

## **Beyond the Feminism vs. Multiculturalism Dispute: Towards a Participatory Approach**

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Draft paper, not for circulation, comments most welcome

### **I. Tensions between Gender and Cultural Claims**

*A challenging conundrum*

The upsurge of interest in multiculturalism in debates of political justice is linked to the fact that most democratic countries are nowadays confronted with demands for accommodation by various types of historically marginalized identity groups. As the ground-breaking work of political philosophers such as Will Kymlicka (1995), Charles Taylor (1992, 1993) or Iris M. Young (1990) helped to elucidate throughout the 1990s, such demands typically involve the recognition of some form of *differentiated citizenship*. Within the scholarly debate, this idea has been often interpreted as requiring group rights for certain types of minorities, thus offering a rationale for legal dispositions and public policies intended to promote the long-term viability of their cultures<sup>1</sup>. Different theories have been worked out that try to establish the moral relevance of cultural belonging, so as to substantiate the defence of group rights. Perhaps the most influential account is that of Kymlicka (1989, 1995), which emphasises the reconcilability and interdependence of autonomy and culture. Participation in what he dubs a ‘societal culture’ provides the tools for understanding cultural narratives, and this is a precondition for making meaningful choices about how to lead our lives – that is, for becoming autonomous<sup>2</sup>. Alternative accounts of group rights appeal, instead, to toleration and to the intrinsic value of pluralism embedded in cultural diversity<sup>3</sup>.

Overall, by addressing the question of the requirements of justice in diverse societies, this literature offers a new grammar to assess the grounds, moral and political, underlying some of the main struggles for justice in the world today: from the rights of indigenous peoples and linguistic and national minorities to the morality of asymmetrical forms of federalism. To many, this development is appealing: it provides a better picture of identity conflicts, offering modes of accommodation that broaden liberal ideals of freedom and equality to account for patterns of inter-

group inequalities that beyond the economic realm and mere individual discrimination.

Yet the feminist critique casts doubt on the potential implications of this revisionist trend. One central objection - as formulated by Susan M. Okin in her famous essay “Is Multiculturalism Bad for Women?” (1997) - runs roughly as follows: insofar group rights strengthen the boundaries between communities (by demarcating spaces of collective self-government relatively free from external interference), they could worsen the situation of their most vulnerable members, namely, of the *minorities within minorities*, also called “internal minorities”<sup>4</sup>. In particular, to the extent that group rights are attributed to identity groups that neglect women’s rights, oppressive practices that reinforce female subjugation in their own cultures could be implicitly legitimized. As Okin warns, the right to education has been denied to many girls and women in the name of cultural integrity; also, rules about virginity, forced marriages and even female genital mutilation have been defended as mechanisms to preserve a given culture<sup>5</sup>.

Undoubtedly, the feminist fear about the potential for oppression embedded in group rights is justified. There is a conundrum here, which Ayelet Shachar appropriately describes as a “paradox of multicultural vulnerability”<sup>6</sup>, whereby well-intentioned efforts aimed at enhancing group autonomy and cultural diversity can easily lead to a neglect of women’s rights within minority groups and make it ever more difficult to revert gender inequalities across socio-cultural lines. Hence, the charge is that measures to promote inter-group equality will end up reinforcing or even aggravating existing intra-group inequalities and subordination. Anyone concerned with *individual* freedom and equality should thus distrust theories of multiculturalism, especially those advocating the recognition of group rights involving separate jurisdictions.

This objection remains as one of the main challenges confronting liberal multiculturalist doctrines, mainly because, as I argue in this paper, the two most widespread responses to this challenge are flawed. The implications of this failure are far from negligible. Proponents of multiculturalism usually claim that minority cultures should be free to resist the attempts, typical of dominant imperialistic cultures, at “liberalising” them and continue living in ways that express their different world-views. Moreover, there is a growing consensus on the legitimacy of the demands of rights by minority cultures<sup>7</sup>. Yet to the extent that some key issues raised by the feminist fear remain elusive such trend may lead to undermine the achievements so far regarding women’s rights. Central among these issues is, of course, how to protect the rights of girls and women belonging to illiberal cultural groups which are internally organised in a non-democratic, patriarchal way. Furthermore, tensions between multiculturalism and feminism raise a crucial question regarding the compatibility of group rights and individual rights in contemporary democracies. Can both categories of rights actually coexist in a meaningful way – that is, without incorporating entirely incoherent values? If so, which criteria or standards should prevail in dealing with conflicts that, so far, appear as intractable?

### *Outline of the argument*

In the remaining discussion, I start by exploring two common modes of addressing what, for the

sake of brevity, I call “the feminist challenge”. One approach, widespread among liberal multiculturalists, emphasises the centrality of autonomy-based arguments in facing the potential conflicts and stresses that group rights should only be accorded to minorities that are generally respectful of human rights (of women and other categories of members). A second answer is provided by critics of group rights who seek to revalorise the value of toleration – without explicit recognition – within the liberal tradition. On this view, the right to exit the group is an essential tool to tackle women’s oppression.

To be sure, there are other forms of dealing with the kind of tensions described. Yet, they either tend to dismiss group interests and group rights altogether (on the grounds that they can potentially override individual rights) or, in the opposite spectrum, they are ready to accept sacrifices of individual rights when cultural survival is at stake<sup>8</sup>. By contrast, notwithstanding their disparate assumptions, the two specific positions indicated are similarly driven by a similar aspiration to reconcile the relevant intuitions that underlie both feminist and multicultural theories, accommodating them within the liberal democratic tradition. Hence, the attempt at resolving the kind of conflict outlined above should not entail undermining or sacrificing entirely one of the values (and categories of rights) at stake. This trait makes them particularly appealing to those who of us who tend to endorse the elementary concerns of justice informing both cultural claims and women’s equality.

However, my contention is that, despite their motivations, both responses ultimately fail in providing satisfactory answers to the conflict at stake, for a number of reasons elucidated in Sections II and III; as a result of this failure, we remain confronted with a competition of group rights and individual rights. Starting from this critical standpoint, the paper argues that, in order to reconcile the legitimate aspirations that underlie both multiculturalism and feminism, we need to shift the focus towards a third approach, which I call a “participatory approach”. Section IV outlines the main features of this approach, which is inspired by a commitment to intercultural dialogue, social fairness and contextualised legitimacy in dealing with cultural conflicts that may threaten women’s rights, rather than by the aspiration to a comprehensive notion of justice. In taking both pluralism and interaction seriously, the participatory approach is better rooted in the *structural* demands for democratic justice and it also bears the promise of a transformative effect of the status of women that is not based on complacent but often biased ways of judging other cultures.

## **II. The Autonomy-based Approach**

### *Group Rights and the connection between freedom and culture*

The first way of addressing the feminist critique consists of clarifying the legitimate scope of multiculturalism and, more specifically, of group rights. The idea goes essentially as follows: in order to make cultural claims and women’s rights compatible, group rights should only be accorded to cultural minorities that have no intention of denying the autonomy and basic human rights to

women (or other categories of members). This is a common liberal answer to the feminist fear and it is definitely the answer most compatible with Kymlicka's theory of multicultural citizenship. As indicated, this theory starts from an autonomy-based conception of liberalism<sup>9</sup>. In particular, the argument establishes an intrinsic connection between freedom and culture, wherein freedom is understood in terms of autonomy: the individual's ability to discover, single out and choose among different conceptions of the good life, as well as to change these choices and conceptions in light of other values or reasons. Liberals generally believe that, except in cases of harm to others, the government should refrain from interfering in this inner struggle of self-definition through individual choices and actions, which must be valued and respected.

However, as Kymlicka argues, this process does not occur in a vacuum; it usually takes place within a particular cultural context (a "societal culture", in his own terms<sup>10</sup>) which shapes and gives meaning to individual lives and projects. Cultures are thus not valuable in themselves, but because they are instrumentally crucial for freedom. Cultural belonging should thus be seen as a precondition for making meaningful choices and, according to Kymlicka, it is this value, rather than the interest of preserving cultural identity, or cultural pluralism per se, that justifies group rights. The main point, as he insists, is that people need to be respected not only as members of the political community - that is, as citizens - but *also* as members of their specific cultural community, especially when both forms of belonging are not coextensive<sup>11</sup>.

Granting group rights to minority cultures is meant to serve this latter purpose. These rights may adopt different forms, depending on the context, the type of group, its particular history and current context and so forth. They can range from mere exemptions to comply with norms that prohibit or restrict certain practices that are essential to preserve the identity of minority groups to veto powers on issues related to language rights, or territorial autonomy and different degrees of self-government. Yet their common aim is to support the particular structure that provides the relevant context of choice for members of minority cultures, thus helping to counteract the drive towards assimilation exerted by the dominant group in a given polity<sup>12</sup>.

If this connection between freedom and culture is plausible, then the second part of the argument is quite straightforward. Minorities should have access to at least the *same* resources as the culturally dominant majority in order to ensure the viability and prosperity of their cultures<sup>13</sup>. Hence, the argument also rests upon extending a conception of equality that is widespread among social liberals: the idea that the state should try to rectify inequalities that are not initially chosen. Inequalities in the access to one's own culture usually qualifies as that, and should thus be addressed in a similar way than other socio-economic inequalities<sup>14</sup>. Group-differentiated rights may help to counteract the disadvantages that cultural minorities face vis-à-vis the wider majority, thus becoming a crucial tool for inter-group justice in multicultural states.

A detailed exploration of both the assumptions and implications of this view would require a lengthy digression that I can not undertake here<sup>15</sup>. The relevant point to be made for the purposes of this work is that, according to this conception, the morality of group-specific rights ultimately emerges out of respect for individual autonomy, irrespectively of how they are conceived or legally

implemented in particular instances. Thus, these rights should never become a sort of *carte blanche* to mistreat certain categories of group members, nor to subject them to duties or unwanted roles for the sake of communal goals such as “cultural survival” that are not seen as intrinsically valuable. Such effect would surely subvert their foundations. Kymlicka’s distinction between “external protections” and “internal restrictions” is meant to spell out this limitation, providing a normative yardstick for deciding on the acceptability of concrete demands of accommodation<sup>16</sup>. Admitting the incompatibility of his own argument with some of the demands made by illiberal groups, Kymlicka argues that group rights are justified *only* as external protections - that is, in order to protect cultural minorities from the impact of majority decisions - but they should be rejected whenever they entail restricting the freedom of their members.

