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The Political Structure of Multicultural Society

A multicultural society faces two conflicting demands and needs to devise a political structure that enables it to reconcile them in a just and collectively acceptable manner. It should foster a strong sense of unity and common belonging among its citizens, as otherwise it cannot act as a united community able to take and enforce collectively-binding decisions and regulate and resolve conflicts. Paradoxical as it may seem, the greater and deeper the diversity in a society, the greater the unity and cohesion it requires to hold itself together and nurture its diversity. A weakly held society feels threatened by differences and lacks the confidence and the willingness to welcome and live with them.

A multicultural society cannot ignore the demands of diversity either. By definition diversity is an inescapable fact of its collective life and can neither be wished out of existence nor suppressed without an unacceptable degree of coercion and often not even then. Furthermore, since human beings are attached to and shaped by their culture, and their self-respect is closely bound up with respect for it, the basic respect we owe our fellow-humans extends to their culture and cultural community as well. Respect for their culture also earns their loyalty, gives them the confidence and courage to interact with other cultures, and facilitates their integration into wider society. As we have seen, cultural diversity is also desirable for society as a whole and represents a valuable collective asset.

Since no multicultural society can or should ignore the demands of diversity, the assimilationist mode of political integration advocated by Conservatives, nationalists, some communarians and proponents of comprehensive liberalism is inherently unsuited to it. The assimilation-

ist takes the nation state as his ideal and believes that no polity can be stable and cohesive unless its members share a common national culture, including common values, ideals of excellence, moral beliefs and social practices. As a custodian of society's way of life, the state is assumed to have the right and the duty to ensure that its cultural minorities assimilate into the prevailing national culture and shed all vestiges of their separate cultures. In the assimilationist view the choice before minorities is simple. If they wish to become part of society and be treated like the rest of their fellow-citizens, they should assimilate. If they insist on retaining their separate cultures, they should not complain if they are viewed as outsiders and subjected to discriminatory treatment.

There is nothing wrong with assimilation. If minorities freely decide to assimilate into the dominant culture, their decisions should be respected and they should be given every opportunity and help to do so. The question, however, is whether this degree of assimilation is necessary to ensure political unity and should be made a precondition of equal citizenship. The answer to that is in the negative. For reasons discussed earlier, minorities have a right to maintain and transmit their ways of life, and denying it to them is both indefensible and likely to provoke resistance. Furthermore, it is not clear what they are to be assimilated into. The assimilationist assumes that society has a coherent and unified cultural and moral structure, and that is rarely the case. Although the moral and cultural structure of a society has some internal coherence, it is not a homogeneous and unified whole. It varies with class, religion and region, is made up of diverse and even conflicting strands, and consists of values and practices that can be interpreted and related in several different ways. The assimilationist ignores all this, and either offers a highly abridged and distorted view of national culture or equates it with that of the dominant group.

If minorities are left free to negotiate their relations with the wider society and have an incentive to do so, they might decide to assimilate, but they are less likely to do so if assimilation is imposed, rushed or brings no benefits. The Jews have survived two millennia of a strong assimilationist pressure from Christians, the ethnic and cultural minorities in the Soviet Union have survived the most brutal repression, the formidable economic and cultural pressures of the United States have not succeeded in creating a melting pot, and the most determined attempts by the Algerian and Sudanese governments have failed to assimilate the Berbers and the southern Sudanese Christians respectively.

There are several reasons why the pressure to assimilate does not always succeed. Cultures are too deeply woven into the lives of their members to be jettisoned at will. Most of them, further, are embedded in or at least intertwined with religion, and outsiders cannot assimilate into them without changing their religion, which they are often reluctant to do. Cultures are also extremely complex structures of beliefs and practices, and their nuances, unspoken assumptions and deepest sensibilities cannot be easily acquired unless one is born into them. Total cultural assimilation therefore requires biological assimilation, and many outsiders are unwilling to pay that price. Assimilation is also generally unable to redeem its promise of full and unqualified acceptance. Even when one assimilates into the dominant culture after a strenuous effort, there is always the danger that one's slightest difference or past background might be made the basis of discrimination by the whole or a section of the wider society. The demand for total assimilation springs from intolerance of differences, and for the intolerant even the smallest differences are sources of deep unease.

The assimilationist pressure sometimes has the opposite consequences to those intended by its champions. When a society refuses to accommodate the legitimate demands of its cultural minorities, the latter seek to exploit such spaces as society itself provides to legitimize their demands. For reasons too complex to discuss here, modern western society is extremely sensitive to religion and does not wish to appear intolerant of deeply held religious beliefs and practices. Minorities are naturally tempted to take advantage of this, and demand recognition of their differences on the grounds that these are an integral part of their religion. The Sikh's turban no longer remains a cultural symbol, which is what it largely is, and becomes a badge of religious identity. The Hindu refusal to eat beef, the Muslim use of loudspeakers to call the faithful to prayer, and the Rastafarian dreadlock are all turned into mandatory religious requirements. The unfortunate consequences of the religionization of culture are obvious. Religion acquires a considerable influence over the development of the culture concerned, religious leaders assume undue authority, critical voices are silenced, and the easily negotiable cultural demands take on a strident and uncompromising religious character. Frightened by the spectre of religious militancy, liberal society throws up its own brand of secular militancy, and the consequent polarization of society takes its toll on the normal political process of deliberation and compromise.

When the religionization of their demands does not yield the desired results, minorities are sometimes tempted to legitimize them in ethnic terms, accusing wider society of undermining their ethnic identity and even of ethnocide. Cultural practices are then ethnicized, given a pseudo-natural grounding, and assigned a spurious identity-sustaining role. The same process that occurs in the religionization of culture is reproduced here with similar results. If cultural differences were accepted as a normal part of life, those involved would not need to ground them in something as intractable and non-negotiable as religion and ethnicity. Religious and ethnic differences would, no doubt, remain, but they would not become politicized, turned into the last bastions of cultural defence, and given more importance than they deserve.

