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Group Identity and Individual Autonomy within Liberal Democracies: In Search of Guidelines

Abstract

Excerpt

As a result of the arrival of migrants and refugees over the last few years, most Western European societies have become multicultural societies. The conceptions of the good and the ways of life of ethnic minorities are sometimes at odds with the dominant ones, for example the so-called *hijab*-affair or the discussion within the Netherlands on the admissibility of female circumcision. Recently there has been significant coverage in the Dutch media concerning two other issues: the wearing of a turban by a Sikh in the Amstelhotel in Amsterdam in pursuance of his job as a cleaner and the debate in some of the quality papers of the Netherlands on the harmfulness of male circumcision.

Keywords: *Chandran Kukathas, communitarian, group identity, human rights, individual autonomy, liberal democracies, minority groups, tolerance*

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GROUP IDENTITY AND INDIVIDUAL AUTONOMY WITHIN LIBERAL DEMOCRACIES: IN SEARCH OF GUIDELINES

Marlies Galenkam⁽¹⁾

I. INTRODUCTION

As a result of the arrival of migrants and refugees over the last few years, most Western European societies have become multicultural societies. The conceptions of the good and the ways of life of ethnic minorities are sometimes at odds with the dominant ones, for example the so-called *hijab*-affair or the discussion within the Netherlands on the admissibility of female circumcision. Recently there has been significant coverage in the Dutch media concerning two other issues: the wearing of a turban by a Sikh in the Amstelhotel in Amsterdam in pursuance of his job as a cleaner and the debate in some of the quality papers of the Netherlands on the harmfulness of male circumcision.

Discussions on practices of migrants are illustrative of topical discussions on the admissibility of minority groups' practices in general (like sects, subcultures and life-style groups). An example of this phenomenon is the current 'hunt' for members of the Scientology movement in some Western European countries like Belgium, Germany, and Greece. Another example is the recent judgment of the European Court on the inadmissibility of sadomasochist practices.

These examples - divergent though they may seem at first sight - raise the same kind of normative questions. First, the theoretical question of whether, and to what extent, within a liberal-democratic society (such as the Netherlands) there should be room for the preservation of the identity of minority groups. Second, and more specifically, there is the question of admissibility. To what extent should 'uncommon' practices of groups be accepted within a liberal democracy? Reformulated, this question amounts to a classic question of liberal political theory. What are the limits of tolerance that a liberal society can show for 'intolerant' or 'illiberal' groups and more importantly, why are the boundaries between tolerance and intolerance drawn in this way? Finally, there is the practical issue of justifying the scope of state intervention within illiberal groups.

Finding Answers to these questions is a difficult task. Most of us will be led by a double - actually conflicting - intuition. On the one hand, it is generally acknowledged that within a liberal democracy there should be some room for tolerance and hence for the freedom to lead the life that one prefers. This includes the freedom to associate, to form a 'dissenting' group, and to cling to the idiosyncratic norms and values of the group. On the other hand, most of us will also agree that this room for tolerance cannot be taken as absolute (in view of, for example, human rights violations). Consequently, there should be a limit to the group's freedom. The question, however, is where to draw the line: (1) at the harm, done to others or done to oneself, (2) at the free will and consent of the members of those groups, (3) or should we adhere to the statement that some practices - as distasteful as they may seem - flow from a religious conviction and

hence should be permitted in view of the constitutionally secured right to freedom of religion?

I will address the above normative questions in this paper, with particular focus on the second question of admissibility of minority groups' practices. The broad terminology of 'minority groups' is used in order to indicate that this question arises not only with respect to ethnic minorities, but with regard to other identity groups (such as religious and life-style groups) as well. My assumption is that there may be a tension between preserving group identities on the one hand and individual autonomy on the other hand⁽²⁾. One of the key questions in any liberal political order seems to be how to adjudicate instances in which associations collide with liberal-democratic values such as individual autonomy. The question is whether a model can be developed wherein identity groups are accommodated and at the same time individual rights are protected. If so, what would this model look like? The intention of this paper is to develop some guidelines that may help determine how we should balance these two values. This balancing will be done after having elaborated and assessed two different views on the topic: the views of Will Kymlicka's and Chandran Kukathas'.

Within the current political-philosophical doctrine, both Kymlicka and Kukathas are known as 'liberal' - instead of communitarian - scholars. In addition, they share the same intention, i.e., to develop a liberal theory wherein minority groups are accommodated without losing sight of the need for protecting individual human rights. In spite of these similarities, the differences could hardly be greater. These differences originate from what the authors consider to be the core liberal value: autonomy vs. tolerance? For Kymlicka, the fundamental value is autonomy. In his view, minority group cultures may be protected only in so far and to the extent that they enhance the autonomy of the individual members. In contrast, Kukathas views tolerance as the primary liberal value. As liberals, we should even tolerate 'non-liberal' groups. In this paper, these two liberal positions, ideal types, will be elaborated and assessed in, sections 2 and 3 (on Kymlicka) and sections 4 and 5 (on Kukathas). Some conclusions will be drawn in section 6, some lessons will be articulated in section 7, some guidelines developed in section 8, and some concluding observations made in section 9.

II. WILL KYMLICKA: AUTONOMY WITHIN A CULTURE

One of the most authoritative views on the relationship between individual autonomy and group identity is that of the Canadian political philosopher, Will Kymlicka. Since Kymlicka has written extensively on this issue, this paper will be restricted to an exposé of his ideas expressed in his 1995 book, *Multicultural Citizenship. A liberal Theory of Minority Rights*.