In sum, this is not an unbounded defence of multiculturalism. Most centrally, it cannot justify the imposition of obligations intended to cultural preservation whenever this goal clashes with individual rights and freedoms; such purpose can only be attained through the uncoerced willingness of group members to remain faithful to their traditional values or ways of live. What matters fundamentally is individual autonomy rather than cultural diversity.

#### *Critique: the group-state schism and the irrelevance dilemma*

Undoubtedly, the liberal tradition offers weighty arguments to justify such constraint; yet, this attempt at reconciling feminism and multiculturalism suffers from a number of flaws that are difficult to overcome. Perhaps the most significant one is that, despite depicting group rights and individual rights as complementary categories, rather than mutually excluding, the autonomy approach leads to downgrading the relevance of group rights altogether. In order to spell out this critique, we need to step back and consider both the presumptions and constraints associated to this approach.

To start with, proponents of the autonomy approach tend to assume that the state has a central role in granting particular rights to minority cultures<sup>17</sup>. A prerequisite for this is that the minority is recognised as such by the state - namely, as a bearer of a distinct identity with potentially legitimate aspirations to attain a particular status and rights. The state, however, might refuse to grant, *ex ante*, such recognition, as it is often the case in practice, and instead expect the group seeking to achieve an special status to identify the traits or circumstances that make it *distinct* or *authentic*, in contrast with the mainstream society. A pernicious dynamic unfolds here. With the aim of strengthening their demands of rights against the wider society (i.e., external protections), the dominant hierarchy within the group may feel compelled to engage in an internal campaign to highlight homogeneity and cohesiveness over multidimensionality and inner complexity. Such efforts may eventually jeopardise individual rights, especially if they involve exerting pressure upon the most reluctant members so that they adjust their behaviour to the set of rules or traditions that will lead outsiders to see them as a cohesive community, rather than a mere collection of individuals. At this point, the struggle for accommodation vis-à-vis the larger society might simply transform into a battle within the group,

played out by the dominant elites who might try to conceal or even wipe out internal diversity through methods that qualify as internal restrictions. Vulnerable sub-groups, such as women, are especially prone to endure a disproportionate burden for the sake of preserving what is seen as the group's *essential* identity. Their freedom may then be at risk, especially when asserting the continued existence of the group heavily depends on reproducing a particular conception of the good, or a way of life, that involves harsh control of private affairs and the perpetuation of oppressive roles. Faced with group pressures, women may be ready to accept these restrictions, conscious that their involvement and compliance is crucial for cultural survival. They might therefore accept lesser roles and forgo their freedoms for what they see as the benefit of the community, or simply to avoid being accused of disloyalty. Needless to say, this effect only reinstates the feminist unrest as regards group rights.

At this point, we encounter a conundrum of no easy resolution. By making cultural accommodation dependent on minorities producing evidence of their very existence and “unique” identity the state might in fact be encouraging the solidification of the internal power relations and thus reinforcing the illiberal traits of the group. Yet once these traits are revealed, the attribution of group rights might be rightfully questioned, and eventually denied if the normative threshold put forward by Kymlicka is applied. There is a certain irony here, so to say, which raises doubts on the practicability of the theory. For one thing: on the one hand, the state indirectly contributes in bringing about the very outcome that should be avoided, namely oppression, and, on the other hand, it draws on this outcome to dismiss the group demands of accommodation. In addition, such dynamics tend to strengthen the oversimplified view of the underlying problem which often pervades the public debate in many democratic countries; that is, as it is commonly framed: “it is either your culture or your rights”. At best, group rights will be reduced to a secondary role, if not systematically ruled out on the grounds of their impending conflict with individual rights. Such result would clearly undermine their central role within liberal multiculturalism as well as the distinctive appeal of theories such as Kymlicka's.

A second objection, which nonetheless points to the same conclusion, emerges out of concern for the fate of deep value-pluralism in the approach we are presently considering. More specifically, it questions its ability to live up to its promise of offering tools for accommodating minority cultures when, in the end, the only cultures that can be effectively accommodated are *liberal* ones - to the extent that they are seen as fully respectful of women's rights and human rights in general. The charge, put forward by Bikhu Parekh, among other scholars<sup>18</sup>, thus comes from the other pole of the feminist critique and essentially contends that an autonomy-based approach inevitably reduces cultural pluralism, and consequently group rights, to a mere façade. This is so because its reliance on thick liberal values - such as autonomy and choice - will inevitably clash with the will of identity groups that regard themselves as distant from liberal worldviews and wish to pursue ways of life and traditions not necessarily consistent with, or respectful of, individual freedom and equality. This concern will be taken up again shortly.

In short, the previous arguments hint to a main difficulty of the approach we are exploring,

namely, that it risks irrelevance in the face of reality. As a tool to accommodate the cultural claims made by minorities, group rights acquire centrality only in situations where, in fact, no much pluralism or principled conflict exists. Instead, their attribution would likely be refused when the need for these rights seems more apparent; that is, when clashes of group values and conceptions of the good are salient and the particular identity of a given group is seen as suspicious of impinging on its members freedom.

This objection, to which I will henceforth refer to as *the irrelevance dilemma*, has been nonetheless contested as overstated by liberal multiculturalists. In Kymlicka's view, for instance, it rests upon a biased sample of cases that suggest, inaccurately, that the overall approach is faulty<sup>19</sup>. Undeniably, claims of illiberal minorities do represent a normative challenge to any distinctively *liberal* theory of group rights. But the point is that both feminists and strong pluralists tend to focus on prominent, highly publicised cases – i.e., from arranged and forced marriage to genital mutilation and other cases of women's abuse, in the case of feminists - that, empirically speaking, are marginal; that is, they can hardly illustrate the ordinary type of cultural conflict faced by Western democracies. This misrepresentation pervades the debate on group rights, and leads many commentators to regard them either as dangerous (i.e., Okin's position, as well as other feminists scholars) or as irrelevant (according to strong pluralists).

To be sure, it does seem wrong to presuppose that minority cultures in the West are largely parochial reactionary groups and that most cultural conflicts involve a clash between liberal majorities and illiberal minorities. As Kymlicka contends, there is no evidence that the roots of all conflicts of culture in multiethnic and multicultural states typically lie on a principled disagreement about democracy and human rights. For instance, evidence shows that the majority of immigrants in multiethnic democracies wish to become full members of the host society and are prepared to integrate into the political system<sup>20</sup>. What they do increasingly dispute is the usual social and political expectations that they will conform (and, indeed, *ought* to conform) to such culture and, therefore, either give up their pre-existing identities altogether or confine them into the private sphere. In this context, claims of group rights essentially seek to re-negotiate the terms of integration, largely equated to assimilation, and achieve a form of recognition beyond the common status of citizenship<sup>21</sup>. Similarly, democracy and human rights are not the main focus of disagreement in the persistent conflicts between national minorities and the state in multinational democracies. Rather, the common aspiration of minority nationalist movements in places like Scotland or Catalonia is a fair redistribution of political agency. Group rights in this context are key instruments to countering the bias of government policies in favour of the cultural majority, which usually enjoys political supremacy.

Thus, to a great extent, Okin and other feminist critics of group rights are wrong to portray minority cultures as illiberal patriarchal cultures, mostly obnoxious in their treatment of women, and therefore not entitled to any form of special accommodation. Although their hostility could be justified in some extreme cases, a comprehensive rejection of group rights for minority cultures based upon this argument is simply unsound.

As for the charge of irrelevance made by strong pluralists, liberal multiculturalists might still reply that group rights are not trivial, since they remain crucial as a tool to accommodating a significant number of cultural minorities that are committed to democracy but also wish to preserve their distinct language and cultural identity.

In short, defending group rights for cultural minorities does not necessarily entail defending communally-minded groups that will misuse these rights to threaten the freedoms of their members<sup>22</sup>. If this is correct, then the irrelevance dilemma might indeed be overstated, and the impact of the feminist critique in debates about the morality of group rights is far less prominent than it is normally assumed. In fact, as Kymlicka insists, multiculturalism and feminism might be seen as allies rather than enemies in the task of making liberal societies more inclusive and free<sup>23</sup>.

### *Two additional critiques*

However, two problematic issues remain that, in my view, raise serious doubts as to whether the autonomy approach can convincingly dismiss the feminist challenge. The first difficulty has to do with the ambiguities surrounding the distinction between external protections and internal restrictions. Both concepts appear as systemically intertwined in practice, which makes the distinction ineffective to deal with the tensions between group rights and intra-group inequalities. The second problem refers to the way in which it tackles the genuine conflicts between cultural claims and women's rights that, however small in number, remain salient and have an extraordinary socio-legal impact in Western democracies.

As for the first difficulty, the two categories that Kymlicka distinguishes tend to overlap in practice because it is not uncommon that protecting the minority from the impact of the wider culture depends on adopting rules that necessarily involve restricting individual freedom<sup>24</sup>. Such need is not contingent. Here I am not thinking of straightforward cases where accommodation should clearly be ruled out when examined in the light of Kymlicka's categories – i.e. whenever a cultural group demands external protections with the intention, more or less explicit, of coercing its internal minorities into accepting certain beliefs or forms of life – but, mostly, of situations that seem to fall within the general scope of application of his theory.

Think of the debate surrounding the morality of the linguistic policies adopted by a minority culture. Public schools in Quebec or Catalonia perform their educational mission mainly in French and Catalan, respectively; while this rule might be necessary to preserve these minority languages and protect a cultural group from the pressures to assimilate into the dominant English and Spanish majorities, it remains extremely contested. Critics regard compulsory schooling in the minority language as an illegitimate restriction of the freedom of cultural dissenters and other internal minorities who would rather have their children educated in English or Spanish. Moreover, both in Quebec and in Catalonia there are parental groups who complain that compulsory education in the minority language will jeopardise the autonomy and opportunities of their children in the future. Culture, according to this argument, should be also an *object* of choice, and not only the context in

which we exercise our autonomy.