Modes of political integration

In much of the literature on the subject three modes of political integration are canvassed as most likely to reconcile the demands of unity and diversity. For convenience I shall call them proceduralist, civic assimilationist, and millet models. Since they are well-known, the barest outlines should suffice.¹

In the proceduralist view the deep moral and cultural differences to be found in multicultural societies cannot be rationally resolved, and our sole concern should be to ensure peace and stability. This requires a largely formal and neutral state laying down the minimally necessary general rules of conduct, subject to which citizens remain free to lead their self-chosen lives. If the state were to pursue substantive goals of its own, it would violate the moral autonomy of, and discriminate against, those taking different views of the good life. According to the proceduralist the formal and minimal state combines maximum political unity with maximum diversity; the former because it stays clear of its citizens' moral and cultural disagreements and makes no controversial demands on them, the latter because it imposes the fewest constraints on their choices. This view, whose origins go back to Hobbes, has been recently restated with some modifications by Michael Oakeshott (1972), Robert Nozick (1974) and Chandran Kukathas (1992a).

The civic assimilationist view occupies a halfway house between the proceduralist and the assimilationist.² Unlike the proceduralist, it argues that the political community requires agreement not only on its structure of authority but also on a shared culture; but unlike the assimilationist, it insists that the latter should not be comprehensive and encompass all areas of life. For it the unity of the political community lies in its shared *political* culture, which includes its public or political values, ideals, practices, institutions, mode of political discourse, and self-understanding. Unless its citizens share such a culture, they cannot engage in a meaningful dialogue, formulate and resolve their differences and pursue common goals. Subject to the constraints of the shared political culture, citizens should be free to lead their self-chosen lives in the private realm. For the civic assimilationist the public realm represents uniformity; and the private realm, which includes the family and the civil society, represents diversity. The former ensures unity, provides principles to determine the permissible range of diversity, and gives society the confidence to tolerate and even welcome deep differences in the private realm. The origins of this view go back to Locke and the founding fathers of the American republic, and it has been restated with suitable modifications by the later Rawls (1993a) and Habermas (1993).

For the advocates of the millet model, human beings are above all cultural beings embedded in their communities. All that deeply matters to them – their customs, practices, values, system of meaning, sense of identity, historical continuity, norms of behaviour and patterns of family life – are derived from their culture. As an essentially legal and administrative institution, the state has no moral status, and its sole *raison d'être* is to uphold and nurture its constituent cultural communities. It is not a community of communities, for that implies that it has an independent moral basis and its own distinct goals, but a union or a loose federation of communities, a bare framework within which those communities should be free to pursue their traditional ways of life and engage in necessary social, political and economic interactions. The state is expected not only to refrain from interfering with their internal affairs, but also to recognize and institutionalize their autonomy, enforce their customs and practices, and so on. Individuals are assumed to owe their primary loyalty to their respective communities, and derivatively and secondarily to the state.

Judged by their ability to reconcile the demands of unity and diversity, the three theories outlined above are all unsatisfactory in varying degrees. The proceduralist assumes that however different their conceptions of the good life might be, all citizens can readily agree on what structure of public authority is most likely to achieve peace. The assumption is unwarranted. The structure of authority can rest on a secular or a religious foundation. If the former, it can be based on universal franchise or one limited by race, class or gender. The universal franchise in turn can be equal or weighted towards the intellectual elite, as J. S. Mill (1964) had argued, or university graduates as was the case in Britain until 1948. The system of elections might be direct or indirect and take individuals as its basic units as the liberals advocate, or corporate groups as Hegel, some pluralists and others have urged. The authority of the state might be absolute or limited by a constitutionally prescribed system of separation of powers. The choice between these alternatives is moral in nature, and based on our views on such questions as the grounds and limits of civil authority, the functions of government, how it should treat its citizens, the nature of the individual, and the importance of political participation. Since individuals deeply disagree on these matters, the proceduralist is wrong to assume that decisions on the structure of political authority are purely instrumental or pragmatic in nature and easily arrived at.

Even if a state scrupulously avoided substantive goals, it would need to decide whether or not to allow slavery, polygamy, polyandry, incest, public hangings, euthanasia, suicide, capital punishment, abortion, violent sports involving animals, coerced marriages, divorce on demand, gay and lesbian marriages, unconventional sexual practices, rights of illegitimate children to inherit parental property, racial discrimination, and so on. If it does not legislate on these matters, it indicates that it does not consider them sufficiently important to the moral well-being of the community to require a uniform and compulsory mode of behaviour. If it legislates, it takes a moral stand and coerces those taking a different view. Whatever it does, its actions have an inescapable moral dimension. This is also true of such policy matters as the system of taxation, allocation of public resources, and the importance to be attached to different rights and the kinds of limitations placed on their exercise. The proceduralist cannot explain how citizens are to debate let alone resolve these questions.

A morally and culturally neutral state which makes no moral demands on its citizens and is equally hospitable to all cultures and

conceptions of the good is logically impossible. And since every law coerces those not sharing its underlying values, a morally and culturally non-coercive state is a fantasy. Some states might, of course, be less coercive than others, but no state can be wholly free of moral and cultural biases and the concomitant coercion on those who disapprove of its structure or actions. Even a state that institutionalizes such values as liberty and equality coerces those who are opposed to them. Since the structure and exercise of political authority are never morally neutral, the unity of a political community cannot rest on procedural foundations alone. It requires at least some agreement on what the political community is about and how it should be governed. Since the proceduralist does not explain how such agreement can be secured in a multicultural society, his account of the unity of the state is incoherent.