As the title indicates, in this book Kymlicka develops an argument in favor of minority protection (in the form of special rights) within the liberal philosophical doctrine. According to him, special rights are sometimes needed in order to preserve the threatened identities of minority groups (such as national and ethnic minorities). His argument is based on a specific view of cultures. According to Kymlicka, cultures should be seen as 'contexts of choice' for individual human beings. That is, one's embeddedness within a culture is a precondition for individual autonomy. Before elaborating on the normative consequences of this perceived

connection between freedom and culture, a brief overview of the main strands of thought will be provided.

Kymlicka's main proposition is that the issue of multiculturalism is often dealt with in overgeneralized terms. Therefore he proposes to distinguish between national and ethnic minorities. National minorities are "territorially concentrated cultures, which were previously self-governing, but have been involuntarily incorporated into a larger state through colonialism, conquest or 'voluntary' federation." (1995a: 10) A principal characteristic of those minorities is their wish to maintain themselves as distinct societies - or more precisely, as 'societal cultures' alongside the majority culture. This becomes evident in their demands for distinct forms of autonomy or self-government. According to Kymlicka, minorities in Eastern Europe, in addition to native peoples and the French-speaking minority within Canada, fit within this category. Apart from these national minorities, cultural diversity within a country may also arise from individual and familial immigration. Kymlicka states that such immigrants or ethnic minorities - often coalescing into loose associations - typically wish to integrate into the larger culture and be accepted as full members (1995a: 10-11). In his own words, "Immigrants are not 'nations' and do not occupy homelands. Their distinctiveness is manifested primarily in their family lives and in voluntary associations, and is not inconsistent with their institutional integration." (1995a: 14)

According to Kymlicka, seen from a liberal perspective, these two kinds of minority groups are qualified - although to a different extent - to the ascription of special rights. Three of these rights may be distinguished as 'self-government rights' (such as the well-known right to self-determination), 'polyethnic rights', and 'special representation rights'. The second and the third are respectively concerned with financial support for certain practices of minorities and with guaranteed seats for ethnic and national groups within the central institutions of the larger state. The reason for ascribing special rights to minorities is their need for protection of their relatively vulnerable and threatened identity amidst a dominant culture. That is to say, special rights are always externally oriented. Their main value lies in the protection of minority groups against the dominant society and hereby in the promotion of equality between groups.

According to Kymlicka, national and ethnic minorities qualify for different kinds of special rights. Whereas immigrants should have, at best, some additional 'polyethnic' and 'special representation' rights, only national minorities may gain 'self-government' rights. In an article some years ago, Kymlicka (1991: 250) wrote: "And I think this is a significant distinction. Surely immigrant groups cannot claim the same rights as national minorities. If I and others decide to emigrate to China, we have no right that the Chinese government provide us with public services in our mother language. We could argue that a government policy that provided English-language services would benefit everyone, by enriching the whole cultural environment. But we have no right to such policies, for in choosing to leave Canada, we relinquish the rights that go with membership in our cultural community. Public subsidization of the ethnic activities of voluntary immigrant groups is best seen as a matter of policy, which no one has a right to, or a right against." According to Kymlicka (1991: 252), this differentiation of minority groups, having different special rights is close to the actual practice and national consensus in both the U.S and Canada. The laws in those countries give Indians, Inuit, French-Canadians and Puerto Ricans a special political status that other ethnic groups do not have.

Interestingly, Kymlicka sets up a rather huge distinction between ethnic and religious minorities. Whereas ethnic minorities should qualify for special treatment, the religious minorities should not. The reason for this is related to Kymlicka's view of liberal states. For Kymlicka (1995a: 111), although liberal states can be religiously neutral, they can never be culturally neutral. This implies that ethnic minorities are always far more disadvantaged than religious minorities. Consequently, they alone are qualified for special treatment.

Thus, some special rights are needed in order to protect the identity of vulnerable minority groups. Having said this, there remains the question of whether such groups have the right to preserve their identity unconditionally or whether there should be limits placed on it. This brings us to a key issue of the paper: what are the limits of liberal toleration and why are the limits there? In chapter 8 of his book, titled *Toleration and Its Limits*, Kymlicka discusses these issues at length. According to him, endorsement of cultural identities is always conditional and qualified. As he notes (1995a: 152), the demands of some minority groups exceed what liberalism reasonably can accept: "Liberal democracy can accommodate and embrace many forms of cultural diversity, but not all."

More specifically, Kymlicka distinguishes two limitations of minority rights, concerning 'internal restrictions' and 'external protections.' The latter of these limitations, external protections, will be examined first. As we noted above, the main function of minority rights is the (external) protection of vulnerable minority groups against the larger society. Yet, some external protections - legitimate though they are in order to reduce the minority's vulnerability to the decisions of the larger society - remain forbidden. They are forbidden in those cases in which these protections result in a straightforward exploitation and oppression of other groups. In Kymlicka's (1995a: 152) words: "Liberal justice cannot accept any such rights which enable one group to oppress or exploit other groups." External protections of a minority group are legitimate only in so far as they promote equality between the minority group and the majority.