The ongoing controversy around the Muslim headscarf across Europe over the last decade illustrates the same difficulty of identifying what counts as an internal restriction and what as an external protection, in this case in a dispute involving an ethnic group. Take the case of France, where a number of local incidents involving schoolgirls of immigrant descent (mostly of North African origin) wearing headscarves in the classroom had come to be looked with suspicion since the early nineties, triggering bitter public debates<sup>25</sup>. Initially, the discussion was mainly focussed on the compatibility of this practice with *laïcité*, or secularism, a core and uncompromising principle of the French Republic involving the separation of state and religion. Throughout the 1990s, the Conseil d'Etat, the highest administrative court, ruled that wearing headscarves was compatible with secularism, unless this conduct constituted an act of intimidation, proselytism or propaganda that could be seen as an obstacle for teaching purposes, disrupting the normal functioning of schools institution. The opinion of the court was mainly based on the need of balancing the individual rights that came into conflict in this dispute: freedom of religion, expression and conscience of the students, on the one hand, and individual freedom and equality, on the other. However, by the end of the decade, the number of schoolgirls wearing headscarves increased, as did the public perception that this conduct posed a threat to the secular state. Finally, in March 2004, the at the time President of France, Mr. Jacques Chirac, signed into law a text that prohibits students in public elementary schools and high schools to wear symbols or clothes that display conspicuously – *ostensiblement* in the original formulation, as opposed to discreet - their religious affiliation<sup>26</sup>.

International and national politics undoubtedly contributed to the idea that the more tolerant solution backed by the *Conseil d'Etat* was mistaken, and that a general law had become necessary to deal with the matter<sup>27</sup>. The French authorities at the time, however, insisted in presenting the so-called “veil law” as a logical consequence of secularism and as a necessary piece of legislation to preserve the core Republican values, in particular the principle of equal treatment and access to opportunities. Thus, efforts were made at avoiding a dispute in terms of “multicultural” conflict or “group rights”. Officially, both the parliament and the government insisted that the law was not against Muslims, and that the different religious beliefs of students were fully protected by the law, yet certain forms of expressing them were inappropriate in the classroom and had to be confined to the private sphere.

But the core of the matter entailed far more than freedom of religion. The official discourse obscured the fact that the presence of headscarves in schools was seen as the beginning of a movement to demand a singular status for French Muslims, which was perceived as an unacceptable threat to social cohesion. The decision to ban the headscarf was also strongly influenced by a number of influential intellectuals and feminist scholars who saw this garment as potentially threatening to women’s equality and rights within the Muslim community. The central message of the law, albeit implicit, was not merely that God and public education should remain separate but, also, that in a secular state there is no place for official identity recognition.

Going back to the central point I wish to make, the headscarf affair also shows the complexity

of discerning whether a particular demand falls under the external protections category or should instead count as an internal restriction. Surely, the official discourse placed the accent on secularism and did not fully seize the widespread view that granting exemptions to the Muslim community is wrong because it entails tolerating gender discriminatory patterns (i.e. internal restrictions). Yet the affected community, including a significant number of Muslim girls and women, interpreted that the law was not merely regulating the limits of religious freedom but imposing specific constraints on the expression of their identity, that is, their particular way of being “French”, in the public sphere. On this account, the ban reinforced a unidirectional mode of belonging to the polity against which external protections would be justified.

Last but not least, the tendency of the autonomy approach to relegate group rights to a lesser role is fostered, rather than mitigated, by the broad lens through which both the attribution of group rights and the relations between minorities and the state are commonly envisioned. To be sure, it is usually assumed that the state has the power to classify a minority as “liberal” or “illiberal” and target its internal practices with various sanctions or restrictions in the name of protecting the individual rights of its members. This can degenerate into a bias against cultural minorities, for it is not uncommon that the most powerful group in society treats other groups or cultures as less developed or inferior, reaching conclusions grounded mostly on prejudices in order to justify paternalistic measures. This occurs not only as a result of state distrust towards minorities. As the examples above show, it is often complicated to decide a priori whether a given claim should count as an external protection or as an internal restriction. Minorities are then charged with the burden of the proof – i.e., the need to reassure the state that they won’t abuse their special status. But this becomes a sort of *probatio diabolica* (the proof of a future “non event”) that most minority groups will simply be unable to meet.

The second difficulty relates to the issue of whether the autonomy approach offers a satisfactory framework to confront the kind of conflicts arising in circumstances of deep diversity – what is oftentimes called “agonistic” pluralism. That is, situations where there is an enduring disagreement that is irreducible to a broader set of encompassing principles upon which rival contestants could converge for purposes of reaching some sort of consensus and overcoming the conflict. Certainly, as Kymlicka argues, it is fallacious to assume that the majority of the so-called “conflicts of culture” revolve around disputes of this sort. Under closer scrutiny, culture claims and women’s equality can often be reconciled. Yet it would be equally misleading to assume that this is *always* the case – namely, that all such conflicts can be resolved by reducing them to a set of non-rival, commensurable values, which provide enough room to preserve the essentials of both multiculturalism and feminism.

This is a point that Chandran Kukathas makes against Okin critics. In his view, by diminishing the significance of the tensions she stresses, they systematically avoid the challenging task of establishing priorities when genuine conflicts arise<sup>28</sup>. At times, he contends, we are compelled to take sides, choosing among one stance or the other and assuming real tradeoffs. This is inevitable because liberal principles, while subject to different interpretations, are not infinitely flexible and

cannot accommodate *all* cultural claims and practices.

Think of illiberal religious communities living in the midst of liberal democracies such as the Amish congregations in Pennsylvania. Their claims are mostly aimed at preserving the survival over time of the group. To this end, they wish to retain a significant control over its members, regulating in detail all spheres of life – i.e., their private conduct, diet, social relations, clothing and so forth. For a long time the state allowed them to educate their children exclusively at home, until 1972, when the American Supreme Court reduced significantly this exemption and obliged them to send their children to school, even though a number of exemptions were still justified on the grounds of cultural preservation<sup>29</sup>. In this and other cases of illiberal isolationist religious communities, the goal of cultural survival has nothing to do with enhancing the choices of members, which are not necessarily valued. The delegation of regulatory powers from the state to the group might become crucial to fulfil such an aspiration, so that the internal affairs are mostly handled within the community relatively free from external interference.

The Amish case is certainly not unique. We find similar exceptional regimes in many countries that work as mechanisms to deal with similarly illiberal groups. Ultra Orthodox Jews, for instance, enjoy similar exemptions in many democratic countries that are meant to facilitate a sectarian religious education that, in fact, reinforce gender divisions. Group rights in these contexts are mainly intended to let these groups alone, to put it plainly, so that they can survive and thrive in the margins of society, in a milieu of relative seclusion<sup>30</sup>.

Neither the Amish nor the Ultra Orthodox Jews try to conceal their interest in preventing the exposure of their children to alternative worldviews, which, in time, might lead them to question their beliefs and values and to move away from the community. Female members obviously face even more obstacles if they want to choose an alternative form of life, for girls usually learn that their identities are mostly valued instrumentally, to the extent that they facilitate the life of their sons and husbands. Their capacity to choose is seriously impaired by their upbringing. It is hard to deny that feminism and multiculturalism stand in deep tension here, and the pressing question, as Kukathas rightly says, is which view should prevail. To be consistent with its own foundations, an autonomy based justification of group rights should definitely rule out the accommodation of illiberal cultures, for it clearly favours freedom over group survival.

Now, the priority of freedom in this approach should not be necessarily taken as an unqualified preference for state intervention in order to face the problem of women's oppression within cultural minorities, although Okin openly supports this course of action<sup>31</sup>. Some states might have good reasons to try and reach a compromise and accommodate a number of illiberal groups<sup>32</sup>. But whatever the reasons that lead to grant (or maintain) a particular regime of accommodation for an illiberal minority, such scheme could qualify as a *toleration scheme*, involving the idea of a discretionary concession, which is significantly different from recognising a genuine right. The question thus remains as to whether the bottom line of the autonomy approach is far too narrow to accommodate, as a matter of principle, genuine cultural pluralism. Conflicts raised by demands of deeply illiberal groups may indeed be empirically exceptional. Yet by no means are these trivial cases, since they are

usually critical in defining the scope of plausible social arrangements in the face of conflicting values and in the self-definition of the polity.

A second approach to the dilemmas arising from the conflict between multiculturalism and feminism conveys a very different answer that, in part, might contribute to overcome the limitations of the present approach, especially, the risk of mistaking justice for liberal doctrine<sup>33</sup>. The next section examines its main traits.

### **III. The Toleration Approach**

#### *Neutrality, multiculturalism and non interference*

One key element of liberal doctrine is neutrality. As a normative standard, neutrality acts as a constraint to state action, shaping the realm of liberal politics and defining the grounds for political legitimacy; above all, neutrality imposes the state an obligation to refrain from intervention aimed at promoting particular conceptions of the good in order to ensure that all citizens have equal opportunities to pursue their particular ways of life<sup>34</sup>. Starting from this ideal a number of contemporary political theorists have stressed the potential of toleration, as a political virtue connected to neutrality, to accommodate cultural minorities and other group-based identities. Chandran Kukathas (2003) is a prominent advocate of this position. As an alternative strategy to dealing with the conflict between feminism and multiculturalism, the toleration approach – as I will hereafter call it - draws on this classical liberal doctrine to promote the fair coexistence of different cultural groups without jeopardising the neutral role of the state and the pre-eminence of individual rights. Its advocates argue that this stance remains as the best standpoint to deal with conflicts of culture.

Indeed, against proponents of group rights, who usually argue that ‘difference-blind’ liberalism is harsh to diversity, defenders of toleration contend that this criticism is unfair. Although there is a great deal of variation in the form the argument takes, the version that will be scrutinised here begins by vindicating the claims of culture made by minorities as largely justified<sup>35</sup>. Hence, the focus in this section is on a proposal that, by and large, accepts the moral relevance of cultural claims but *not* necessarily of cultural (group) rights; also, this is an account that fully acknowledges that difficult cases will come forward where cultural claims will actually conflict with feminist demands and, in such situations, some trade-offs are inevitable. The toleration approach thus lacks the strong conciliatory drive that characterises the previous one. Its proponents press the argument in the following way:

Ever since its inception, liberalism has embraced a distinct stance over the legitimate domain of state coercion. The ideal of toleration, implying equal respect for all doctrines and conceptions of the good, is a central embodiment of the Kantian idea that persons should be treated as free moral agents, and as equal sources of valid ends. Liberal states are not allowed to restrict the realm of individual freedom, unless interference is intended to preserve a system of equal liberties for all<sup>36</sup>. At

the outset, state neutrality, which in most modern formulations follows from the previous reasoning, demands a duty of “non-involvement”, or of “non-interference”, as it is usually conveyed. In some accounts, the importance of this standard derives from one particular aspect of individual freedom, namely, freedom of conscience - as I will explain further, this trait distinguishes Kukathas’ theory from alternative defences of toleration stressing its role in preserving diversity. But regardless of its ultimate justification, the main thesis is that, given the complexities of current conditions of multicultural coexistence, it has become ever more crucial that the state avoids coming out as an entity that interferes in the clash between majorities and minorities, encouraging particular cultures. It is mostly through a commitment to neutrality that its role as a common entity representing “the people” and not just, or specially, one particular group, can be fulfilled.

