political liberalism'. As Justice Pigeon noted in dissent, the usual liberal notion of freedom of religion 'includes the right of each individual to change his religion at will'. Hence churches 'cannot make rules having the effect of depriving their members of this fundamental freedom'. The proper scope of religious authority is therefore 'limited to what is consistent with freedom of religion as properly understood, that is freedom for the individual not only to adopt a religion but also to abandon it at will'. Justice Pigeon thought that it was 'as nearly impossible as can be' for people in a Hutterite colony to reject its religious teachings, because of the high cost of changing their religion, and so they were effectively deprived of freedom of religion.⁶

Justice Pigeon's view, it seems to me, is most consistent with Rawls's 'political liberalism'. Pigeon is assuming, as Rawls says we should for the purposes of political argument and legal rights, that people have a basic interest in their capacity to form and revise their conception of the good. Hence, he concludes, the power of religious communities over their own members must be such that individuals

can freely and effectively exercise that capacity. Were the Hutterites to accept Rawls's conception of the person, then they too would have to accept the view that freedom of religion must be interpreted in terms of an individual's capacity to form and revise her religious beliefs.⁷

The same issue arose in the case of *Wisconsin v. Yoder* in the United States, which dealt with the power of the Amish community over its members. The Amish, like the Hutterites in Canada, tried to make it difficult for their members to leave the group, albeit in a different way. They wanted to withdraw their children from school before the age of 16, so as to limit severely the extent to which the children learn about the outside world. And they too defended this by arguing that freedom of religion protects a group's freedom to live in accordance with its doctrine, even if this limits the individual freedom of children. The American Supreme Court accepted the Amish claim, but here again the coherence of the Amish claim depended on their explicit rejection of Rawls's 'political conception' of the person, which emphasizes the capacity to form and revise our ends.⁸

Hence Rawls's strategy of endorsing autonomy only in political contexts, rather than as a general value, does not succeed. Accepting the value of autonomy for political purposes enables its exercise in private life, an implication that will only be favoured by those who endorse autonomy as a general value.⁹ Rawls has not explained why people who are communitarians in private life should be liberals in political life. Rawls may be right that 'Within different contexts we can assume diverse points of view toward our person without contradiction so long as these points of view cohere together when circumstances require' (Rawls 1980: 545). But he has not shown that these points of view do cohere. On the contrary, they clearly conflict on issues of intra-group dissent such as proselytization, apostasy, and mandatory education.

Why has Rawls not seen this conflict? Perhaps because he thinks that his political conception is the only one that can protect religious minorities from the intolerance of the majority. In a number of places he suggests that, once we recognize the inevitable plurality of religious groups in society, the only viable way to prevent persecution of minority faiths is to guarantee 'equal liberty of conscience' for individuals (e.g. Rawls 1982b: 25–9; 1989: 251). But this is a mistake—one can ensure tolerance *between* groups without protecting tolerance of individual dissent *within* each group. A millet-like system ensures the former without ensuring the latter. If we want to defend civil rights for individuals, therefore, we must go beyond the need for group

tolerance and give some account of the value of endowing individuals with the freedom to form and revise their final ends.¹⁰

Rawls is mistaken, therefore, to suppose that he can avoid appealing to the general value of individual autonomy without undermining his argument for the priority of civil rights. The mere fact of *social plurality*, disconnected from any assumption of *individual autonomy*, cannot by itself defend the full range of liberal freedoms.¹¹ If, as communitarians argue, people's private identity really is tied to certain ends, such that they have no interest or ability to question and revise them, then a millet-like system which allows for internal restrictions within each group may be a superior response to pluralism. If individuals are incapable of revising their inherited religious commitments, or if it is not important to enable individuals to exercise that capacity, then the millet system may best protect and advance those constitutive ends.