The proceduralist is on stronger grounds when he claims that his state provides a considerable space for cultural diversity. Since it is not committed to a substantive vision of the good life, its laws and policies make minimum demands on its citizens and leave them free to pursue their self-chosen goals. However, as we saw, the state cannot be morally as neutral as the proceduralist imagines, and hence the space for diversity is not as great as he claims. Furthermore, in most multicultural societies a particular culture is generally dominant and enjoys considerable economic and political power. By contrast others suffer from obvious structural and other disadvantages and cannot flourish or even survive for long without public moral and material support. The same dynamics of the competitive economy that creates vast economic inequalities and a disadvantaged underclass operates in the cultural sphere as well. Indigenous communities, for example, have no hope of maintaining their ways of life unless the state restricts the movement of people and capital into their territories and grants them powers of autonomy and cultural self-regulation, all of which are ruled out by the proceduralist. When cultures enjoy unequal power, as they generally do, the procedural state works to the disadvantage of minority cultures.

Although the civic assimilationist view avoids the mistakes of the proceduralist and has much to be said for it, it is open to three objections. First, since it separates private and public realms too neatly, it is unable to give a coherent account of those institutions that straddle both. For example, the school educates future citizens, and has a political dimension. However, since children are not just citizens but also human beings and members of the relevant cultural communities, their parents and cultural community have a vital interest in their education,

which makes the school a cultural institution that belongs to the 'private' or civic realm. If we stressed the former, we would have to treat the school as a public institution subject to the control of the state and ignore parental cultures and choices; if the latter, we would reach the opposite conclusion. If, however, we stressed both as we should do and as many societies are increasingly doing, the civic assimilationist theory offers no guidance on the structure and functions of the school.

Religion also defies the private-public distinction. Religious persons see life as a whole and seek to live out their deeply held beliefs in their personal and collective lives. This confronts the civic assimilationist with a dilemma. If he confined religion to the private realm as he generally does, he would discriminate against religious people, alienate them from public life, provoke their resistance, and endanger the very unity for whose sake he excludes religion from the public realm. If he admitted it into the public realm, he would jettison or at least blur the private-public distinction and face the acute problem of how to deal with what would now be a multicultural public realm.

Secondly, the civic assimilationist view insists that while cultural communities are free to lead their self-chosen lives within the private realm, they should accept the political culture of the wider society. This ignores the fact that the latter is a product of history and reflects and registers the political consensus prevailing at a given point in time. As the demographic composition of society changes, or the latter throws up new ideas and movements, or when its dominant values and practices are shown to bear unduly heavily on those who are new to it or whose historical experiences are different, the established political culture needs to be suitably revised. Women's groups, not all of them feminists, have highlighted the patriarchal bias of the dominant liberal culture and pressed for its radical reassessment. There is no reason why cultural minorities should be denied that right.

What is true of society's values is also true of its political symbols, images, ceremonies, collective self-understanding and view of national identity. They, too, reflect and reproduce a particular historical consensus and need to be suitably revised when shown to misrepresent or ignore the presence, experiences and contributions of marginalized groups or to be out of step with the changes in the demographic composition of society. These groups may rightly ask that the wider society should grant them suitable public recognition in the collective expression of its identity. Such recognition confers public legitimacy on their presence, recognizes them as valued members of the community, and

facilitates their integration. 'We' cannot integrate 'them' so long as 'we' remain 'we'; 'we' must be loosened up to create a new common space in which 'they' can be accommodated and become part of a newly reconstituted 'we'.

Thirdly, the civic assimilationist attempt to combine a monocultural public realm with a multicultural private realm has a tendency to work against the latter. The public realm in every society generally enjoys far greater dignity and prestige than the private realm. The culture it institutionalizes enjoys state patronage, power, access to valuable resources, and political respectability, and sets the tone of the rest of society. Although other cultures are free to flourish in the private realm, they exist in its overpowering shadow, and are largely seen as marginal and worth practising only in the relative privacy of the family and communal associations. Subjected to the relentless assimilationist pressure of the dominant culture, their members, especially youth, internalize their inferior status and opt for uncritical assimilation, lead confused lives, or retreat into their communal ghettos.

The older generation of Jewish immigrants to Europe and the USA have frequently remarked that when young they used to feel deeply embarrassed if their parents spoke Yiddish in public, wore traditional dress or performed their religious and other ceremonies in public, and that over time they lost their language, cultural pride and in some cases even the culture itself. This sad phenomenon has not disappeared even in more relaxed times such as ours. A couple of years ago when I was travelling by train in Britain, I was sitting opposite an elderly Pakistani couple and next to their adolescent daughter. When the crowded train pulled out of the station, the parents began to talk in Urdu. The girl felt restless and nervous and started making strange signals to them. As they carried on their conversation for a few more minutes, she angrily leaned over the table and asked them to shut up. When the confused mother asked why, the girl shot back, 'just as you do not expose your private parts in public, you do not speak in *that language* in public'. One wonders if she would have felt so distressed if her parents had been speaking French. Though no one presumably had told her so, she knew that the public realm belonged to whites, that only their language, customs, values, bodily gestures and ways of talking were legitimate in it, and that minority ethnic and cultural identities must remain confined to the private realm. In a society dominated by one culture tolerance is not enough to sustain diversity in the private realm as the civic assimila-

tionist assumes. Public institutions including the state need to play an active and supportive role. We shall later see what this involves.

The millet model has its merits, and hence its long historical pedigree. Ancient Greece and Rome allowed the communities of traders, travellers and others settled in their midst to be governed by their own customs and practices. In medieval England the Lombards and the Baltic merchants of the Hanseatic League lived in separate enclaves, ran their affairs according to their own customs, and paid the crown a tribute in return for its protection. This was also the practice in ancient and medieval China, where Ibn Batuta, a fourteenth-century Muslim traveller, found a congenial home in the self-governing Muslim quarters away from the 'skilled and civilized' but 'strange' majority community. Contemporary India and Israel have incorporated some elements of the millet model into their political structures and respect the personal laws of their minority and majority communities.