On this account, the emergence of various forms of public recognition of cultural identities (especially, the attribution of group rights) is seen as a deviation from this scheme, a move that might lead to relinquish the liberal legacy altogether, including the aspiration to a common citizenship<sup>37</sup>. Critics also contend that the active involvement of the state in supporting cultural attachments leads to the fragmentation of society. The solution, they insist, is to transcend, rather than to affirm, cultural diversity. It is important to emphasise that both the moral relevance of the claims of cultural minorities and the significance of identity attachments are not underrated in this approach. On the contrary, its advocates generally claim that toleration is crucial *precisely* because those claims and values matter, and matter fundamentally.

Within this general line of thought, Chandran Kukathas has developed a distinctive position that aims at tackling the potential clash between multiculturalism and feminism without endorsing a comprehensive notion of justice<sup>38</sup>. A central contention throughout his work is that the most plausible account of liberalism is rooted in the value of toleration, which, in his view, is ultimately embedded in liberty of conscience<sup>39</sup>. In a culturally diverse society, Kukathas claims, this is the most fundamental freedom. His position, however, does not automatically entail *appreciation* or *respect* for diversity, not even an inter-subjective disposition to engage into a dialogue with others. Mere indifference towards the customs, practices or forms of life that are being tolerated is enough<sup>40</sup>. A free society, in Kukathas’ account, is depicted as made up of a collection of individuals (and, so, authorities) associated under laws which recognize their freedom of association “as, and with whom, they wish”<sup>41</sup>. This is, for him, the most basic freedom, as it allows the co-existence of a variety of human arrangements that corresponds to the legitimate diversity of ends that is central in a free and open society. Here, the understanding of the liberal state is that of a political agreement, an “association of associations” that avoids taking as its concern or judging its members’ life. If, on the contrary, public authorities act as a sort of an ultimate power determining what is morally acceptable “liberalism is lost”<sup>42</sup>.

Kukathas illustrates these conclusions through the metaphor of the good political society as a ‘liberal archipelago’, composed by different societies or communities “which is neither the creation nor the object of control of any single authority”. Authorities in this model “function under laws which are themselves beyond the reach of any singular power”<sup>43</sup>. That is why a liberal polity must be

able to accommodate multiple authorities, whose legitimacy derives from the acquiescence of their respective subjects<sup>44</sup>. Yet, precisely because individuals should not be coerced to act against their inner conscience, the state should also provide them with the means to resist and repudiate authority. This, Kukathas thinks, can be done by allowing people to establish a new authority or situate themselves under a different one, rather than through interfering in the internal affairs of associations in order to enforce specific standards of justice<sup>45</sup>.

This position has a strong anarchist leaning, and it thus differs considerably from other forms of liberalism rooted on the value of autonomy – and more precisely of the view defended by scholars who, like Kymlicka, operate more evidently within the Rawlsian framework. Firstly, the argument defended by Kukathas is at odds with that framework in that it endorses a conception of state and society with fuzzy boundaries, namely, as an open society with a multiplicity of authorities that qualify as legitimate as long as they are able to obtain the support of their members. Since a good society is not a unified entity circumscribed by fixed borders, social unity plays a minor role<sup>46</sup>. Secondly, the state also plays a lesser role in this picture; it needs to accept the jurisdictional independence of other authorities and to refrain from imposing common standards to those who are not inclined to accept them<sup>47</sup>. Thirdly, Kukathas version of political liberalism avoids appealing to particular moral commitments linked to a comprehensive conception of justice<sup>48</sup>. In his view, a political order that tries to accommodate diversity cannot be based on such a conception if it wants to succeed in commanding the acceptance of all. And in a free and plural society, groups can only realistically agree on abiding by norms that tolerate disagreement<sup>49</sup>. Finally, Kukathas' theory is primarily concerned with the question of the legitimacy of authority, rather than with that of justice<sup>50</sup>. Moreover, his account presupposes that devising a uniform and shared conception of justice for diverse societies is a futile aspiration, unless such conception is deprived of most of its substantive content, in which case it “ceases to be a theory of justice at all”<sup>51</sup>. People can rightly dissent in their judgments of what is good and what is bad and Kukathas contends that a political order should avoid trying to dissolve this pluralism.

There are other contributions that point to a similar direction. For instance, Galston also calls for an account of liberalism that takes diversity seriously. The commitment to what he dubs “the Diversity State” entails “a strong system of tolerance”, which has as a key component “a cultural disestablishment, parallel to religious disestablishment”<sup>52</sup>. Galston recalls that the crucial strategy for the historical expansion of liberalism was the recognition of difference through regimes of mutual tolerance. Moreover, he distinguishes between two concepts of liberalism, one based on autonomy and another based on toleration and claims that, “properly understood, liberalism is about the protection of diversity, not the valorisation of choice”<sup>53</sup>.

But regardless of these different justifications, to support a version of liberalism that prioritises freedom of conscience and political toleration, instead of autonomy, has important consequences for how to best deal with the potential conflicts between cultural equality and women's rights. To start with, in its different variations, the toleration approach leaves no room for group rights and the institutionalisation of collective autonomy. According to its proponents, not only these are

unnecessary instruments to accommodate diversity and protect minority cultures, but its adoption would amount to a drastic modification of liberalism, distorting its core values. To attain those ends, they maintain, simply depends on interpreting consistently the meaning of laicism and toleration (“live and let live”) beyond the religious sphere, a classical strategy that presumably remains underestimated in debates over multiculturalism<sup>54</sup>. Freedom of association stands as the crucial value in this model, unsubordinated to a higher one and, therefore, non-state organisations play a central role<sup>55</sup>.

Admittedly, the scope of this approach is limited. Above all, it does not guarantee the *integrity* or *survival* of minority cultures over time, since there is no room for external protections or for any sort of public measures intended to prevent individual assimilation into the majority culture. Only their members’ perseverance in making the necessary co-operative efforts to preserve and transmit the meaning of certain values and traditions to successive generations, together with the capacity of associations to attract new supporters, can ensure this end. The vigour of cultures, and of cultural pluralism in itself, will thus depend on the strength of the associations, for this is a model that aspires at privatising diversity.

Yet this constraint is not seen as a flaw. Just as liberals maintain that social inequality arising from voluntary transactions between the holders of the same rights is fair, so too is cultural inequality derived from competition in the ‘cultural market’. In exercising their basic freedoms, individuals must be able to choose the option that they see as most attractive. We may regret that multiple individual choices led, over time, to the decay of some cultures or ways of life. But to the extent that this outcome results from the exercise of individual liberties, it cannot be seen as unfair, and so the state should abstain from interfering. Kukathas thus suggests a “politics of indifference”<sup>56</sup>, where associations, and therefore collectives, are not valuable in themselves<sup>57</sup>. Precisely to stress this point, which tells his proposal apart from those endorsing the notion of group rights, Kukathas claims that his is a “pure” or “minimalist” multiculturalism, one that it is “so tolerant it will even accept within its midst those who are opposed to it”, and yet “will not give special protection or advantages to any particular group or community”. That is, in his own terms, a version of multiculturalism “without fear or favour”<sup>58</sup>.

In short, although the toleration approach rules out state intervention that is meant to protect cultural minorities, it does seem to leave ample room for accommodating their claims. Furthermore, to the extent that the primary concern is with the most extensive accommodation of diversity possible, its advocates argue that this model enhances pluralism and respects cultural diversity to a greater degree than rival proposals, including those that defend cultural rights. In particular, proponents of toleration are inclined to admit that a case can be made for illiberal groups that uphold values that clash with autonomy and, particularly, with women’s autonomy. This is because the likelihood of intra-group injustice (and, in particular, of women being unfairly treated) is assumed as a inevitable on this account.

But how to tackle the threat to women's rights that might emerge from tolerating a variety of – liberal and non liberal – cultures? Kukathas' position in this point is straightforward. Despite he does take feminist concerns seriously (including the risk that female acquiesce to certain self-degrading cultural practices stems from socialisation into inferior roles rather than from a proper exercise of freedom<sup>59</sup>) he nevertheless argues that, when there is a conflict between feminism and multiculturalism, the latter should prevail. This is a rather unsurprising conclusion. It predictably follows from the premises of a theory that starts by acknowledging that non-liberal ways of life must also have the chance to survive. The internal structure of some cultural groups might therefore reflect illiberal values<sup>60</sup>, among them the idea, typical of patriarchal societies, that women's position should be confined to traditional roles. Moreover, Kukathas takes a sceptical stance on the issue of equality both between persons and between groups. The pursuit of equality, he claims, is unattainable without sacrificing diversity; hence, "if diversity is to be accepted, then equality must be abandoned"<sup>61</sup>.

However, as a model for managing diversity, the toleration approach is not boundless. Its defenders do acknowledge some restrictions, which they typically relate to preventing harm to others, as this is a general limitation to liberty, which is the ideal that sustains the entire theory. Yet, as it is well known, the interpretation of Mill's constraint is far from obvious and proponents of toleration tend to draw a thin line that allows to accommodate a wide range of illiberal norms and practices, including practices that involve women's subordination, on the grounds of their implicit consent. Thus, many internal restrictions become acceptable harms, so to say, for the sake of accommodating as many ways of life as possible. In the case of Kukathas' theory, his reluctance to allow state intervention is also linked to a general distrust on the state ability to succeed in preventing the sort of lamentable cultural practices and general disadvantages facing women that preoccupy feminists. More often than not, he thinks, public intervention leads to greater harm – i.e., abuse of power - because it ignores the real interests of the relevant subjects and imposes the will of a more powerful majority<sup>62</sup>.

So, in the toleration approach, the trade-offs between multiculturalism and feminism tend to impinge on the feminist side<sup>63</sup>. Yet the bottom-line requirement that most proponents of toleration share is the emphasis on the so-called "right to exit". Since, in principle, the state has no duty to enhance a substantive conception of autonomy *within* the different groups or associations, it must guarantee that dissident members have the chance to leave the group. This solution seems to reconcile cultural diversity – including illiberal ways of life – with liberty. Moreover, this is, in Kukathas' view, the logical corollary of freedom of association<sup>64</sup>. To be sure, the right to exit the group, to dissociate, mitigates the eventual possibility that certain cultural groups become, in his own words, "islands of tyranny in a sea of indifference"<sup>65</sup>. It includes not only the possibility for dissenters to join another group but also the right to create a new one, so that every individual has the opportunity to live in forms that express her inner conscience instead of being obliged to remain

in associations against her will<sup>66</sup>.