This is hardly a novel conclusion. Defenders of internal restrictions have long argued that, once we drop the assumption that autonomy is a general value, religious and cultural groups should be allowed to protect their members' constitutive ends by restricting certain individual rights (e.g. Kukathas 1992a; McDonald 1991b; Karmis 1993; Mason 1993). Sandel himself defends the right of the Amish to withdraw their children from school, arguing that freedom of conscience should be understood as freedom to pursue one's constitutive ends, not as freedom to choose one's religion (Sandel 1990). He argues that people's religious affiliation is so profoundly constitutive of who they are that their overriding interest is in protecting and advancing that identity, and that they have no comparable interest in being able to stand back and assess that identity. Hence there is little or no value (and perhaps even positive harm) in teaching Amish children about the outside world.

There is a genuine conflict here, which we need to face honestly. If we wish to defend individual freedom of conscience, and not just group tolerance, we must reject the communitarian idea that people's ends are fixed and beyond rational revision. We must endorse the traditional liberal belief in personal autonomy.

3. *Accommodating Non-liberal Minorities*

Why is Rawls so reluctant to endorse autonomy as a general human interest? What is wrong with Mill's 'comprehensive' liberalism? The problem, Rawls says, is that not everyone accepts this ideal of

autonomy, and so appealing to it in political life would be 'sectarian'. The autonomy-based defence of individual rights invokes 'ideals and values that are not generally . . . shared in a democratic society', and hence 'cannot secure sufficient agreement'. To base liberalism on a controversial value like autonomy would mean that liberalism 'becomes but another sectarian doctrine' (Rawls 1987: 6, 24; 1985: 246).

This is a legitimate point, but Rawls overstates it, and draws the wrong conclusion from it. The idea that we have an interest in being able to assess and revise our inherited conceptions of the good is very widely shared in Western democratic societies.¹² There are some insulated minorities who reject this ideal, including some indigenous groups (the Pueblo), and religious sects (the Amish and Mennonites). These groups pose a challenge for liberal democracies, since they often demand internal restrictions that conflict with individual civil rights. We cannot simply ignore this demand, or ignore the fact that they reject the idea of autonomy.

But Rawls's strategy is no solution to the questions raised by the existence of non-liberal minorities. His strategy is to continue to enforce individual rights, but to do so on the basis of a 'political' rather than a 'comprehensive' liberalism. This obviously does not satisfy the demands of non-liberal minorities. They want internal restrictions that take precedence over individual rights. Rawls's political liberalism is as hostile to that demand as Mill's comprehensive liberalism. The fact that Rawls's theory is less comprehensive does not make his theory more sympathetic to the demands of non-liberal minorities.

How then should a liberal state treat non-liberal minorities? I have argued that any theory which does not accord substantial civil rights to the members of minority cultures is seriously deficient from a liberal point of view. Some critics claim that I am therefore 'drawn down the path of interference' in many existing minority cultures—for example, that I am committed to imposing a liberal regime on the Pueblo Indians, and forcing them to respect the religious liberty of the Protestants on the reservation.¹³

But this conflates two distinct questions: (1) what sorts of minority claims are consistent with liberal principles? (2) should liberals impose their views on minorities which do not accept some or all of these liberal principles? The first is the question of *identifying* a defensible liberal theory of minority rights; the second is the question of *imposing* that liberal theory.

So far, I have focused on the first question—i.e. identifying a defen-

sible liberal conception of minority rights. With respect to that question, I believe that the most defensible liberal theory is based on the value of autonomy, and that any form of group-differentiated rights that restricts the civil rights of group members is therefore inconsistent with liberal principles of freedom and equality. The millet system, or the Pueblo theocracy, are therefore seriously deficient from a liberal point of view.

But that does not mean that liberals can impose their principles on groups that do not share them. This is obvious enough, I think, if the illiberal group is another country. The Saudi Arabian government unjustly denies political rights to women or non-Muslims. But it does not follow that liberals outside Saudi Arabia should forcibly intervene to compel the Saudis to give everyone the vote. Similarly, the German government unjustly denies political rights to the children and grandchildren of Turkish 'guest-workers', who were born on German soil and for whom Germany is the only home they know. But it does not follow that liberals outside Germany should use force to compel Germany to change its citizenship laws.