Another precondition of minority rights is that the protection of a minority culture may not result in 'internal restrictions', i.e., restrictions on the basic civil and political liberties of its members. Hence, the individual rights of the members should always be respected. This limitation has to do with Kymlicka's aforementioned 'positive' view of cultures. Membership within a culture ideally enables individuals to make autonomous choices about how to lead one's life. This is Kymlicka's main reason for supporting cultural membership. The implication is that liberals can only endorse minority rights in so far as those rights are consistent with respect for the freedom and autonomy of the individual members. This precondition illustrates Kymlicka's sensitivity to the threat of 'forced inclusion' of individuals within their cultures. Not all minority cultures are worth respecting, since some of them are oppressive. Individuals should have autonomy to protect against oppressive communities. To conclude, in a liberal society a minority group may stick to its own 'practices', provided that these practices are not at odds with the autonomy of its members, i.e., provided that this minority group is - to a certain extent - 'liberal' itself.

By emphasizing the liberal value of autonomy, Kymlicka seems to imply that the value of tolerance is related. Societies may consider tolerance of paramount importance, and yet remain quite illiberal societies when one considers that the value of individual autonomy is not respected. A good illustration is the so-called millet system during the Ottoman empire. This

system was based on a considerable amount of respect and tolerance for different religious groups (based as it was on the axiom "*cuius regio, eius religio*"). Nonetheless, this system cannot realistically be viewed as a 'liberal' system, because of the lack of individual autonomy and individual rights (especially the right to change one's religion). According to Kymlicka (1995a: 158), as liberals we should not be committed to tolerance as such, but to a much more specific form of tolerance, one that demonstrates a commitment to autonomy.

In adhering to the value of autonomy, one could question whether or not minorities are forced to become 'liberal'. Kymlicka answers this question in the negative. The fact that some practices of minority groups seem to be inadmissible from a liberal point of view (in the sense that they violate the rights of their members), does not automatically imply that the state should intervene into those 'illiberal' cultures and forbid those practices. Here we arrive at our third question of legitimacy of state intervention. In contradistinction to what we would expect, Kymlicka tends to be rather wary of such intervention. In his view, we have to distinguish between two questions. The first is the question of identifying a defensible liberal theory of minority rights. This is the task which he - as a political philosopher - has set for himself in his 1995 book. The second is the much more practical issue of imposing that liberal theory. To Kymlicka, there is relatively little scope for legitimate coercive state interference into an intolerant culture. As he contends (1995a: 168), "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 groups have to learn to live with this". Nonetheless, intervention is justified in cases of gross and systematic violations of human rights. Here, a number of factors are relevant. They include "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." (1995a: 169-170) Unfortunately, these factors are not elaborated in any more detail.

Finally, the latitude that is created for intolerant and illiberal minority groups has to be qualified in another sense. Although his 1995 book deals with about both national and ethnic minorities, with regard to the issue of non-intervention Kymlicka seems to have in mind only national minorities. Ethnic minorities are treated differently. As Kymlicka (1995a: 170) notes, "In these cases, it is more legitimate to compel respect for liberal principles."

III. ASSESSMENT

In evaluating Kymlicka's approach there is much to comment upon. The review will be restricted to those aspects that are relevant to the key questions of this paper. They are respectively (a) the differentiation of minorities, (b) Kymlicka's autonomy-based conception of liberalism, and (c) his plea for non-state intervention into 'illiberal' cultures.

A. Differentiation of Minorities

Kymlicka is to be complimented for his attempt to differentiate among minority groups. To date, in international legal circles, the topic of minority rights is too often dealt with in rather unspecific terms. The broad definition of minorities forged almost twenty years ago by Capotorti

(i.e., "groups numerically inferior to the rest of the population of a state, in a non-dominant position, wherein there is a common will of the members to preserve their distinctive characteristics") is still in use as the most authoritative distinction. In order to elevate the discussion on minority rights to a higher level, differentiation and specification of the terms are required. This does not imply, however, a complete endorsement of Kymlicka's proposal for differentiation, since the strength of Kymlicka's proposal is also its weakness.

Take, for example, the distinction between national and ethnic minorities. The main rationale for distinguishing these two groups lies in the diverging aspirations of both groups. Whereas national minorities want to be independent, ethnic minorities want to integrate. For one, this subjectivistic approach - focussing on the subjective wish of the respective groups and thereby neglecting objective circumstances - seems to be too one-sided to be convincing (see further Galenkamp, 1996). Moreover, this subjectivist approach seems to be based on an unrealistic view of ethnic minorities. Most migrants in Western European countries do not merely want to integrate and assimilate into the dominant culture. They want to integrate, while at the same time preserving, their own identity. Actually, a paradox arises here. Kymlicka is known as a defender of the rights of national and ethnic minorities. But with regard to ethnic minorities, he turns out to be a defender of a policy of forced assimilation with practically no room for the preservation of one's own identity. To borrow a famous phrase from Shakespeare, "When in Rome, do as the Romans." This plea for assimilation seems to be at odds with current migrant's policy in most Western European countries. For example, in the Netherlands, although migrants are urged - and currently more than ever - to integrate into the dominant culture like other minority groups, it is still accepted that they may preserve parts of their own identity, such as religious or life-style ones.