*Critique: On the role of the state and the difficulty with exit rights*

Overall, the toleration approach seems promising; it offers a mode of tackling the challenges of multiculturalism that appears to overcome the main flaws affecting the previous approach while preserving the core of the liberal tradition. Yet, its eventual success depends, first, on how plausible the depiction of the role of the state in diverse societies is, and, secondly, on whether the right to exit is a convincing tool to prevent intra-group oppression.

Let us first consider the issue of the role of the state. As indicated, most formulations of the tolerance approach begin with the following assumption: to the extent that the liberal state adopts a neutral stance as regards to culture, parallel to the idea of religious disestablishment, the diverse cultural groups will have the opportunity to flourish and prove their capacity to attract supporters in the context of the civil society. Otherwise, by enhancing or restricting particular cultural groups or practices, the state would be institutionally privileging some groups to the detriment of others and, consequently, individual interests would not be equally treated.

Yet this picture of cultural neutrality is highly misleading, mainly because it sets an aim that is impossible to attain. As Kymlicka and others have argued at length – in my view, convincingly – modern democratic states cannot help but making decisions that have an impact in the cultural landscape within their borders<sup>67</sup>. This constraint is not merely contingent. Take, for instance, education. Since the aftermath of the liberal revolutions, education is no longer a privilege of a handful of men but has become a right, whose fulfilment is allegedly one of the most important functions of the state. There are a number of reasons why this evolution has taken place and have generally meant a vast social improvement. But this positive assessment cannot conceal the fact that most states have historically used this tool to disseminate a particular language and culture (usually, the majority one) as the “national” or “official” one, which would in time become hegemonic, thus discriminating other linguistic group<sup>68</sup>.

The toleration approach fails in recognising this fact; its proponents tend to rely upon a ahistorical understanding of liberalism, one that basically ignores or distorts the enormous impact of ethnicity and culture in building today’s democracies. Claims of neutrality are thus misleading. For one thing: to a significant extent, cultures and languages exist with their different traits and connotations as a consequence of state interventions, that is, by means of law and policy. The point, however, is not merely one of ignoring the influence and weight of historical facts. Rather, the problem is that cultural intervention is nowadays unavoidable, and therefore the dichotomy ‘interference versus *laissez faire*’ is fallacious when applied to the cultural realm<sup>69</sup>. As Kymlicka also argues, while it is possible to think of a totally secular state, no political structure today can be entirely “acultural”<sup>70</sup>. Decisions must be made concerning the content and language of education, of the public media, the policies of immigration and citizenship, the distribution of electoral boundaries, of public symbols and so forth. Culture also pervades constitutional agreements and

legal rules. Whenever members of the majority culture (irrespective of their political affiliations) have a dominant role in making those decisions, cultural minorities will systematically lose out.

In order to elucidate the critique better, take again the case of linguistic minorities. If the state identifies a given language as the official one – that is, state-sponsored and widely taught in schools as well as commonly used in public institutions – then its native speakers will clearly have a significant advantage and more opportunities to spread the culture associated with it, as compared to those whose mother tongue is different<sup>71</sup>. The toleration approach, however, tends to overlook this effect and, instead, it assumes as unproblematic the existing linguistic hegemonies. Such an assumption leads to clear inconsistencies and double standards. As indicated, claims of linguistic minorities are usually constructed as mere preferences, rather than expressing a legitimate interest, whereas the relevance of majority languages and cultures is taken for granted often on the basis of their supposed instrumental value. Hence, for minority language speakers, assimilation into the majority language is perceived as more rational, as it might increase their chances of mobility and communication. For this reason, as long as the possibility of assimilating into the dominant language exists, it is not uncommon to argue that linguistic minorities should bear the costs of preserving their own languages, thus equating their preferences to expensive tastes.

But this discourse ignores two fundamental aspects. On the one hand, language is not merely a means of communication. In the modern world, it is also a vital identity factor for individuals as well as a means for cultural survival. The possibilities for minority cultures to survive and evolve are fundamentally linked to its ability to use its functioning language in the public domain<sup>72</sup>. Hence, in order to accommodate linguistic minorities, the state needs to undertake positive steps that go beyond allowing the use of minority languages in the private realm. On the other hand, a duty of non-interference by the state cannot be the solution to accommodating minorities, since regulating the public sphere has an inevitable cultural dimension. Linguistic pluralism thus raises far more complex issues than whether or not people should have certain linguistic rights derived from their individual rights to, namely, privacy or freedom of speech<sup>73</sup>. By overlooking this critical aspect, the toleration approach misrepresents the demands of group (linguistic) rights, setting as a consequence unfeasible standards.

Let us now turn to assessing the relative force of the right to exit. As indicated, proponents of toleration usually grant this right a central role, depicting it as a less intrusive remedy in facing conflicts between multiculturalism and feminism. The idea goes as follows: so long as an alternative affiliation exists for dissenters, neither cultural diversity nor women's freedom are genuinely at risk; hence, there is no need to sacrifice one of the values at play. The underlying assumption here is that cultures can be conceived as *objects* of choice. The role of the state mainly consists of ensuring that individuals have the chance to leave their identity groups, and this is still compatible with preserving a non-interventionist stance in case of conflict.

However, on closer scrutiny, the right to exit can hardly resolve the problem of intra-group injustice and it also fails to offer an adequate response to the feminist critique<sup>74</sup>. This is so for the following reasons:

First of all, leaving the community rarely counts as a *real* option for the women who are the prime candidates to exercise this right<sup>75</sup>. This is a widespread feminist objection that holds even more strongly when exiting entails breaking out completely from oppressive patriarchal cultures. As Okin argues, relying on exit rights is problematic because those who would seem to need them most are also those least likely to be able to use them<sup>76</sup>. This might simply be because they are unable to conceive or imagine the possibility of leaving their communities<sup>77</sup>. Oppression, especially when it is embedded in the group structures and in its everyday practices, generates deep constraints in the freedom and well-being of its victims, influencing their self-perceptions and the way they act and understand their social world. Women who have been raised in patriarchal cultures are not only particularly vulnerable, but, in fact, they typically play a central role in reinforcing and perpetuating the very structures and patterns that contribute to their own domination<sup>78</sup>. They normally do so unreflectively, by internalising the ideology that stigmatise or degrade their identities. In the end, women may find it simply unthinkable to view themselves apart from their enduring attachments and social roles (religious, social, domestic and so forth).

Because the psychological effects of socialisation into oppressive groups are profound, it might be truly difficult for women to resist or challenge demeaning practices, let alone doing it by leaving the group. The fact that abusive and discriminatory practices often take place with their acquiescence helps explain that, even in cases where exit might appear as relatively easy from the outside, from the inside the choice is less plausible.

Take again the case of illiberal groups such as the Ultra Orthodox Jews living in big metropolises like New York or London. Members in these groups live side by side with a widespread liberal majority culture, so we might think that it is relatively easy for dissenters (male or female) to abandon the group. Actually, exit doesn't even involve travelling far, migrating or seeking a refugee status. Often, it is simply a matter of moving next door and starting a new life. Orthodox Jewish women in Golders Green, for instance, encounter in their daily lives non-Jewish female Londoners in their high street, their local NHS health centre, parks or cafes. In other words, they are constantly exposed to alternative ways of life, and yet exit might still be unthinkable for them, simply because their upbringing and education had seriously impaired their self-consciousness as free persons. A girl raised in a Jewish Orthodox family has probably spent her formative years in a context (home, neighbourhood, school) where she is taught that the primary purpose of female members of her group is to procreate and raise their children, passing on the central values of the community and contributing to the survival of her identity group. Probably everything in her family and community dynamics discourages her from establishing significant relations with non-members, even if they live side-by-side. Additionally, denominational schools tend to reinforce the values of the community and dissuade them from challenging traditional female roles. Girls are then more likely to be withdrawn from school at an early age and receive pressures to marry and start a family within the community. Exit might then simply become inconceivable, as hard as moving to a distant culture or fleeing an oppressive political regime.

So, there are many barriers to exiting the community. The right to exit presupposes agency and

its exercise certainly marks the end, not the beginning, of a conscious process of reflection that conveys the capacity for dissent. Yet the socialisation of girls and women into patriarchal groups often results in a serious impairment of their moral agency. This is a critical shortcoming of Kukathas' theory, to the extent that it disturbs its very foundations.

Secondly, even if they consider exit as an option, women who have been brought up in sectarian or fundamentalist groups are usually ill-equipped to live independently and succeed in starting a professional career and integrating into a liberal competitive society. Not only their level of literacy and education tends to be lower as compared to men, but they usually own less property and are financially dependent. Besides, women who are mothers will rarely consider exit as a real choice if it entails leaving their children and families behind. Fears of ostracism by family and friends, coupled with alienation in the mainstream culture and lack of material resources to survive may strongly dissuade them from leaving their communities. They then might simply readjust their preferences, adapting them to the real options they have and embrace their position within the community<sup>79</sup>.

In sum, Kukathas offers a remarkably thin conception of exit, since his theory simply assumes that people are free to leave the group without considering what specific measures could diminish the risks and costs of leaving. Moreover, this theory tries to disentangle those impediments from the core idea of freedom, so as to maintain that they should be borne by group members who choose to leave<sup>80</sup>. Such position is not based on a naive perspective of exit (actually, Kukathas fully acknowledges the hardships associated with leaving one's own culture) but it springs from his general distrust towards the state and the minimalist role it plays in his theory<sup>81</sup>. In addition, if exit is conceived as a genuine right, it is unclear why women – or any other member of a minority who decides to leave to group - should bear all the costs associated with exercising it. In fact, all liberal states seek to minimise and redistribute the costs of exercising individual rights (and even duties, such as paying taxes), for if the sacrifices are too burdensome it is questionable to claim that rights exist at all<sup>82</sup>. So, in the absence of appropriate pre-conditions for their exercise, individual rights, including exit rights, can easily become a chimera. The problem with Kukathas approach is also that it endorses a negative conception of rights that many regard as implausible.

In order to counteract this objection and preserve the core of the toleration approach some of Kukathas fellow "associationist" liberals endorse a more robust conception of exit rights coupled with an active role of the state in removing the obstacles that hinder their exercise. The goal is typically to minimise the costs of leaving, so that it becomes a feasible option and can therefore count as a sufficient protection for dissenting women.