In these cases, the initial moral judgement is clear enough. From a liberal point of view, someone's rights are being unjustly denied by their own government. But what is not clear is the proper remedy—that is, what third party (if any) has the authority to intervene in order to force the government to respect those rights?

The same question arises when the illiberal group is a self-governing national minority within a single country. For example, the Pueblo tribal council violates the rights of its members by limiting freedom of conscience, and by employing sexually discriminatory membership rules.¹⁴ But what third party (if any) has the authority to intervene forcibly to compel the Pueblo council to respect those rights?

Liberal principles tell us that individuals have certain claims which their government must respect, such as individual freedom of conscience. But having identified those claims, we now face the very different question of imposing liberalism. If a particular government fails to respect those claims, who has the authority to step in and force compliance? (Note that by 'imposing' liberalism, I am referring to forcible intervention by a third party to compel respect for liberal rights. Non-coercive intervention by third parties is a different matter, which I discuss below.)

The attitude of liberals toward imposing liberalism has changed over the years. In the international context, liberals have become increasingly sceptical about using force to compel foreign states to

obey liberal principles. Many nineteenth-century liberals, including John Stuart Mill, thought that liberal states were justified in colonizing foreign countries in order to teach them liberal principles. Contemporary liberals, however, have generally abandoned this doctrine as both imprudent and illegitimate, and sought instead to promote liberal values through education, persuasion, and financial incentives.¹⁵

In the case of national minorities, however, liberals have been much more willing to endorse coercive third-party intervention. For example, many American liberals assume that the American Supreme Court has the legitimate authority to overturn any decisions of the Pueblo tribal council which violate individual rights. American liberals often assume that to have a right means not only that legislators should respect one's claim when passing legislation, but also that there should be some system of judicial review to make sure that the legislature respects one's claim. Moreover, this judicial review should occur at a country-wide level. That is, in addition to the various state and tribal courts which review the laws of state and tribal governments, there should also be a Supreme Court to which all governments within the country are ultimately answerable. Many American liberals often talk as if it is part of the very meaning of 'rights' that there should be a single court in each country with the authority to review the decisions of all governments within that country, to ensure that they respect liberal rights.

This is a very particularistic understanding of rights. In some liberal countries (e.g. Britain), there is a strong tradition of respecting individual rights, but there is no constitutional bill of rights, and no basis for courts to overturn parliamentary decisions which violate individual rights. (The same was true in Canada until 1982.) In other countries, there is judicial review, but it is decentralized—that is, political subunits have their own systems of judicial review, but there is no single constitutional bill of rights, and no single court, to which all levels of government are answerable. Indeed, this was true in the United States for a considerable period of time. Until the passage of the Fourteenth Amendment, state legislatures were answerable to state courts for the way they respected state constitutions, but were not answerable to the federal Supreme Court for respecting the federal Bill of Rights.

It is easy to see why American liberals are committed to giving the Supreme Court authority over the actions of state governments. Historically, this sort of federal judicial review, backed up by federal troops, was required to overturn the racist legislation of Southern

states, which state courts had upheld. Given the central role federal courts have played in the struggle against racism, American liberals have developed a deep commitment to the principle of centralized judicial review, according to which a single body should have the authority to review and overturn the actions of all levels of government within each country, on the basis of a single bill of rights.