Apart from this distinction between national and ethnic minorities, there is the distinction between ethnic and religious minorities. Again, the differences seem to be exaggerated, and in actual practice this difference is difficult to uphold. In the case of the ethnic minorities in the Netherlands, most members are 'religious' and ethnic minorities. Moreover, the problems that have been, at the same time, raised in the last few years with regard to those groups, all have to do with their religious (that is, non-Christian and especially Islamic) convictions. Most of the discussions focus on the conflict between liberal-secular values (such as the equality of men and women) and Islamic values. By explicitly excluding those 'double' minorities Kymlicka's approach appears to have too little to offer in cases of religiously laden conflict. Besides, in so far as the distinction between ethnic and religious groups can be upheld, it is less than convincing to uphold these distinctions, since it may lead to counterintuitive outcomes. For example, ethnic minorities would be qualified for special treatment, while religious minorities would not. This seems to be a far cry from state practice in most Western European countries. In these countries the freedom of religion is generally constitutionally secured, while the right to preserve one's own culture is not.

B. Autonomy-Based Conceptions of Liberalism

According to Kymlicka, minority groups may adhere to their own practices, provided that these practices are not at odds with the group members' autonomy, i.e., provided that these groups are - to a certain extent - 'liberal' themselves. But, one could ask, does not Kymlicka get rid of the

problems too easily by adding this provision? It is easy enough to tolerate liberal communities. Far more difficult, however, is the question of what to do with non-liberal communities. Should these communities be tolerated as well? With regard to this question, a blurry picture emerges. On one hand, in day-to-day politics we should tolerate these cultures, and hence, we should not intervene in these cultures (see below at c). On the other hand, however, seen from the liberal and theoretical perspective we cannot tolerate such groups, for they are likely to violate the autonomy of their members. But, one could ask, what remains then of the value of tolerance and respect for 'dissenters'? Does not a liberal viewpoint also include the idea of group sovereignty and hence the freedom to choose autonomously for a non-autonomous life (for example, in case of orthodox religious communities)? We seem to have arrived here at a second paradox in Kymlicka's approach. As noted, Kymlicka has been known as a defender of minority groups and their right to live according to their own conceptions of the good. Looking more closely at his approach, the margins to live one's own life tend to be rather small indeed. In the words of Freeman (1995: 37), Kymlicka can be blamed for coming close to a - 'liberal imperialistic' attitude, in the sense that liberal norms and values are held out as an ideal to non-liberal groups. Besides, Kymlicka seems to be inspired by strongly universalistic ideals. It may be doubted whether such universalism is a good basis for dialogue between different communities within a society.

C. Non-State Intervention

Kymlicka's plea for on-state intervention comes as no surprise. It is surprising because Kymlicka, from a liberal perspective, views the violation and suppression of basic individual rights of group members by their own group as unjust. Nonetheless, he believes that the state has no authority to intervene in those practices. Such a position seems to detract from his autonomy-based liberalism. Does not the having of liberal principles commit one to stand up for them? In case it does not, one's liberal principles are, so to speak, 'up for sale'. The net result of non-intervention is that members of illiberal minority groups are rendered vulnerable to infringement of their basic rights (see below at section 6). This plea for non-state intervention has brought us quite close to the tolerance-based approach of liberalism. This approach will be elaborated below.

IV. CHANDRAN KUKATHAS: TOLERANCE AND THE RIGHT OF EXIT

In his article "Are There Any Cultural Rights?" (1995; but originally published in 1992), Chandran Kukathas provides us a second liberal approach for coping with the potentially competing claims of the individual and his (or her) community. The intent of his approach is quite the same as that of Kymlicka's: an attempt to strike an appropriate balance between the claims of the individual on the one hand and the interests of the minority community on the other hand. In spite of the similarities, the differences between the two approaches could hardly be greater. These differences are mainly due to the primacy that Kukathas attributes to tolerance instead of autonomy.⁽³⁾ His plea for tolerance stretches rather far. In his view, liberals are obliged to tolerate even 'intolerant' and 'illiberal' minority groups. Interestingly enough, however, this room for tolerance for minority groups is created not by giving them special or collective rights, but by focussing on individual rights.

Kukathas starts his article by criticizing current critics of mainstream liberalism (such as Kymlicka), blaming it for having no room for cultural minorities and hence, pleading for special rights for those groups. Kukathas (1995: 230) notes the following: "(...) while we are right to be concerned about the cultural health of minority communities, this gives us insufficient reason to abandon, modify or reinterpret liberalism." For Kukathas, far from being indifferent to the claims of minorities, liberalism puts concern for minorities at the forefront, so there is no need to depart from the liberal language of individual rights to do justice to minorities.

Although, Kymlicka can be blamed for giving *too much* recognition to cultural minorities (by ascribing special rights to them), but according to Kukathas (1995: 245), Kymlicka can be blamed for giving *too little* recognition to those groups, insofar as he regards autonomy as the fundamental liberal value. Kukathas tends to disregard the interests of cultural communities that do not value the individuals' freedom to choose. According to Kukathas, any attempt to force minority cultures to reorganize themselves in accordance with liberal norms is intolerant and therefore illiberal. On the basis, Kukathas makes a plea for focussing on the value of tolerance.

But why should we consider tolerance as the key liberal value? Here again we see Kukathas' ultimately individualistic mode of reasoning. We have to respect the minority's wish to live according to its own ways of life, not because its culture should have a right to be preserved, but because individuals should be free to associate (1995: 238). Notice that Kukathas focuses on the freedom of association rather than - what far more often occurs - on the right to freedom of religion. According to Kukathas, a corollary of the freedom of association is that the individual should be free to dissociate from communities. To summarize Kukathas' view, the claims of the individual and those of minority groups are accommodated by two individual rights: on the one hand the right of association and on the other hand the right of dissociation, or, as Kukathas calls it, 'the right of exit'. If one does not like the group practices, one should be free to leave the group. This right of exit guarantees that the individual's interests will always be taken into account.