Respecting the autonomy of a cultural community is sometimes the only way to bring or keep the community within the wider political community as is the case in Israel, or to give it the confidence to interact with and evolve its own pattern of relationship with wider society as is the case in India, Nigeria, Sudan and many other multicultural societies with histories of intercommunal conflict. In some cases it is also just, as when there is a danger of the majority community imposing its own vision of the good life on its minorities as in India and other developing countries, or when the minority community's way of life is distinct and self-contained as with the Amish in the United States, Australian aborigines and tribal peoples in India. Cultural autonomy also adds to the cultural diversity of society with all the advantages mentioned earlier.

The millet model, however, goes far beyond cultural autonomy and self-government and claims to provide the organizing principle of the entire society. It is open to several objections. By breaking up society into self-contained communities and disallowing all but minimally necessary interaction, it militates against the development of common social and political bonds without which no political community can act effectively and maintain its unity and cohesion. The Ottoman millet system worked for centuries only because the imperial form of government ruled out a shared public life and treated non-Muslims as second-class citizens. It had great virtues including a remarkable record of religious toleration that puts Europe to shame, but it also froze religious

communities, arrested the growth of common bonds, and could not cope with the demands of democracy and common citizenship. Besides, individuals belong to several communities such as the ethnic, the religious and the cultural, which do not necessarily coincide, thereby making it difficult to decide which community's autonomy to protect. Furthermore, since members of a community rarely take an identical view of their culture, institutionalizing its autonomy risks perpetuating the role of the dominant elite and threatening basic individual liberties to which the wider society cannot remain wholly indifferent, especially when disaffected individuals create disorder or ask for its help. Again, the millet model might make some sense in an undeveloped agricultural economy, but none in an industrialized society in which constant social and economic mobility and close interactions between groups break through the communal barriers and require a shared economic and political life with a common body of rules, norms and practices.

In the above I have examined four views on the political structure of multicultural societies and found them defective in different degrees. The assimilationist theory more or less ignores the claims of diversity; and the millet theory those of unity. The proceduralist and civic assimilationist theories respect both, but fail to appreciate their dialectical interplay and strike a right balance between them. They confine unity and diversity to separate realms and draw too neat a distinction between the private and public spheres with all the difficulties that these create. Since they view diversity as a fact to be accommodated rather than a value to be cherished and leave it to the precarious mercy of the cultural and political marketplace, they also work to the disadvantage of minority cultures and do not create a climate conducive to cultural diversity. If we are to develop a coherent political structure for a multicultural society, we need to appreciate the importance of both unity and diversity and establish a satisfactory relationship between them. Since different multicultural societies have different histories and traditions and include different kinds of cultural diversity, each needs to develop its own appropriate political structure. Since, however, they all face the common problem of reconciling the demands of unity and diversity, certain general principles apply to them all. These principles, which I discuss below, are not intended to prescribe a model but to act as navigational devices.

Structure of authority

Peace is the first desideratum in every society, particularly the multicultural whose tendency to provoke acute conflicts is further compounded by its inability to rely on a shared body of values to moderate and regulate them. At all costs a multicultural society must find ways of holding itself together long enough to enable its different communities to become used to each other and build up common interests and mutual trust. It needs a collectively agreed structure of authority entitled to speak and act in the name of the community, and hence a constitution that lays down the manner of constituting such an authority, its manner of exercise and area of jurisdiction. The constitution is not an ideological document laying down once and for all a body of political principles, for it would then foreclose new developments and restrict the community's political imagination, but a body of procedures and norms that is acceptable to all under its authority.³ The procedures and norms cannot be deduced from abstract standards of fairness, for if the latter are unacceptable to those involved, they neither carry political authority nor are likely to be observed in practice. The constitution is a political document hammered out in difficult negotiations and embodying such consensus as is thrown up by the parties involved. It shapes, structures and stabilizes the wider political process, and is in turn embedded in and sustained by the latter. Although it is the source of all legal authority within the community, its own authority is political in nature and derived from the continuing popular acceptance of it.

It is not always easy to agree on the basic principles of the constitution in a multicultural society. The more substantive they are, the greater the likelihood of disagreement. It should therefore do no more than prescribe the basic structure of civil authority, its area of jurisdiction and mode of exercise. There are bound to be people who are, for various reasons, unable to agree upon even such a minimal constitution. Wherever possible and when it is not likely to store up future trouble or provoke widespread resentment, they need to be won over by appropriate concessions and placed under a weak moral or at least a prudential obligation to respect the constitution. Some groups of ultra-orthodox Jews in Israel deny the very legitimacy of the state of Israel, which in their view is expected to be created by a messianic intervention rather than by human efforts.⁴ The founding fathers of the state of Israel wisely won them over by agreeing to leave them alone in certain areas, exempting them from many of the ordinary obligations of citizenship

and giving them financial and other support. They are obviously a privileged group, but most of their fellow citizens thought the price worth paying, partly to bring them under the authority of the new state, partly out of the belief that they represent a valuable strand within the Jewish culture, and partly in the hope that the sense of security and the common experience of living together with secular Jews would bring about appropriate changes in their ways of thought and life (Beilin, 1992, ch. 3). The Constitution of India showed similar political prudence when it won over its religious and cultural minorities by granting them the kinds of collective rights and exemptions discussed earlier (Mahajan, 1998, chs 3 and 4).

There is a strong case for a constitutionally enshrined system of fundamental rights in a multicultural society. They affirm the equal dignity and status of all citizens, give pride of place to rights considered essential to the good life, and build them into the very structure and self-understanding of the state. They check the excesses of populism and reassure minorities that their claims to equality and justice are not dependent on the vagaries of normal politics. They also provide the minimum basis of national unity, prescribe the limits of cultural diversity, and structure the political debate on minority practices. By giving minorities the necessary self-confidence and requiring the state to respect certain norms, a statement of fundamental rights helps create a climate in which different communities can interact in a relatively relaxed manner and build up mutual trust and goodwill. It is hardly surprising that every multicultural society has increasingly felt compelled by its experiences to move in the direction of enshrining such a statement in its constitution.