But should the same sort of centralized judicial review which applies to state governments also apply to self-governing national minorities, such as Indian tribal governments or the Commonwealth of Puerto Rico? Like state governments, tribal governments were not historically subject to the federal Bill of Rights. But many liberals have sought to change this, and so passed the 1968 Indian Civil Rights Act, which subjects Indian tribal governments to most aspects of the federal Bill of Rights. But even here, tribal governments are only answerable to tribal courts, not (except under special circumstances) to the federal courts. The Commonwealth of Puerto Rico has also become subject in recent years to the federal Bill of Rights, and to judicial review by federal courts, although how and why this occurred is far from clear.¹⁶

Contemporary liberals, then, have become more reluctant to impose liberalism on foreign countries, but more willing to impose liberalism on national minorities. This, I think, is inconsistent. Many of the reasons why we should be reluctant to impose liberalism on other countries are also reasons to be sceptical of imposing liberalism on national minorities within a country. Both foreign states and national minorities form distinct political communities, with their own claims to self-government. Attempts to impose liberal principles by force are often perceived, in both cases, as a form of aggression or paternalistic colonialism. And, as a result, these attempts often backfire. The plight of many former colonies in Africa shows that liberal institutions are likely to be unstable and transient when they have arisen as a result of external imposition, rather than internal political reform. In the end, liberal institutions can only really work if liberal beliefs have been internalized by the members of the self-governing society, be it an independent country or a national minority.¹⁷

There are, of course, important differences between foreign states and national minorities. Yet in both cases I believe there is relatively little scope for legitimate coercive interference. Relations between majority and minority nations in a multination state should be determined by peaceful negotiation, not force (as with international relations). This means searching for some basis of agreement. The most

secure basis would be agreement on fundamental principles. But if two national groups do not share basic principles, and cannot be persuaded to adopt the other's principles, they will have to rely on some other basis of accommodation, such as a *modus vivendi*.

The resulting agreement may well involve exempting the national minority from federal bills of rights and judicial review. And, as I have noted, contemporary liberal societies have in fact provided such exemptions for some national minorities. Moreover, these exemptions are often spelled out in the historical terms of federation by which a national minority entered the larger state. In cases where the national minority is illiberal, this means that the majority will be unable to prevent the violation of individual rights within the minority community. Liberals in the majority group have to learn to live with this, just as they must live with illiberal laws in other countries.

This does not mean that liberals should stand by and do nothing. A national minority which rules in an illiberal way acts unjustly. Liberals have a right, and a responsibility, to speak out against such injustice. Hence liberal reformers inside the culture should seek to promote their liberal principles, through reason or example, and liberals outside should lend their support to any efforts the group makes to liberalize their culture. Since the most enduring forms of liberalization are those that result from internal reform, the primary focus for liberals outside the group should be to provide this sort of support.

Moreover, there is an important difference between coercively imposing liberalism and offering various incentives for liberal reforms. Again, this is clear in the international context. For example, the desire of former Communist countries to enter the EC has provided leverage for Western democracies to push for liberal reforms in Eastern Europe. Membership in the EC is a powerful, but non-coercive, incentive for liberal reform. Similarly, many people thought that the negotiations over the North American Free Trade Agreement provided an opportunity to pressure the Mexican government into improving its human rights record. The Mexican desire for a continental free-trade agreement provided the United States and Canada with some leverage to push for liberal reforms within Mexico. Obviously, there are many analogous opportunities for a majority nation to encourage national minorities, in a non-coercive way, to liberalize their internal constitutions. Of course there are limits to the appropriate forms of pressure. For example, refusing to extend trade privileges is one thing, imposing a total embargo or blockade is quite another. The line between incentives and coercion is not a sharp one,

and where exactly to draw it is a much-debated point in the international context (see Damrosch 1989).

Finally, liberals can push for the development and strengthening of international mechanisms for protecting human rights. Many Indian tribes have expressed a willingness to abide by international declarations of human rights, and to answer to international tribunals for complaints of rights violations within their community. Indeed, they have shown greater willingness to accept this kind of international review than many majority nations, which jealously guard their sovereignty in domestic affairs. Most Indian tribes do not oppose all forms of external review. What they object to is being subject to the constitution of their conquerors, which they had no role in drafting, and being answerable to federal courts, composed solely of non-Indian justices.