The resulting picture of the liberal state as conceived by Kukathas is one that is at odds with the one presented by Kymlicka. In Kukathas' article, we find no requirement whatsoever that minority groups within such a state should be 'liberal'. On the contrary, in Kukathas' view, minority groups such as the Amish may indeed be quite 'illiberal'. According to Kukathas, the Amish have the right to practice their traditional ways. This implies, for example, the right to choose not to send their children to school. In Kukathas' words (1995: 116), "If members of the cultural community wish to continue to live by their beliefs, the outside community has no right to intervene to prevent those members of acting within their rights." For the individuals within those 'illiberal' communities this implies that "as members of the greater society, they have - just like other citizens - individual freedoms and individual rights, but as members of the illiberal minority group they do not have." (1995: 248)

With regard to the topic of admissibility of 'uncommon' practices of minority groups, the one relevant question for Kukathas is whether the individuals taking part in these practices are prepared to accept their illiberal nature. In any illiberal culture, individuals should have the choice between abiding by the wishes of the community or ceasing to be part of that community. According to Kukathas (1995: 133), this primacy of the right of exit is consistent with our

intuitions: "If an individual continues to live in a community and according to ways that (in the judgment of the wider society) treat her unjustly, even though she is free to leave, then our concern about the injustice diminishes."

Kukathas' far-reaching plea for tolerance is put in perspective at the end of his article. First, in order to prevent the right of exit being from being merely a paper formula, the wider society should be open to individuals wishing to leave their local groups. Second, even illiberal groups are bound by some liberal prohibitions concerning "cruel, inhuman or degrading treatment." (1995: 249) Third, just like Kymlicka, Kukathas recognizes a difference between the (normative) position of national and ethnic minorities. As he remarks, "The acceptance of cultural norms and practices depends on the degree to which the cultural community is independent of the wider society." (1995: 251) It appears that Kukathas has in mind traditional groups such as the Indians (Cree, Inuit or Pueblo) or the Amish. In all of these cases the cultural community lives somewhat isolated from the wider society. This cannot, however, be upheld in the context of ethnic minorities. The geographical proximity of these ethnic minorities, to the wider society, significantly limits the room for tolerance for uncommon practices: "The immigrant society, while entitled to try to live by their ways, have no right here to expect the wider society to enforce those norms against the individuals." (1995: 251-252)

V. ASSESSMENT

Kukathas' liberal approach is an interesting and stimulating alternative to the one presented by Kymlicka. As we have seen, Kymlicka takes the value of autonomy as the key liberal value. But as Kukathas rightly contends, in many cultures and subcultures this value of autonomy is not esteemed. We should beware of putting autonomy first. In light of the current diversity within the world at large and within most nation-states, would it not be better to focus on tolerance?

Another advantage of Kukathas' approach is its balanced outlook. Kukathas, like Kymlicka, tries to solve the conflict between individual rights and communal interests - though from a quite different angle. Kukathas sketches the balance as follows: "The theory advanced here looks to recognize as legitimate cultural communities which do not in their own practices conform to individualist norms...Yet at the same time, it is a liberal theory, inasmuch as it does not sanction the forcible induction into or imprisoning of any individual in a cultural community." (1995: 247) Undoubtedly, Kukathas' approach is individualistically oriented. The two key rights - the right to association and dissociation - are individual rights. Groups (even national and ethnic minority groups) are seen as 'voluntary' associations of individuals. These two individualistic starting points already imply a criticism of any communitarian way of thinking. Cultural groups as such do not have a right to self-preservation⁽⁴⁾ Ultimately, it is up to individual members to determine whether a (minority) group culture is worth to be preserved. This individualistic outlook, however, is not the only factor. Interestingly, and paradoxically, we end up with an approach with considerable latitude for cultures in general, and, more specifically, for illiberal minority groups. Outsiders do not have the right to intervene in those cultures, even in the name of liberal values. The resulting picture is that of a liberal society composed of different groups, all having the freedom to govern themselves in purely internal matters with no threat of external interference. In short, "Live and let live." Could it be more beautiful?

One might question, however, whether this picture is that beautiful. Whereas Kymlicka's approach is vulnerable to the danger of 'liberal imperialism', Kukathas' approach is vulnerable to the opposite threat: a threat that stretches the value of tolerance so far that ultimately our liberal values are put at stake. In the words of Freeman (1995: 37), we may call this the danger of 'non-liberal collaboration', or, in the words of Green, 'a situation of local illiberalisms'. Three problems with this approach will be discussed in more detail below.

(a) The first problem concerns the net result of Kukathas' analysis. As just indicated, we end with a society wherein there are different - maybe 'illiberal'- islands living quite separate and independent from one another. There are some drawbacks to this picture. First, an 'island'- model of society is not a good basis for dialogue among different groups. The notion that identity groups may exist as autonomous entities, with no relationship whatsoever to the constitutional state, creates a false impression. Groups are free to determine their own values and to live according to their own lifestyles. Therefore, they are not restricted by the norms and values of the constitutional state. It will come as no surprise that in the long run this viewpoint may imply the

end of the constitutional state itself.