Indeed, this is the focus of much debate among proponents of toleration. For instance, Galston argues that "exit rights must be more than formal"<sup>83</sup>, and that it is a legitimate concern of the state to allow state protections to secure this right<sup>84</sup>. Similarly, Brian Barry argues that freedom of association is a fundamental right, but he clearly states that a legitimate concern of public institutions is to ensure that members of associations have "real exit rights", which means that "excessive costs" should be reduced<sup>85</sup>. At the very least, the state can act against strong internal coercion as well as

reduce the difficulties of integrating into another culture – i.e., sponsoring language courses, social housing, medical care, etc<sup>86</sup>.

We could go on to analyse the pros and cons of different approaches to reducing the costs of exit. Yet in my view, the assumption that other cultures should be regarded as “objects of choice” (as a panacea to face the feminist critique) remains faulty *even* if most obstacles to exit could be effectively removed. For one thing, the question remains as to why dissenting women (or men) should be confronted with this drastic decision in order to overcome oppression or marginalisation within the group.

Indeed, there are at least two additional problems with conceiving the right to exit as a key tool to tackle the conflict between multiculturalism and feminism:

First, by making it the main option for dissenters, it confers tacit recognition to the most powerful members within the group, granting them an unequal privilege in shaping the character and social self-understanding of its collective identity. But this understanding presupposes an essentialistic representation of culture, one that is essentially configured by the particular practices and meanings that are deemed core by the group’s dominant authorities. Such a depiction inevitably contradicts Kukathas’ own rejection of culture in primordial or substantial terms, as a set of practices and meanings based on common essences or historical character<sup>87</sup>. But for this to be so – that is, to avoid the charge of essentialism and recognise the hybridity of culture - dissenters must have the chance to remain within the group and challenge its perceived cohesiveness and values. By ignoring this point, Kukathas’ politics of toleration thus gestures towards a politics of resignation that is by no means neutral. Not only it takes cultural structures and dynamics as a *fait accompli*, but it misrepresents dissenters as outsiders. Dissenters, however, usually see themselves as insiders, and therefore claim their status as members. Most commonly, exit is pictured as the very last option, and is certainly not their main preference.

Secondly, a further perverse effect of the strong reliance on exit rights is that the group faces no pressure to engage in internal change in order to accommodate dissent or prevent injustice<sup>88</sup>. And, what is worse, the failure in exercising that right is taken as a sign of acceptance of - or acquiescence with - the practices and ethos of their cultural group. The (tolerant) state is therefore authorised to turn a blind eye on the group’s internal practices.

This second remark points to a final difficulty with this approach, which affects the very foundations of the theory of toleration we are assessing. As explained, one central element of this theory is the depiction of cultural groups as associations. The right to exit thus seems a logical corollary of such conception. But cultural identities, and even modern states, are something other than contingent associations connected by a formal agreement whereby members can freely join or leave<sup>89</sup>. In fact, choices play a very marginal role in membership both to the state and to the type of cultural group that is of interest here: most of the time, these are ascriptive identities rather than chosen ones. The focus on freedom of association and on exit rights contradicts this basic fact, assuming a contractualist approach that misrepresents the character and influence of cultural groups on human well-being and identity, therefore leading to misguided solutions.

Going back to the case of women as vulnerable members of illiberal communities, in my opinion, they can hardly be portrayed as persons that once decided to join these groups and are free to leave at any time, even if they could count on the state to facilitate this option. Cultures are not sport clubs. People are usually born and socialised in them without previous consent, often unconsciously. For this reason, women who are marginalized within their own communities are mainly interested in having the chance to transform their cultures *from within*. Indigenous women, for instance, want to be recognised as indigenous *and* as women. Only some people, often in extreme circumstances, consider leaving.

In sum, the right to exit cannot be the *main* device to balance cultural claims and individual rights. It is not only unfair that women who dissent are left to bear the high costs involved in leaving their communities, but the whole approach enhances the unequal privilege of those who hold the power within each cultural community. The proposal, then, fails to live up to its own expectations. While it is true that liberalism can be seen as a tradition of thought that supports diversity, as Kukathas himself recognises, diversity in itself has only an instrumental - non intrinsic - value, to the extent that it contributes to preserving a world free from domination.

#### **IV. Towards a Participatory Approach**

For the reasons discussed in the preceding sections, both the autonomy and the toleration approaches are ill-equipped to confront the clash between multiculturalism and feminism. Under strict scrutiny, their accounts of the conflict tend to obscure some of its central elements and, to this extent, they are unattractive. Likewise, the solutions they propose either impose a comprehensive moral view that fits badly with the need to achieve political arrangements in the face of deep diversity, or they exhibit a libertarian view of governance that not only oversimplifies the conflicts at stake but also restricts significantly the role of justice and rights in their resolution.

In this last section I argue that, in order to reconcile the crucial insights that nonetheless both approaches make, we need to shift the focus towards a third, more participatory vision. I want to press the following idea: in taking cultural diversity as well as both individual and group rights seriously, the participatory approach offers a compelling model that can help defuse the aforementioned critiques. Perhaps more crucially, as an alternative form of tackling the type of conflict that concerns us here, it is better equipped to meet the demands for democratic justice in multicultural divided societies. This is, on the one hand, because it reduces the structural vulnerability of both cultural minorities and their own internally subjugated members; and, on the other hand, because it helps to generate, or restore, the kind of trust that is central for dealing with conflicts of culture through forms of social cooperation based on mutual recognition and equal respect. In addition, by emphasising the need to build communicative structures and procedures that foster participation - both within and across cultural communities - the participatory approach bears the promise of a transformative effect on the status of women that is not based on complacent and often biased ways of judging other cultures.

In what follows I will outline the main traits of this third perspective and highlight its strengths in contrast to the two dominant ones. I will then focus more specifically on how to approach the tensions that arise between demands by cultural minority groups for greater recognition and collective accommodation and calls for gender equality that are largely conceived as universal and incorporated as individual rights in most liberal democratic constitutions. Finally, the last part advances briefly the implications of this re-conceptualisation for the role of law in controversies over contested cultural practices.

*The participatory approach: towards a politics of engagement*

As we have seen, oftentimes, practices and arrangements that are the object of protection through policies of multicultural accommodation stand in tension with women's rights. Yet the participatory approach engages with such tension in a pragmatic manner that departs significantly from the toleration and autonomy paradigms. Most centrally, it acknowledges that societal and cultural divides regarding interests and values may be pervasive, outlining a framework for tackling actual conflicts that tries to be responsive both to the irreducible phenomena of diversity and fragmentation, on the one hand, and to the systemic interconnections between individuals and groups in shared (territorial and non-territorial) spaces, on the other. Such unavoidable links – that proponents of toleration tend to ignore - inevitably call for inter-group dialogue and the search for common points of encounter.

A *democratic turn*, as we might call it, stems from this latter emphasis, which is central in this proposal. It explicitly attributes political agency to members of minority cultures and seeks to enhance inter- as well as intra-group fairness through fostering inclusive forms of participation and responsive communication. Vulnerable cultural groups, as well as their internal dissident members, are given a central role in building strategies for managing disagreement and thus become significantly empowered - as opposed to being simply *protected* by the state, as in the autonomy approach. To be sure, this approach assigns a very discreet task to mainstream state institutions and regulations, especially to substantive legal rules (“hard law”, such as constitutional norms) that seek to guide courts in resolving conflicts in a final way. Instead, “soft law” and alternative means of conflict mediation and resolution become essential in fostering a more egalitarian frame for contestation and infusing an ethos of mutual recognition. In other words, law plays a central role in establishing adequate processes and forums of discussion, rather than in seeking to tame the conflict and ultimately dissolve disagreement.

In short, the participatory approach urges a *politics of engagement* in order to deal with conflicts over contested practices that typically emerge in the context of claims for accommodation raised by minority cultures. Above all, this stance involves reframing those conflicts in a way that stresses aspects that are concealed by the alternative approaches discussed. Thus, the main concern of the participatory approach is neither to assess the compatibility of those claims with liberal doctrines, nor to justify the relative merits of state intervention aimed at ensuring the prevalence of women's rights over group rights, or vice versa. Instead, this position prioritises questions such as the

following ones: which procedures for mediating the sort of tensions that prompt concrete conflicts could count as fair?, who should be allowed to participate in deliberating over the permissibility of certain practices?, which are the specific constraints that participants should observe when they engage into dialogue?, what regimes of accommodation might be acceptable in a given context?, and so forth. In other words, this approach puts the accent on identifying the type of strategies and forums that can help reconstructing and managing group divides, rather than on deciding the substantive issues at stake in abstraction of the context where these arise.

Let me elucidate further the differences with the two approaches previously explored. To begin with, the participatory approach acknowledges that, in multicultural societies, conflicts between cultural groups may be pervasive and lead to irreducible dilemmas. This is especially true when they are rooted in incommensurable values or conceptions of the good, as in some of the cases described above, where the identity of religious groups is bound up with the rejection of autonomy and choice. Nevertheless, conflicts may be *equally* genuine and similarly intractable whenever “culture” is invoked more ideologically, so to say, as a defensive retreat for historically oppressed groups that resent the encroachment of the state or because their minority languages or political institutions are threatened by the dominant culture, even if their values are not so distant.

Surely, advocates of toleration would endorse this starting point<sup>90</sup>, in contrast with proponents of an autonomy-based conception of liberalism, who, as explained, tend to relativise the relevance, normative and practical, of genuine cultural divisions and of the claims of illiberal groups<sup>91</sup>. Yet, rather than taking divisions as static and reclaiming the jurisdictional or territorial independence of the different cultural groups, the participatory approach calls for a meaningful interaction between them, one that involves the need to engage in forms of cooperative dialogue that foster mutual understanding and eventually lead to compromises, if not to full agreement based on moral consensus. Such shift away from non interference and towards a more demanding form of intergroup relations responds, above all, to the inevitable interdependence and interconnection between groups in an increasingly globalised world. In addition, the participatory approach recognises that the relative magnitude and intractability of cultural conflicts cannot be decided *in advance* – that is, before dialogue takes place and concrete disagreements are fully elucidated and expressed in a dialogical space. In fact, most of the so-called “cultural conflicts” can neither be fully understood nor successfully handled if we ignore the history and patterns of behaviour that shaped the current interaction of majorities and minorities – i.e. forms of power and governance expressing patterns of domination, grievances due to past oppression, struggles over natural resources, etc. Not only is this complex interplay central to comprehending and tackling current divergences<sup>92</sup>; it also has a deep impact on the self-perception of members of minority groups, who oftentimes describe their identity in opposition to the dominant culture. Thus, in settings of historically subordinated statuses and systematic institutional infra-representation of particular minorities, primordial individual identifications with a certain cultural identity may be more linked to a shared experience of subjugation and economic deprivation (such as the experience of colonialism suffered by indigenous peoples) than to the adherence to a coherent set of beliefs and values<sup>93</sup>.