Although the case for fundamental rights is overwhelming, the dangers highlighted by their critics are real and need to be guarded against. A deeply divided society might be unable to agree upon their content, and the attempt by the majority to impose them is likely to exacerbate the situation, as is the case with the otherwise excellent Canadian Charter of rights and freedoms. In such situations the society concerned should either wait until there is a consensus or settle on a fairly thin statement of rights, leaving it to the courts to give them a substantive content and the normal political process to build a consensus around it, as Israel has done with the widely accepted concept of human dignity. There is also the danger that fundamental rights might be used to silence unconventional voices, prevent public expressions of deep

differences, or impose a premature closure on the outcome of intercultural dialogue. Although there is no infallible way of avoiding this, the risk can be minimized by limiting fundamental rights to matters essential to all defensible forms of good life and on which a broad cross-cultural consensus can be obtained. They should obviously be substantive enough to serve their intended purpose, but should not impose a specific vision of the good life and subtly subvert the prevailing forms of cultural diversity.

Thanks to the enormous influence of the American experience, it is commonly believed that the constitutionally guaranteed system of fundamental rights necessarily requires a Supreme Court, that the latter alone has the power to interpret and enforce them, that its decision is final and cannot be challenged, and that it extends to striking down offensive legislation. All four assumptions, especially the last three, need to be reconsidered if the judiciary is not to undermine or emasculate the democratic political process and usurp a political role. Fundamental rights do not occupy a separate realm of their own, but are embedded in and nurtured by democratic politics. Since they have both a legal and a political dimension, we need to find ways of integrating the judicial and the political process. We might give Parliament or its equivalent the right to ask the Supreme Court to reconsider its decisions in highly controversial cases, or give the Court the power to make a declaration of incompatibility and ask the Parliament to reconsider the offending legislation but not to strike it down itself, and so forth. New Zealand, Britain and several other countries are experimenting with some of these ideas, and they deserve careful attention.

Justice

In every society the state plays a vital role in fostering a sense of justice and common belonging. Its role is even greater in a multicultural society in which it is one of the few sources of unity, provides a focus to the shared life, and is expected to set an example of how to rise above the narrow communal prejudices and points of view. It is therefore of the utmost importance that the institutions of the state should be, and be seen to be, impartial in their treatment of the members of different communities. This is particularly important in the case of the police.

They enforce the law and maintain order, and discharge two of the state's crucial functions. They are the first and most important link in the long chain of justice and determine what is fed into and is likely to come out of the judicial system. They come into daily contact with citizens, who judge the otherwise remote and impersonal state in terms of their experiences of the police. And as the only institution of the state that is constantly exposed to the unsavoury side of society, the police are also likely to be the most deeply corrupted by it. It is hardly surprising that in all multicultural societies their behaviour is often the focus of much minority discontent and protest. It is essential to ensure that their exercise of authority is regulated by clearly defined procedures, above all suspicion of partiality, and its misuse subjected to severest censure and punishment. It is also crucial that they should be as representative of the wider society as possible consistent with the demands of professional competence and integrity. This gives different communities the opportunity to work together, counter each other's biases, and learn to look at themselves from a wider perspective. It also prevents the identification of the state with one particular community and ensures that different communities become used to exercising authority over each other.

As the sole source of legally secured justice in society, the state needs to ensure that its citizens enjoy equality of treatment in all significant areas of life such as employment, criminal justice, education and public services. Negatively equal treatment involves absence of direct and deliberate or indirect and institutionalized, discrimination. The former occurs when those in charge of decision-making are guided by prejudices against certain groups of people, the latter when the rules and procedures they follow contain unnoticed discriminatory biases and work to the systematic disadvantage of particular communities or groups. The rule that policemen should be six feet tall, or that a candidate for an academic post must have acquired his first degree within the country, discriminates against Asians and immigrants respectively. The law should require all public institutions periodically to examine the hidden biases of their rules and procedures, and should set up appropriate bodies such as the Commission for Racial Equality in the UK and the Equal Employment Opportunity Agency in the USA to ensure that they do so. In the absence of such provisions, highly prized areas of life run the risk of becoming the unmerited preserves of a particular community, with the consequent alienation and exclusion of the rest.

Positive equality requires equality of rights and opportunities. All citizens should enjoy equal rights, and these should include not only the usual repertoire of civil, political, economic and other rights but also cultural rights. The latter refer to the rights an individual or a community requires to express, maintain and transmit their cultural identity. Since culture is an integral part of an individual's sense of identity and well-being, cultural rights are part of human rights, and a good society should guarantee them to all its citizens. Besides in every society the majority community generally sets its cultural tone and is effortlessly able to affirm and express its cultural identity. Justice requires that, subject to the limits to be discussed later, the same opportunity should be extended to the minority communities as well. By giving them the sense of security they need to express their identity and interact with the wider society, cultural rights also earn their loyalty and good will and facilitate their integration. Principles of justice regulate matters essential to the good life and relate to what Rawls calls the basic structure of society. The basic structure is not economic and political only, as Rawls maintains, but also cultural, and hence principles of justice should deal not only with liberties and material resources but also with cultural rights and opportunities. The politics of recognition is therefore part of a wider and nuanced theory of justice, with the crucial difference that unlike liberties and resources, recognition cannot be individually enjoyed or centrally distributed and calls for a more complex conception of justice. We shall return to this later (Chapters 10 and 11).