(b) Kukathas not only tends to overlook the relationship between (minority) groups and the state, but also between individuals and their groups. By attributing a large amount of tolerance to groups, little scope remains for dissent of individuals. As we saw before, the only individual rights that are recognized are the right to association and to dissociation. It is doubtful whether the possession of these two rights suffices in order to speak of a 'liberal society'. According to Kymlicka (1995a: 157) we have to answer this question in the negative. Kukathas' model of society cannot be viewed as a liberal model "for it does not recognize any principle of individual freedom of conscience." Consequently, individuals, and especially dissenting ones, are locked into their community. As long as they are not willing to leave the group (see below at c), they are forced to comply with the group's norms and practices. Kukathas' solution to the tension between individual rights and communal interests, has now become much clearer: the solution is obtained by denying practically all individual rights!

(c) Certainly, Kukathas could counter this criticism by contending that people always have the right of exit from their identity group. What is the problem? In Kukathas' analysis, the right of exit seems to function as a panacea that solves all tensions between members of the group and the group itself. It appears that this analysis has some serious drawbacks. First, the right to exit argument forces insiders into a cruel zero sum choice: one can either accept all group practices - including those that violate your basic rights - or leave the group. In other words, take it or leave it. Luckily, real life situations often produce more options. Second, one could ask what are the real prospects for exit from the groups concerned? Kukathas' view seems to obscure the real hardships of leaving one's identity group. The mere possibility of exit does not suffice to make it a reasonable option. For the most part, the groups concerned are not 'voluntary' ones, but rather 'involuntary' groups such as national or ethnic minorities. By speaking of the right of exit and the condition of consent, Kukathas tends to presuppose adult human beings. Hence, he passes over the really difficult issues that are currently at stake, such as issues that concern the rights of children within 'illiberal' communities. For example, how does one approach the practice of

female circumcision of baby girls, currently practiced in the Somalian minority group within the Netherlands? The exit option seems to be out of the question here. Finally, the right of exit may be a necessary, though not a sufficient condition for liberal society. It is certainly true that, when exit is unavailable, things become even worse. This is not to suggest, however, that when exit is available, things will be all right. As Freeman (1995: 39) notes, "For individuals to lead good lives in a complex world, a set of rights more (...) than the right to exit from oppressive groups is required."

In summary, Kukathas' approach may be used as a good illustration of what is left in case the room for tolerance taken too far. It is a society consisting of illiberal islands, wherein the rights of individuals are being sacrificed. Green (1995: 270) may be correct in his observation: "With respect to `internal minorities', a liberal society (according to Kukathas' analysis) risks becoming a mosaic of tyrannies: colourful, perhaps, but hardly free." In other words, although pluralism within a culture seems to be a precondition of liberalism, Kukathas' pluralism of cultures is quite at odds with liberalism!

VI. ADDITIONAL DRAWBACKS

Thus far, we have elaborated and assessed two kinds of liberal theories. Although starting from a different angle - both of these liberal theories try to do justice to the eventually competing claims of minority groups and their individual members. It should be clear, that in the context of these two theories, the dilemmas at stake have not yet been resolved. Both of these theories, one starting from the value of autonomy and the other starting from the value of tolerance, appear to have some drawbacks. In the words of Kymlicka (1995b: 15), "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. Yet basing liberalism on tolerance abandons the traditional liberal concern with individual freedom of choice, and threatens to condemn individuals or subgroups within minority cultures to traditional roles that may be unsatisfying and indeed oppressive." As we have seen, in both approaches the threat of `illiberalism' is lurking: either by forcibly inducing groups to be liberal or by leaving members of illiberal groups to their own devices.

In spite of the differences, there are some striking similarities between Kymlicka's and Kukathas' approach. First, both analyses are of little relevance to the migrant's policies of most Western European countries. This is due to the almost exclusive focus on national minorities. A second parallel is that both scholars are critical of state intervention in the affairs of illiberal groups. Undoubtedly, both for practical and for principled reasons, state intervention should be seen as an *ultimum remedium*. One can argue, however, that a categorical rejection of state intervention goes too far. According to Schachar (1996), such a categorical rejection of state intervention reinforces the above elaborated myth that identity groups, if only given the chance, could exist as autonomous entities with no relation to the constitutional state. Moreover, the application of the ideal of non-state intervention, can unwittingly provide 'liberal' groups with a license to subordinate group members and to violate their individual rights. In legal terms, one could say that a policy of non-state intervention denies group members their equal protection as citizens of the state and thereby degrades them into second-class citizens. In view of these criticisms,

Schachar (1996: 16) - probably rightly - concludes the following: "If individual rights are not to be an empty category, then some entity - that is, the state - must have the responsibility for intervening if those rights are violated."

VII. THREE LESSONS

On the basis of the two foregoing approaches, my assessment and the parallels between them, we have arrived now at some insights that may be of help for the questions under review.

(1) First, seen from an internal perspective, we should beware of the 'forced inclusion' of individuals within their identity group. Doing justice to those groups may end up curtailing the autonomy of their members. In other words, 'cultural tolerance' may sometimes be used as a cloak for oppression and injustice within those groups (Poulter, 1987: 593). In legal terms, the collective right to self-determination may be at odds with the individual right to self-determination. It can be argued that human rights do not lose their relevance within identity groups. Ideally, human rights should function as a shelter for individuals, not only in society at large, but also within minority groups.

(2) A second lesson is externally oriented and concerns the potential exclusion and discrimination of outsiders. It can be formulated as follows: in a society that is tolerant of diverse identity groups, one should beware of the imminent potential for the exclusion and discrimination of outsiders. This second lesson was already elucidated by Kymlicka in his second precondition to minority rights. As we noticed there, special rights for those minority groups are legitimate only to the extent to which they promote equality among groups. They are not legitimate if they result in new forms of inequality. This lesson already illustrates that minority practices may have consequences not only for members of the group itself, but may have external effects as well. Reformulated in legal terms, the right to self-determination of a group may be at odds with the right to self-determination of other groups or individuals.