By stressing internal boundness over interconnectedness, the toleration approach downplays the relevance of issues related to power, status and history, which usually permeate cultural conflicts and are essential to grasping their roots. Likewise, the general rule of non-interference leans heavily towards the privatisation of these conflicts, a strategy with severe constraints. For the reasons put forward in section II, the depiction of dissenters as outsiders (instead as members), coupled with the defence of the right to exit as the main tool against internal oppression, is not just misguided, but it also reifies culture and overlooks the fact that cultural customs and traditions are fluid and contested, rather than solid and static, thereby misrepresenting what is at stake in many cultural conflicts. Indeed, as Monique Deveaux contends, oftentimes, on-going intra-cultural disputes lie at the heart of those conflicts, too<sup>94</sup>. Yet the toleration approach fails to depict contestation as intrinsic to culture and equate mere resignation or acquiescence of dissenters with consent, which is a further distorting effect in a narrative that underestimates the difficulties to exit. For it is simply wrong to assume that those who stay within the group approve the authoritative “official” version of its core values and ethos, consenting to the permissibility of unfair practices<sup>95</sup>.

The same bent towards essentialism is also reinforced by the autonomy approach, although in this case this is triggered by the perverse effects of the group-state schism in which this position is based and, more specially, by the significant power inequalities affecting these relations. As indicated earlier, this approach presupposes that it is in the hands of the liberal state to grant group rights to its cultural minorities. A given group, however, should establish itself as a “distinct” culture in order to justify its claims for special accommodation vis-à-vis the majority culture. Minority leaders are thus impelled to adopt a defensive attitude that, more often than not, is strategically oriented to reinforce the most purist versions of the culture in an essentialist fashion. Once again, this overstates the internal observance and coherence of practices and customs, as well as the rigidity of inter-group boundaries.

In addition to implying that the state determines the terms of accommodation, proponents of autonomy also tend to presuppose that state laws and its jurisdictional system play a fundamental role in settling disputes over contested practices. The state thus retains the power to delimit the limits of tolerance; it can classify a cultural minority as “illiberal” and restrict its internal practices or target them with legal sanctions, often in the name of protecting its most vulnerable members and preserving the integrity of individual rights. The preference for legislation and the use of punishment as a preventive mechanism are particularly noticeable when conflicts are framed in terms of “it is either your culture or your rights”<sup>96</sup>. The prevalent assumption is that there should be clear primacies in case of conflicting rights<sup>97</sup>.

In contrast, the participatory approach reacts against the omnipresence of the state and assumes that the political community is under permanent construction by all its members. It overtly recognises that there is a vanishing line between politics, law and culture and tends to rely on a pragmatic mode of accommodation that involves intercultural dialogue and mutual recognition. In tackling conflicts of culture, this approach takes into account the power inequalities that usually impinge on the relations between the state and cultural minorities, urging to pay closer attention to

the particular context in which tensions arise, instead of gesturing towards grand design and general solutions. More generally, this stance is reluctant to support state intervention through the exercise of “official” government, especially if the vulnerability of minorities is associated to forms of past oppression that were created or sustained with its complicity; also, whenever members of minority cultures are significantly underrepresented in mainstream democratic institutions and/or suffer from economic marginalisation and poverty. Under these circumstances, it is only reasonable that minorities distrust state intervention, questioning the neutrality of legislation affecting issues of culture and the impartiality of official mechanisms of conflict resolution.

Hence, rather than deciding which should be the fundamental tenets in a liberal society, the main focus of the participatory approach is placed on enhancing inter-group and intra-group dialogue and other pre-conditions to dealing with conflicts of culture satisfactorily. The question of which type of procedures can help to redefine the relations between majorities and minorities in divided societies (so as to revert the situation of special vulnerability that usually affects the latter) acquires priority.

On the other hand, there is a *prima facie* commitment to assume the legitimacy of group-differentiated rights as human rights (that is, not merely as positive rights that may, or may not, be granted by the state), which conveys the need to move beyond mere tolerance in order towards granting explicit recognition to cultural minorities. Against what advocates of toleration argue, the lack of group-specific rights is taken as a significant form of interference. This is so because, for the reasons explained, the dichotomy between interference and *laissez faire* contains a fallacy when applied to the realm of culture. The pluralist approach acknowledges this important point, as it tries to be responsive to unjust distributions of power and enable cultural minorities to exercise a form of public autonomy – instead of simply conceiving them as “private” associations. The recognition of group rights confers agency and formally equalises groups, preventing minorities from systematically losing out in the defence of their interests and values<sup>98</sup>. The emphasis on commonality and social unity is certainly reduced, but this is not necessarily conducive to a separatist mentality, as critics maintain. For the reasons laid out before, the participatory position highlights interconnectedness and mutual accommodation, which assumes that a relation can be regulated by competing layers of rules but it nonetheless remains a *relation*.

#### *Conflicts of culture, women’s rights and the precautionary constraint*

Yet how does the participatory proposal respond to the feminist critique? At the outset, it is important to note that the risk that some identity groups might tend to misuse group rights with the aim of oppressing some of its members is not a sufficient reason to categorically reject this category. This is not because this approach ignores the weight of this problem, but because it assumes that the same potential dysfunction affects other institutionalised groups, including states: they, too, might act or legislate in forms that endanger the individual rights of citizens; yet except in extreme circumstances, such as genocide or mass violations of human rights, states are able to retain their

self-government powers vis-à-vis outsiders. If we leave aside prejudices about minority cultures, the same should hold for them, since this is an approach that avoids privileging some groups over others.

Secondly, it is important to bear in mind that individual rights and freedoms can also be abused in a way that seriously undermines the exercise of other rights that are particularly important for women; yet, again, the solution is not to deny the legitimacy of these rights altogether. Of course, there should be ways to prevent and repair such abuses. But, again, hard questions related to the legitimacy of external intervention through more or less coercive means should be equally relevant both for the state and for minority cultures.

Now, the recognition of group rights cannot become an excuse to evade inter-cultural cooperation, since the participatory approach stresses the essential interconnection between groups, and the complex multidimensional and hybrid identities that it generates. Hence, what characterises this stance is a particular way of approaching conflicts of culture that confront majorities and minorities. This model promotes contestation, internal and external, relying on the substantive value of procedures, instead of imposing hegemonic solutions that derive from the need to establish clear primacies between rights – individual or collective – that derives from the autonomy model. Flexibility becomes a virtue in a model that emphasises the need to engage in a public debate about each other practices and aspirations with a reflexive purpose. The clash between feminism and multiculturalism should thus be addressed contextually, drawing attention to the historical background that conform the circumstances of the conflict and taking into account that law - including constitutional rights and freedoms – is also a cultural product that results from usually problematic social and political processes.

In this context of dialogue, there is a general constraint on the judgments that participants make: a *precautionary requirement*, as I will dub it, which translates into a call for modesty that is meant to prevent the risk of judging other cultures with double standards. By and large, this constraint tries to counteract the propensity of dominant cultural groups to judge the practices of other cultures more harshly than their own. As a result, superficial judgment based on culturally dependent reasons that are alien to the minority culture ground the prohibition of particular customs or practices – in my view, this bias has proven decisive in decisions to ban the Muslim headscarf in many European countries<sup>99</sup>. Fairness between groups is jeopardised in such cases, especially if we take into account that the line that divides liberal from illiberal groups tends to be blurred.

Consider again the case for gender equality. Unfortunately, inequalities that surround gender relations are deeply ingrained in all cultures. Despite the human rights discourses and the prohibition of discrimination, women fail to enjoy the same status and well-being as men almost everywhere in Western democratic societies. Here, too, inequalities tend to be institutionally embedded, deeply rooted in rules, cultural symbols and decision-making processes, so that different gender roles are reproduced that serve as carriers of female subordination<sup>100</sup>. Nevertheless, the majority culture tends to look at its own institutions and practices upholding gender subordination with significant self-indulgency and adopts a stricter scrutiny that leads to justify blunt interference and high doses of

paternalism when it comes to restricting potentially discriminatory customs of minority cultures.

The double-standards in judging this need are apparent. For example, the fact that most mothers in rich democratic countries, such as Germany, work only part time, if they work at all, is normally regarded as a matter of choice – i.e., as an expression of their consent to assuming child-bearing and domestic tasks to a notably higher degree as compared to their male partners. Even if this decision has obvious trade-offs that men do not need to face, such as renouncing to a successful career or becoming economically more dependent, there is hardly any call for coercive intervention intended to force a fair division of domestic work. On the contrary, it is commonly assumed that a meaningful exercise of autonomy can lead to loss of freedom and that the individual is the only author of her own life. In contrast, there is a tendency to regard women in other cultures who are undertaking similar roles as subjugated, responding to adaptive preferences and in need of protection. Likewise, in liberal societies, we tend to depict women living with male partners who openly admit having other relations as free and responsible for their choice, whereas we attribute the practice of polygamy in immigrant cultures to the mere acquiescence of women to vast restrictions in a context of male domination. However, in liberal cultures, monogamous marriage often becomes a tool for men to dominate women in the private sphere in liberal cultures, as the high levels of inequalities and of domestic violence show.

Feminist critiques of group rights tend to ignore the precautionary requirement, too. In her well-known piece “Is Multiculturalism Bad for Women?”, Okin acknowledges that women in liberal democratic countries are subjected to various forms of subordination, but she describes these practices in a benevolent, less threatening, manner<sup>101</sup>. In contrast, she focuses on extreme practices such as female genital mutilation, forced marriage or the so-called “cultural defence” to excuse rape within marriage when she refers to minority cultures, as if these practices were the *defining* traits of these cultures. Overall, we are left with the impression that recognising group rights inevitably leads to accepting those awful practices and therefore we need to choose between protecting minority cultures or protecting women. This, in my view, has been the same misleading approach in decisions to ban Muslim headscarves recently taken in many European countries.