This shows, I think, that the standard assumption of American liberals that there must be one court within each country which is the ultimate defender of individual rights seems doubly mistaken, at least in the case of multination states. History has shown the value of holding governments accountable for respecting human rights. But in multination states, the appropriate forums for reviewing the actions of self-governing national minorities may skip the federal level, as it were. Many national minorities would endorse a system in which the decisions of self-governing national minorities are reviewed in the first instance by their own courts, and then by an international court. Federal courts, dominated by the majority nation, would have little or no authority to review and overturn these decisions.

These international mechanisms could arise at the regional as well as global level. For example, European countries have agreed to establish their own multilateral human rights tribunals. Perhaps the American government and Indian tribes could agree to establish a similar bilateral human rights tribunal, on which both sides are fairly represented. There are many ways to strengthen mechanisms for respecting individual rights in a consensual way, without simply imposing liberal values on national minorities.

This is not to say that federal intervention to protect liberal rights is never justified. Obviously intervention is justified in the case of gross and systematic violation of human rights, such as slavery or genocide or mass torture and expulsions, just as these are grounds for intervening in foreign countries. The exact point at which intervention in the internal affairs of a national minority is warranted is unclear, just as it is in the international context. I think a number of factors are potentially relevant here, including the severity of rights

violations within the minority community, the degree of consensus within the community on the legitimacy of restricting individual rights, the ability of dissenting group members to leave the community if they so desire, and the existence of historical agreements with the national minority. For example, whether it is justified to intervene in the case of an Indian tribe that restricts freedom of conscience surely depends on whether it is governed by a tyrannical dictator who lacks popular support and prevents people leaving the community, or whether the tribal government has a broad base of support and religious dissidents are free to leave.¹⁸

Cases involving newly arriving immigrant groups are very different. In these cases, it is more legitimate to compel respect for liberal principles, for reasons discussed in Chapter 5. I do not think it is wrong for liberal states to insist that immigration entails accepting the legitimacy of state enforcement of liberal principles, so long as immigrants know this in advance, and none the less voluntarily choose to come.

A more complicated case involves long-standing ethnic groups or religious sects who have been allowed to maintain certain illiberal institutions for many years, even many generations. This would include the Amish and Mennonites who emigrated to the United States and Canada early in this century, as well as the Hasidic Jews in New York. For various reasons, when these immigrant groups arrived, they were given exemptions from the usual requirements regarding integration, and were allowed to maintain certain internal restrictions. We may now regret these historical exemptions, but they were granted, and we cannot entirely dismiss them, unless they are unconscionably unjust (e.g. if they guaranteed a minority the right to maintain slaves). Relying on certain tacit or explicit assurances about their right to maintain separate institutions, these groups have now built and maintained self-contained enclaves that depend on certain internal restrictions. Had those assurances not been given, these groups might well have emigrated to some other country. As I noted in Chapter 6, it is not clear how much weight, morally speaking, should be given to these sorts of historical arguments, but it seems that these groups do have a stronger claim to maintain internal restrictions than newly arriving immigrants.¹⁹

4. Conclusion

The legitimacy of imposing liberal principles on illiberal national groups depends on a number of factors. The question of how two cul-

tures, or two countries, should resolve differences of fundamental principle is a very complicated one which would require a book of its own. My project in this book is primarily to figure out what liberalism's fundamental principles are. Most contemporary liberal theorists have argued that the citizens of a liberal society, motivated by liberal principles of justice, would not accord political significance to their cultural membership. I have argued that this is a mistake, and that liberal principles of justice are consistent with, and indeed require, certain forms of special status for national minorities. Of course, the members of some minority cultures reject liberalism. In these cases, members of the more liberal majority will have to sit down with the members of the national minority, and find a way of living together. Liberals have no automatic right to impose their views on non-liberal national minorities. But they do have the right, and indeed the responsibility, to identify what those views actually are. Relations between national groups should be determined by dialogue. But if liberal theory is to contribute anything to that dialogue, it is surely by spelling out the implications of the liberal principles of freedom and equality. That is not the first step down the path of interference. Rather, it is the first step in starting a dialogue.