(3) Third, we should beware of a society becoming a collection of 'illiberal' islands no longer being in touch with one another. This lesson stresses the need for preserving the social unity of the liberal state, or, in other words, the national perspective. This last lesson has been elucidated in more detail in the assessment of Kukathas' view (section 5). As we have seen, there are some dangers of presenting minority groups as autonomous from the state structure. Identity groups - even the most independent ones - are not outside, but inside the state.

VIII. IN SEARCH OF GUIDELINES

In section 6, the non-intervention doctrine proposed by both Kymlicka and Kukathas, was rejected. In some instances, the state should intervene in minority group affairs and forbid some of their practices. This raises the question of when precisely the state should intervene. How should we determine which group practices are legitimate and which, seen from a liberal perspective, are not? Can we develop some guidelines that may determine whether state intervention is legitimate or not? In our search for such guidelines, I think the preceding lessons

may be of help. They may sensitivize us to the problems we may encounter in the case of a culture-based analysis. Hence, these lessons may provide a first indication of the proper limits of tolerance to 'uncommon' practices of minority groups.

Notice that the terminology being used is still quite broad. Rather than restricting these discussions to national or ethnic minority groups, the general term 'minority groups' is used. The key question that arises in the context of ethnic minorities is ultimately the same as the one that arises in the context of other kinds of minority groups (such as religious or life-style groups): do subcultures within a liberal society have the latitude to preserve their own identity and associated practice? If so, what are the limits? Which of their practices are intolerable?

Furthermore, a potential advantage of the three guidelines to be discussed below is precisely that they enable us to lessen the differentiation that is often made between different types of minority groups. It can be argued that independently of whether it is the practice of a 'religious', 'life-style', 'ethnic', or even a 'national' minority group, in all these different cases the same question is at the centre: should we tolerate this specific practice and, if not, what are good reasons for forbidding it? As to the question of admissibility of group practices, we should look not so much at the nature of the group (is it a religious group and is the practice inspired by some 'deep-down' and 'well engrained' convictions?), but rather, at the extent of the harmfulness of the practice itself. Investigating the extent of religiousness of a group would be a difficult task, and besides, in the recent past this approach has often led to a privileging of the older religions at the expense of the 'newer' religions. Furthermore, it is high time we acknowledged that the argument of 'religious freedom' of parents may sometimes be used as a license to subordinate and violate the rights of children.

Before presenting the guidelines however, let me give a rough sketch of my own normative presuppositions, starting with the idea of group sovereignty. What do I mean by this? It seems to me that the basis of any liberal order should be tolerance for 'dissenting' groups and individuals. This assumption has also been one of the motivating forces underlying the specific form of democracy as we know it in the Netherlands, namely 'consociational democracy' - or as we call it in Dutch, *verzuiling*. The idea of group sovereignty originated from one of the founding fathers of the Dutch Calvinist movement, Abraham Kuyper.

To the attentive reader, it will be obvious that by choosing group sovereignty as the starting point, I depart from Kymlicka's approach. As we have seen, his approach is autonomy rather than tolerance-based. My approach bears more resemblances to that of Kukathas. There are, however, some differences as well. In contradistinction to what Kukathas argues, the axiom of group sovereignty cannot be viewed as the conclusion. The following guidelines, albeit tentatively formulated, can be seen as a threefold restriction of the axiom.

(I) The first guideline concerns the potentially harmful effects of minority practices on individual members. This guideline may be formulated as follows: "Minority groups may stick to their own practices, unless their practices cause serious physical or mental harm to the groups' members. Less serious harm is admissible, in so far as the members endorse the practices."

Two kinds of normative considerations underlie this guideline. First, the so-called harm principle, a classic principle within liberal doctrine since John Stuart Mill. This principle expresses the thought that the freedom of citizens may be limited only in cases where their freedom would inflict harm on others. A second consideration concerns the idea of consent. At any time members of a minority group should have the opportunity to subscribe to (or to criticize!) a specific group practice. This consideration includes, of course, the right of exit as an *ultimum remedium* (see Kukathas). A further consideration, more extensive in scope, includes democratic and participation rights within the groups (what one could call - freely rendered from Hirschman's famous *Exit, Voice and Loyalty* (1970) - the right to 'voice') as well. In the event that people do not endorse a practice, they retain the right of state protection against their own group (and hence eventually state intervention). The rationale of this first guideline should now be clear: preventing individuals from becoming victims of group practices.

(II) The second guideline, in brief, follows logically from the first. This guideline concerns the potentially harmful effects of group practices on non-members. "Minority groups may stick to their own practices, unless these practices are harmful to outsiders (in the sense of discrimination and gross violation of their human rights)."

This guideline bears a number of similarities to the second precondition formulated by Kymlicka. A second departure from Kukathas' approach can be discerned, since Kukathas was silent on this issue. Underlying this second guideline is the presence of potentially external effects of group practices. These external effects considerably diminish the admissibility of identity group practices, where those practices have strong negative effects on the freedoms and rights of outsiders.

(III) Thus far, this paper has provided two restrictions on the idea of group sovereignty. Nonetheless, will these restrictions suffice? It appears unlikely. A third guideline is needed, one that is related to the most abstract level of the (existence of the) liberal state itself. This third guideline may be formulated as follows: "Minority groups may stick to their own practices, unless these practices endanger the fundamentals of the liberal democratic state."