All citizens should enjoy equal opportunities to acquire the capacities and skills needed to function in society and to pursue their self-chosen goals equally effectively. This may involve giving additional help to those who need it to overcome disadvantages derived from cultural differences or past acts of injustice. Such help does not constitute what is tendentiously called compensatory discrimination, for its purpose is not to compensate for past injustices but to help these groups overcome their historically inherited disadvantages and to equalize them with the rest. Such equalizing measures are justified on grounds of justice as well as social integration and harmony. If a cultural community were to feel powerless, or be disproportionately disadvantaged, or excluded from mainstream society, it would not be able to realize its potential, would feel unjustly treated and remain a source of constant tension. As I discuss later (Chapter 8) the concept of equal opportunity requires great sensitivity when applied across cultures.

Decentralization of power has a particularly important role to play in ensuring justice in multicultural societies. Since different communities regularly encounter each other in the normal course of life at local or regional levels, respect for their differences at these levels matters to them greatly and shapes their perceptions of each other and the state. It is also easier for the local and regional bodies to accommodate differences than it is for the central government, because the adjustment required is more readily identified, limited in scale, not too costly and is generally free from the glare of publicity. There is also greater room for experimentation, mistakes are more easily corrected, and different areas can learn from each other's good practices. It is therefore crucial to build up strong local and regional units of government and use them to foster a vibrant civic culture. As recent research has demonstrated, intercommunal tensions are less frequent and more easily managed when there is an extensive local network of formal and informal cross-communal linkages nurturing the vital social capital of mutual trust and cooperation (Varshney, 2001).

Intercommunal conflicts thrive on memories of real or imagined past acts of injustice. The more bitter the memories, the more intractable the conflicts and the more difficult it becomes to restore normal relations between the communities involved. It is therefore vitally important in a multicultural society to resolve conflicts promptly in a just and humane manner and to prevent accumulation of painful memories. As for the inherited memories of the past, society needs to find ways of both pacifying the tormented consciousness of its erstwhile victims and paving the way for intercommunal reconciliation on the basis of a carefully worked out system of 'transitional' and restorative justice. A public apology for a grave past injustice is one way, provided that it is genuine, based on full knowledge and acceptance of the nature of the injustice involved and accompanied by a willingness to make at least some amends for it. This was the case in Australia when its Prime Minister, Paul Keating, backed up his apology in 1992 for the violence to the Aborigines and the theft of their land by white colonisers with appropriate legislation and financial help. As a rule, perpetrators of injustice do not want to remember the past and their victims do not wish to forget it, and their divided attitudes to it render a shared future impossible. It is vital to avoid both obsessive brooding over the past and a willful amnesia and to confront, understand and accept the past as well as break with it by rectifying its injustices and agreeing to conduct future relations on a just basis. The pain of past humiliations is best assuaged

not by melodramatic demands for forgiveness from the erstwhile victims whose agony they sometimes aggravate by the implicit attempt at moral blackmail, but by a genuine and firm promise of a just future made in a spirit of collective responsibility.⁵

Collective rights

In a multicultural society, cultural communities generally demand various kinds of rights they think they need to maintain their collective identity. Some of these rights, usually called group, collective or communal rights, are not easy to accommodate within liberal jurisprudence, and raise difficult questions such as whether the concept of collective rights is logically coherent and what kinds of collectivities may legitimately claim what kinds of rights (Bauböck, 1994a, ch. 11; Kymlicka, 1995, ch. 3; Jones, 1999).

Just as individual rights are those of which the individuals are the bearers, collective rights are those of which human collectivities are the bearers. Human collectivities are of several kinds, ranging from groups united by transient or long-term common interests to historical communities based on a shared way of life. The term 'collective rights' is generic, and group, communal and other rights are its species. Like human collectivities, rights also cover a wide spectrum and encompass rights to non-interference, exemption from normal requirements, self-government, claims on society's resources, and so on. When we talk of collective rights, we need to be clear about the kind of collectivity we have in mind, the sense in which we use the term 'right', and the content of the right.⁶

Collective rights can be acquired in one of two ways. Individuals might pool their rights together or alienate them to the collectivity; we might call these *derivative collective rights*. The rights of trade unions, clubs, and so on are of this kind. Secondly, collectivities might acquire their rights *sui generis*, by virtue of being what they are and not derivatively from their members. We might call them *primary collective rights*. The rights of medieval towns to self-government including the levy of taxes, exclusion of outsiders and the right to make representations to the king, the rights of Christians and Jews to self-government under the Ottoman empire, and a tribe's right to its sacred sites and traditional esoteric knowledge fall under this category. These rights

belong to the relevant collectivities *qua* collectivities and cannot be derived from their individual members for the simple reason that the latter *qua* individuals have no such right. Collectivities are human beings related to each other in certain ways and, although they are made up of individuals, they sometimes form new and independent entities making autonomous claims of their own. The distinction between derivative and primary collective rights relates to their nature or mode of acquisition, not to their rationale or mode of justification. All rights derive their justification from their contribution to human well-being, and in this respect there is no difference between the two kinds of collective rights. To say that primary collective rights are not derived from or reducible to individual rights is therefore not to say that the collectivities involved have interests independently of those of their members.

While derivative collective rights are readily conceded, primary collective rights are not, on the grounds that only the individuals can be primary bearers of rights and that all collective rights are reducible to them. The objection is based on one or more of the following four grounds:

- Rights presuppose the capacities for agency and reciprocity which only individuals possess.
- Secondly, they are ways of recognizing the moral status of and showing respect for their bearers, and only individuals, being ends in themselves, have such a status.
- Thirdly, rights are means of protecting and promoting fundamental interests, and only the individuals can have interests.
- Finally, rights can only be given to those who exist or are 'real'. Individuals satisfy the condition whereas collectivities are either wholly fictitious or elliptical ways of referring to individuals.

None of these arguments is persuasive. Animals and children can have rights though neither possess the capacities for agency and reciprocity. We grant them rights if we think it desirable, and appoint or authorize adults to exercise them on their behalf. It is not true either that collectivities lack the capacity for agency or reciprocity, for they generally have their decision-making procedures and act through their accredited representatives.