It is important to put this issue in perspective. The question of how to deal with illiberal cultures does not just arise in the context of minority cultures. While there are some illiberal national minorities, there are also illiberal majority cultures and illiberal homogeneous nation-states. (Indeed, some national minorities in Africa and Eastern Europe are much more liberal than the majority cultures.) In all of these cases, liberals both within and outside the illiberal group face the question of what actions are legitimate in promoting their liberal ideals. Whatever answers are appropriate in these other cases are likely to be appropriate for minority cultures.

Moreover, it is important not to prejudge the illiberal nature of a particular minority culture.²⁰ The liberality of a culture is a matter of degree. As I noted in Chapter 3, all cultures have illiberal strands, just as few cultures are entirely repressive of individual liberty. To talk as if the world was divided into completely liberal societies on the one hand, and completely illiberal ones on the other, inhibits a constructive dialogue between cultures (Parekh 1994; Modood 1993).

Even when minority leaders express a hostility to liberalism, it is important to remember the political context. These leaders may simply be responding to the fact that liberals have been resisting the minority's claims for self-government, or other external protections. If we examine the way that minority cultures actually treat their

members, in terms of respect for civil liberties and tolerance of dissent, they are often just as liberal as the majority culture.

For example, when some indigenous leaders say that they value community rights above individual rights, what they often mean is that they attach profound importance to their recognition as a distinct culture and society with inherent rights of self-government.²¹ They want to be recognized as a distinct national community, and, in that sense, demand a 'community right', not just individual rights. They are not necessarily saying that they attach little or no weight to individual liberty within their community. Indeed, many observers have noted that indigenous cultures are often quite individualistic in their internal organization. Many indigenous cultures display a profound antipathy to the idea that one person can be another's master (e.g. de Onis 1992: 39). The claim that indigenous peoples favour collective rights over individual rights is often a claim about the importance of indigenous self-government *vis-à-vis* the larger society, not a claim about how that self-government should be exercised *vis-à-vis* community members.

I do not mean to deny the extent of illiberal practices in some cultures. This is a profound challenge to a liberal theory of minority rights. But the challenge is not unique to minority cultures. It also arises for liberals in responding to illiberal practices in majority cultures and ethnically homogeneous nation-states. Liberals need to think more deeply about how to promote the liberalization of societal cultures, and about the role of coercive and non-coercive third-party intervention in that process. Dismissing the idea of self-government for national minorities will not make that problem go away.

CHAPTER 9

The Ties that Bind

So far, I have tried to show that group-differentiated minority rights are consistent with basic liberal principles of individual freedom and social justice, and that familiar liberal objections on these grounds are unpersuasive. But lurking behind these familiar objections is another concern, about the impact of these rights on the sense of community or fraternity.

Of course, liberals have never been very comfortable with the language of 'community' or 'fraternity'. As a result, liberal fears in this area are often rephrased in other terms, particularly the language of 'citizenship'. But, whatever the terminology, the fear is that group-differentiated rights will undermine the sense of shared civic identity that holds a liberal society together. These rights will be a source of disunity that could lead to the dissolution of the country, or, less drastically, to a reduced willingness to make the mutual sacrifices and accommodations necessary for a functioning democracy. The only way to develop a shared civic identity, many liberals believe, is to have a common (undifferentiated) citizenship status.

This concern has come up repeatedly in the liberal tradition. Indeed, as I noted in Chapter 4, until very recently most liberal opposition to minority rights was quite explicitly phrased in the language of stability, rather than freedom or justice. And social unity is a valid concern. Liberal societies require a high level of mutual concern amongst their citizens, which we cannot take for granted. And there is ample evidence from around the world that differences in ethnic and national identity can, if emphasized and politicized, form a barrier to a wider solidarity.

It is not enough, therefore, to show that minority rights are consistent in principle with freedom and justice. We also need to determine whether they are consistent with the long-term requirements of a stable liberal democracy, including the requirement of a shared civic