What is the purpose of this third guideline? Generally speaking, one could say that the liberal state, itself, is the main precondition for the preservation of group autonomy. In other words, our society's plurality may merely last by the grace of the continuity and unity of the liberal-democratic state itself. Hence, this third guideline implies a third departure from Kukathas' line of reasoning. Important though the idea of group sovereignty may be in a liberal setting, it can never be the last word. Ultimately, within a liberal constitutional state the primacy should lie not at the level of various groups and subcultures, but with the constitutional state.

IX. CONCLUSION

In this paper, an attempt has been made to shed some light on a highly topical subject: the relationship and the tensions between individual autonomy and group identity. More specifically, three questions have been addressed. First, the theoretical question of whether - and, if so, to what extent - within a liberal-democratic society there should be latitude for the preservation of

the identity of (ethnic) minority groups. It seems that one of the main aspects of liberal thinking is tolerance for 'dissenting' groups. In my view, liberalism can both accommodate minority groups (of various kinds) and at the same time protect the liberal value of individual rights.

A second question that arises is how the potentially conflicting interests of individuals and groups may be appropriately balanced. Reformulated, this question concerns the topic of admissibility. To what extent should 'uncommon' practices of groups be accepted within a liberal democracy? That is, seen from a liberal perspective what are the limits of tolerance that a liberal society can show for 'intolerant' and 'illiberal' groups and, more importantly, why are the limits defined exactly as they are? The third and related question is what constitutes the justification for state intervention within those illiberal groups.

In order to answer the last two questions, two liberal political-philosophical approaches have been discussed: Will Kymlicka's and Chandran Kukathas'. Since both approaches give rise to problems of vagueness and underdeterminacy, at the end of this paper I have tentatively formulated three guidelines that may be of help in determining with more precision the limits of tolerance towards identity groups' practices and consequently of state intervention. The first guideline limits the harm that can be done to members of the groups and limits the ability of the group to lock them into their subculture. The second guideline prohibits harm to outsiders (in the form of far-reaching discrimination and violation of their human rights). The third limit of tolerance concerns the endangering of the liberal-democratic state itself. It seems to me that in all of these instances, state intervention is justified. By following these three guidelines, perhaps it will be possible to skirt the Scylla of 'liberal imperialism' and the Charybdis of 'non-liberal collaboration'.

Undoubtedly, it could be argued that the proposed guidelines raise so many questions that they obscure rather than elucidate the issues at stake. For example, when should one speak of 'harm'? Is this a universally valid norm or is the content of the concept culturally determined? Has the criterion of 'consent' any feasibility? Who are to count as outsiders? When is our liberal-democratic state in danger? Apart from these technico-philosophical issues, it remains to be seen whether the guidelines are of help in daily-life problems. Take the examples from the beginning of this paper. In the *hijab*-affair and the wearing of a turban, it seems to me that these 'affairs' do not violate any of the guidelines, since no harm is done and consent is implied. As to the indoctrination that seems to occur within the Scientology Movement, the harm and the consent at stake are more blurry. The topic of circumcision of girls and boys is problematic in view of the aspect of consent and also in view of its harmful effects (to a greater or lesser extent). Finally, there is the example of sado-masochist practices. Here, consent seems to be implied (in the case of adult human beings), but the topic of harmfulness is more difficult to answer. The answer to this last question largely depends on whether one would subscribe to a subjective or an objective definition of harm. It will come as no surprise that a further elaboration of these issues is called for.

In spite of these qualifications, I hope to have made clear that the three guidelines together provide a threefold qualification of Kukathas' idea of 'group sovereignty'. Crucial though this kind of sovereignty may be in a liberal state, it should never be taken as absolute and unlimited, since this would endanger the individual's freedom and eventually the state itself. Group

sovereignty may be a useful axiom, but it can never be the last word.

Notes:

1. Currently, the issue of 'group identity' is elaborated mostly in terms of 'minority rights'. In the last few years there has been a vivid debate among scholars on the status and content of those minority rights. Should we proclaim special and collective minority rights (for example, the collective right to preserve one's cultural identity) in order to protect the specific interests of minority groups or will the 'common' individual human rights framework do? In my Ph.D. thesis, *Individualism Versus Collectivism. The Concept of Collective Rights* and some other articles, I elaborated on these issues. In this paper, I have not delved into this highly philosophical, - and, as I consider it now, rather 'essentialistic' and hence, fruitless - debate on whether collective minority rights 'exist'. Nor have I elaborated on the question of whether the right to preserve one's cultural identity should be seen as an 'individual' or a 'collective' right. Moreover, the technico-juridical and political issue whether specific, collective rights are needed in order to protect the identity of minority groups will not be focused upon. The reason for passing over these issues is that they seem to me of little help in answering the main questions of this paper. Independently of whether we view the right to preserve one's cultural identity a 'special and collective right' or a 'common individual human right', in both cases we encounter a collision of rights. In both instances the same sorts of questions arise: what to do with the right to freedom of association or the freedom of religion, in cases where those rights seem to be at odds with another right (e.g. the right to equal treatment)? How to resolve this conflict between rights? Can we develop guidelines? For a similar sort of argumentation see Svensson (1979); MacDonald (1991) and Mason (1993). This seems to be Charles Taylor's starting point in his essay 'The Politics of Recognition' (1994).

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