As for the second argument, it is not true that only human beings have dignity and moral status. God has both in the eyes of the believer. For Australian Aborigines the spirits of the dead and the sacred moun-

tains and forests have a moral status. For Hindus and Buddhists all sentient beings have a moral status, and deserve respect and compassion. Human communities too can have a moral status, for they give meaning and a sense of rootedness and belonging to their members, which is why the latter are often prepared to give up their lives for them. Furthermore, it is a mistake to think that rights are ways of recognizing and respecting a preexisting moral status. They are also ways of conferring it, and hence the question is not whether human collectivities have a moral status but whether they should have it.

The third argument makes the crucial point that only human beings have interests, can suffer or prosper, feel miserable or happy, and so on, but goes wrong in defining human interests in narrowly individualist terms. Some of our interests are individual in nature; for example, I want to live, write a good book, or have a happy marriage. Some others are shared with and pertain to us as members of the community and can only be pursued together; for example, we want our political community to continue to exist, be peaceful and not torn by conflicts, culturally rich and vibrant, characterized by civility and mutual trust, or be respected and admired in the world. These are either our interests as a community and in that sense our collective interests, or form the shared background or precondition of our individual interests, and hence our common interests. In either case they may rightly be called the interests of the community.

Finally, it is not true to say that only the individuals exist and the collectivities do not. Individuals can certainly be seen, felt, touched, and so on, but there is no good reason to accept such a crude and narrow criterion of existence or reality. Britain, the United States, the Catholic Church, the United Nations, the western tradition of philosophy and the University of Hull exist, although they cannot be seen or touched. Human collectivities exist through the forms of consciousness, beliefs, practices, rituals and so on of their members and persist over time when these are institutionalized, intergenerationally transmitted and imaginatively appropriated by their members. They are made up of individuals, but equally the latter are shaped by them. Neither can be reduced to the other and declared either self-subsistent or fictitious.

Collective rights, then, are possible and can be derivative or primary in their origins. The former are created by pooling together individual rights, the latter are *sui generis*. Primary collective rights are of two kinds. First, although they belong to human collectivities, they are or can only be enjoyed and exercised by individuals. Israel's Law

of Return gives diasporic Jews the right to settle in Israel. The right is possessed by the diasporic Jewish community as a whole but exercised by its members individually. This is also the case with a Sikh's right to wear a turban and a Muslim employee's right to time off for prayer. For convenience I shall call these *individually exercised collective rights*. Second, some collective rights belong to collectivities and are, or can be, exercised by them collectively. The right to national self-determination (assuming that it is a right), the right of a community to make representations to the government or be consulted by it on issues of vital interest to it, a university's right to self-government, and so on, are of this kind. At a different level the Catholic Church's right to grant or refuse divorce and expel its members, and the Church of England's right to officiate at the coronation ceremony and to representation in the House of Lords also belong to this category. For convenience I shall call them *collectively exercised collective rights*. Some of the rights in both categories are rights to non-interference by the state or other outside bodies, some others involve positive claims on them, yet others fall somewhere in between.

Although collectivities *can* be the bearers of rights, it is sometimes argued that they *should* not be granted rights because they are likely to misuse these and threaten individual rights. The argument is flawed. All rights can be misused including individual rights. If we were to be consistent, we would have to deny the latter as well, and that is absurd. The argument also privileges individual rights over group rights, and there is no good reason to make such an assumption. If collective rights can be used to oppress individuals, individual rights too can be used to damage and destroy communities. Not all individual rights always trump all collective rights, for much depends on the relative importance of the rights in question and their context and consequences. Indeed, the contrast between individual and collective rights is overdrawn and ignores their highly complex relationship. Some collective rights threaten individual rights; for example, the right of a group to enforce moral conformity or expel its members or deny them the right of exit. Some are the very preconditions of individual rights; for example, a political community's right to self-government or independence. And some collective rights protect individual rights and empower their bearers because organized groups and communities are better able to defend the rights of their members than the latter can do individually; for example, a community's right to its

culture, language or educational institutions makes it easier for its members to retain their culture or language than if these were solely matters of individual rights.

The case for collective rights, then, cannot be dismissed out of hand. We need to ask which collectivities should have what rights under what conditions. The question can only be answered in terms of considerations of human well-being, the basis and rationale of all rights, individual as well as collective. Human well-being cannot be defined in the abstract. Although we can identify universally common components of it as we did earlier, every political community interprets and prioritizes them in its own way, has its own thick notions of human flourishing, and arrives at its own ideas on the content and conditions of human well-being. While some collective rights can claim universal validity, others vary from society to society. Different societies would therefore reach different decisions on which collectivities should enjoy which rights.

It would seem that a collectivity has a *prima facie* claim to rights if it meets one of the following overlapping conditions:

- First, it means a great deal to its members, enjoys a moral status in their eyes, and they wish to preserve it. The Amish, religious sects and traditional communities, for example, fall under this category.
- Second, its existence is vital to the fundamental interests of its members, and the latter can only or best be promoted by the community enjoying the right of collective action. The indigenous peoples in Canada, Australia, India and elsewhere, and the Basques, the Kurds and other national minorities meet this condition.
- Third, a community is deeply insecure and would not and cannot integrate into mainstream society without certain guaranteed rights. Muslims and other religious minorities in post-independence India, and Christians in Sudan, Egypt and other Muslim countries in which a strong majority is determined to impose its vision of the good life on them fall under this description.
- Fourth, a community has long been subjected to systematic oppression, lacks the confidence and the ability to compete with the rest of society, and needs to be equalized with the latter by appropriate remedial or supportive group-specific measures. The ex-untouchables in India and African Americans in the United States meet this condition.

- Fifth, a community has the potential to make a valuable and unique contribution to the wider society, and can only do so if it is given the rights required to preserve its identity and attain its characteristic form of excellence. Deeply religious groups and monastic orders belong to the category.
- Sixth, some communities are based on shared doctrines of which they see themselves as custodians, and can only function and contribute to their members' and wider society's well-being when endowed with appropriate rights. This is why, although it can cause much suffering and restrict individual liberties, most states respect, say, the Catholic Church's right to excommunicate its members or deny them divorce, and exempt it from the provisions of their anti-sex discrimination legislation.

This is all rather sketchy and each of these conditions, which entitle a collectivity to claim rights, needs to be argued and articulated at greater length. However, it is only intended to indicate how we might go about assessing the claims for collective rights. In each case the nature and content of rights would vary, depending on what is required to achieve their intended purposes. Some collectivities might merit only the right to non-interference, some might merit exemption from certain general requirements, yet others might rightly claim positive support of the state and other public institutions. In some cases we might think it better not to grant rights with all their legal and other complications, and settle the matter by accommodation or by imposing duties on others. This is a decision about how best to meet the legitimate claims of the collectivities involved, and does not affect the validity of the claims themselves.

While a collectivity merits rights under certain conditions, the rights have no meaning unless it is able to act as a collective agent and possesses the requisite institutional structure to take and enforce its decisions. Furthermore, since individual rights are just as, or even more, important and deserve to be safeguarded, its decision-making procedure should be broadly acceptable to its members, provide them with a collectively acceptable mode of redress and allow them the right to exit without excessive cost. Although it is not necessary that the collectivity should allow elections, representative institutions, and so on, for that is a matter for its members to decide, it is crucial that its internal functioning should enjoy their broad-based support. Exit from a com-

munity can never be cost-free, for no community worth belonging to treats its members' departure with indifference or which they can leave without a sense of loss. However, the cost should not involve depriving them of their legitimate claims on its resources or what is widely accepted as theirs.

When confronted with the claims of cultural communities to different kinds of rights, we should then ask such questions as whether these promote their members' or wider society's well-being, whether granting rights is the best way to do so, whether communities have the institutional resources to exercise these rights and provide an acceptable mechanism for a trade-off between these and individual rights in cases of conflict, and what the overall social, financial and other costs are. Answers to these questions do not always coincide. Although a community's claim might be legitimate, it might lack the requisite institutional resources, or be internally oppressive and refuse to change. We need to weight up these and other considerations. And since there is no infallible or incontrovertible method of doing so, we should reach a decision by means of a democratic dialogue between the parties conducted in a spirit of goodwill and compromise.⁷

Common culture

Like any other society, a multicultural society needs a broadly shared culture to sustain it. Since it involves several cultures, the shared culture can only grow out of their interaction and should both respect and nurture their diversity and unite them around a common way of life. For those accustomed to thinking of culture as a more or less homogeneous and coherent whole, the idea of a multiculturally constituted culture might appear incoherent or bizarre. In fact such a culture is a fairly common phenomenon in every culturally diverse society (Appiah, 1994, 1996).

Take something as mundane as cuisine. Chinese cuisine was initially an exotic import in the West, but over time many of its members acquired a fondness for it and made it an integral part of their dietary culture. Those who enjoyed their traditional food at home visited Chinese restaurants from time to time, and moved with ease between the two. In recent years a further development has taken place. The Chinese and western cuisines are no longer wholly separate. Each has

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A multicultural society is likely to include communities some of whose practices offend against the values of the majority. It cannot tolerate them indiscriminately because it has a duty both to raise its voice against morally outrageous practices and to safeguard the integrity of its own moral culture. However, if it disallowed all it disapproved of, it would be guilty of moral dogmatism and extreme intolerance and would miss the opportunity to take a critical look at its own values and practices. This raises the question as to how a multicultural society should decide which minority values and practices to tolerate within what limits.

Consider the following practices which have aroused different degrees of public concern in recent years:

1. Female circumcision.
2. Polygamy.
3. Muslim and Jewish methods of slaughtering animals.
4. Arranged marriages, practised mainly but not only by Asians. The practice ranges from a largely formal parental approval of their offsprings' choices of spouses to foisting ones on them.
5. Marriages within prohibited degrees of relationship; for example, Muslims can marry their first cousins, and Jews their nieces, both of which are viewed with disfavour in some western societies.

6. The practice, common among some African communities, of scarifying their children's cheeks or other parts of the body as part of the initiation ceremony.
7. The Muslim practice of withdrawing their school-going girls from such activities as sports, athletics and swimming lessons that involve wearing shorts and exposing parts of their body.
8. Muslim girls wearing the *hijab* or headscarf in schools. Although it is allowed in most western countries, it continues to arouse varying degrees of opposition in some of them.
9. Sikh refusal to wear helmets rather than their traditional turbans when driving motor cycles or doing dangerous work on building sites, to take off their turbans when taking oaths in court or bowing before the speaker in the House of Commons, and to shave off their beards when working in places that involve handling of food.
10. Refusal by gypsies and the Amish community to send their children to schools either altogether or after reaching a certain age on the grounds that modern education is useless for them and alienates them from their community.
11. Requests by Hindus to be allowed to cremate their deceased on a funeral pyre, scatter the ashes in rivers and, in rare cases, to drown rather than cremate their corpses.
12. Subordinate status of women and all it entails including denial of opportunities for their personal development in some minority communities.

In order to decide whether or not to tolerate these and other practices, we need guiding principles. In much of the popular and philosophical discourse four principles are generally canvassed. Since they are well-known and I am only concerned to draw attention to them rather than examine them closely, I shall not elaborate on them. Some writers appeal to universal human rights or more generally to universal moral values, and argue that since these represent the moral minimum and are culturally neutral, they provide the universally valid standards of evaluation.¹ For some others every society has a historically acquired character or identity embodied in its core or shared values. Since the latter form the basis of its way of life, it has both a right and a duty to disallow practices that offend against them. I shall call this the principle of core or common values.² Some writers maintain that since moral values are culturally embedded, society should disallow only those practices that cause harm to others, for to go further would amount to