But this conclusion is too hurried, precisely because the dilemma it presents is fallacious. Not only does it ignore the previous point – that is, that majority cultures contain discriminatory practices, too, and are still able to retain their rights– but it leaves many questions over the legitimacy of less obviously harmful practices open. For the reasons laid out before, cultural disputes do not always reveal incommensurable values, and in any case what a particular conflict involves cannot be decided in advance, without taking into account the opinions of the parties involved. Instead, Okin simply assumes that the practices she identifies as inherently wrong should be banned, concluding that the state “has no more need to consult with the women of such group that it need consult with slaves before it insisted upon their emancipation”<sup>102</sup>

Similar examples abound, also beyond the feminist literature. The precautionary requirement tries to avoid this condescending leaning towards paternalism. It entails a general attitude to refrain from direct involvement in the affairs of minority cultures intended to protect women (or other

internal minorities), unless extreme events or hideous practices take place. The participatory approach does rest on a general presumption in favour of regarding women as autonomous agents, which implies avoiding superficial judgment about false consciousness or indoctrination whenever we assess the morality of unfamiliar customs that might look suspicious. This presumption is particularly important in contexts of emergent racism or xenophobia against minority cultures, to the extent that they often bolster degrading images and stereotypes of these groups.

Although the approach I am presenting here justifies such constraint in order to guarantee fairness and impartiality between cultures, there are also other reasons, pragmatic and not so pragmatic, that could justify the precautionary requirement. More obviously, in circumstances of deep inequalities between groups, external intervention might turn out to be counterproductive, aggravating the conflicts. This is simply because minorities will see this interference as biased, an attempt at subjugating them further<sup>103</sup>. The situation of women within the community might worsen as a result, especially if there is a defensive retreat to conservatism<sup>104</sup>. Therefore, the priority in these cases should be to revert the situation of economic and political vulnerability of the group, which will probably incite women emancipation as a transformation from within, rather than as an imposition from outside<sup>105</sup>.

Summing up, the participatory approach rejects the main strategies put forward by the autonomy and the toleration approaches to deal with the problem of women's oppression within minority cultures. In cases of conflict, voice, instead of interference or exit, provides the best answer. Institutionalising forms of public deliberation that demand the participation of members of the relevant cultural groups about the justification of their internal practices becomes central in this model. The goal is to visualise the conflict in all its complexity and multiple dimensions.

To this end, cultural disputes will sometimes need to be recasted as *intra*-cultural, instead of *inter*-cultural, especially when practices are called into question from within, rather than from the outside. It is not uncommon that conflicts emerge and spread out because some members of the minority culture challenge a given interpretation of a practice or custom, seeking the support of the wider society and its institutions<sup>106</sup>. The participatory approach also acknowledges this crucial point – that is, that many cultural conflicts convey the existence of on-going intra-group disagreements, which reveal the contested nature of culture. For this reason, the participation of internal minorities in the fora or procedures established to institutionalise inter-cultural dialogue and tackle specific conflicts is the key safeguard in this approach. There should be no privileges for the powerful within the group. In contrast with the toleration approach, there is an explicit recognition of dissenters as insiders<sup>107</sup>. Hence, women's active involvement in this deliberative framework is crucial, especially if conflicts involve allegations of gender oppression, because it minimises the risk of misrepresenting an alien culture, offering a monolithic view of their members. It also bears the promise of a transformative effect of their own status *within* their group, which will undoubtedly be more effective than change imposed from the outside.

Of course, the mere presence of women in public forums may do nothing to shape the outcomes of decision-making processes. Admittedly, this approach does not ensure any particular

outcome (even less a *liberal* one), nor even that cultural disputes are resolved in a conclusive manner. In fact, there is the possibility that they might ultimately remain unsettled, because processes devised to confront them might only yield contingent minimal agreements and commitments. However, as stressed above, the main aim of a participatory approach is not to dissolve diversity, and thus there is no preference for the type of unified, final solutions that characterise dominant liberal approaches – i.e. we either accommodate or prohibit a given practice or right. The aspiration is more modest: to obtain fragmentary arrangements that can be reasonably accepted by the groups involved. Such arrangements might be merely based on pragmatic or political reasons, rather than on moral ones, and yield only provisional solutions. Yet the politics of engagement that this model supports encourages the revisability of agreements, adding flexibility into intercultural dialogue.<sup>108</sup>

Even if the prospect of an open-ended process that ultimately fails to settle definitely a given conflict might sound unsatisfactory, my contention is that the participatory approach retains considerable advantages. By reframing tensions in a way that favours democratic responses, cultural disputes appear as less intractable and the trade-offs we nonetheless face are far less problematic than those that alternative approaches need to assume. Its normative appeal emerges out of the recognition of the other (individuals and collective) as an equally valuable source of claims, interests and opinions in contexts where the exercise of public authority needs to be especially justified. It is also an approach that relies on the substantive value of procedures, emphasising the intrinsic worth of on-going inter and intra group dialogue, its relevance to mutual understanding and non domination, as well as its transformative potential of the relations between groups.

#### *The Role of Law in the Participatory Approach*

Finally, let me briefly hint at the role of law in this approach. Proponents of the autonomy approach, as well as liberal feminists, commonly express a preference for state legislation and the use of coercive legal means to target illiberal cultural practices. The very idea of looking at these disputes through a “rights in conflict” prism assumes the necessity of establishing clear priorities. In contrast, the vision of law in the participatory approach emphasises its role in promoting social dialogue, participation and inter-group trust, rather than its coercive and integrationist dimensions. This position aims at expanding the conventional construction of legality and the unitary narrative of the legal system – where norms have a unified common source of formal validity flowing from the state’s authority. Law is key in providing a space for contestation and consensual forms of normativity, thus limiting arbitrary exercises of public authority. Therefore, this is an account that gives greater weight to procedures than to outcomes, extending the meaning of legality beyond formal, state devised, rules. The turn towards some form of legal pluralism (involving multiple sources of normativity and sites of constitutional authority that interact without domination) is the corollary of an approach that recognises group rights as well as the intrinsic relations between law and culture.

To be sure, since no overarching set of principles can be presupposed, law’s dynamics, rather

than its statics, becomes central. What counts as “law” in order to assess particularly contested practices is not something “pre-given” to the cultural conflict and the contradictory revealed interests; rather, law is seen as *process* and rules as in the making. Both their binding character and legitimacy ultimately derives from the fairness of the process itself, rather than from the fact that they are sanctioned by the official authority of the state expressing a common source of formal validity. On this account, law is also a means for trust building in the face of serious motivational and cognitive deficits that affect inter-cultural relations<sup>109</sup>. However, the right of internal minorities to remain in their cultures, be perceived as members and have a voice in deliberations over disputed practices cannot entail the *obligation* to stay. The law should obviously protect the right to exit of dissident members, designing effective external protections that enable them to exercise this right. The principle of non domination, which is crucial in the participatory approach, could also justify some explicit prohibitions as limits to *all* cultures – such as the banning of practices that have irreversible effects and a strong discriminatory impact on the most vulnerable members, such as clitoridectomy, forced marriage, or child marriage. Yet the point is that this approach confers a strong priority to change *from within*, and to the transformative power of dialogue in improving the situation of women across cultures as well the pervasive distrust between majorities and minorities.

## V. Conclusion

Summing up, the participatory approach aims at promoting intercultural dialogue, instead of isolationism, but it also assumes that dialogue might not *necessarily* lead to mutual understanding and full agreement on a principled basis; rather, in addressing the feminist fear, its aspirations are far more modest: to seek the grounds for negotiation and compromise, rather than full consent, in non-ideal circumstances. Communication needs to respect a precautionary constraint, which is meant to preserve the values of fairness and respect for the other, including *the other within*, whose membership in the culture also needs to be acknowledged.

This approach also faces a number of problems that need to be addressed. Central among them is the question of whether this shift of perspective does indeed rest on more inclusive foundations than competing approaches, or whether, on the contrary, it merely recreates a liberal democratic worldview on another level. I cannot attempt to counter this challenge now. Yet I would still argue that the stance defended here is more pragmatic and thus more integrative of non-liberal cultures, because it falls short of endorsing the type of thick substantive requirements typically defended by both liberals and deliberative democrats.<sup>110</sup> In so doing, it acknowledges that pervasive conflict and fragmented citizenship might be the norm, rather than the exception, in multicultural settings. It also recognises cultural conflicts as political, and thus not always linked to deep moral disagreements<sup>111</sup>, and that competition for resources, resentment for past wrongs, etc. underlie many cultural disputes, and the procedural rules that frame the space for contestation should allow these reasons to come to the surface. Only the elucidation of the deeper reasons behind many contested practices can promote mutual understanding, impartial judgment and, perhaps, consensus.

Finally, exit rights remain important in this approach, but their role is clearly secondary; they act as the last resort, rather than being conceived as the panacea to minimise oppression and justify the extended system of toleration that Kukathas defends. The value of autonomy is not dismissed either; yet the participatory approach recognizes that most individuals want to develop their moral capacities within their cultural groups, rather than be protected from the outside through external rules aimed at transforming their culture, often without sufficient knowledge of its values, conventions and traditions. The emphasis on a form of intra-cultural dialogue that depicts dissenters as insiders embodies this basic contention.

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<sup>1</sup> I have discussed the concept of group rights and the dilemmas surrounding the idea of differentiated citizenship in N. Torbisco Casals, *Group Rights as Human Rights*, Dordrecht, Springer, 2006.

<sup>2</sup> Yael Tamir (*Liberal Nationalism*, 1993, Princeton UP) and Joseph Raz (*Ethics in the Public Domain*, Oxford, Clarendon Press, 1994) among others, have defended similar arguments.

<sup>3</sup> See, for instance, Joseph Raz (1994); Charles Taylor (“The politics of recognition”, in *Multiculturalism and the Politics of Recognition. An Essay by Charles Taylor*, ed. A. Gutmann, Princeton UP, 1992).

<sup>4</sup> Leslie Green, “Internal minorities and their rights”, in *Group Rights*, Toronto, University of Toronto Press, 1994; for a general discussion: Avigail Eisenberg and Jeff Spinner-Halev (ed.) *Minorities within minorities. Equality, Rights and Diversity*. Cambridge UP, 2005.

<sup>5</sup> Susan M. Okin, “Is Multiculturalism Bad for Women?”, in *Is Multiculturalism Bad for Women?*, Ed. By J. Cohen, M. Howard, and M. Nussbaum, Princeton UP, 1999 (originally published in the *Boston Review* 22, 1997)

<sup>6</sup> Ayelet Shachar, “The Paradox of Multicultural Vulnerability: Individual Rights, Identity Groups and the State”, in *Multicultural Questions*, ed. C. Joppke and S. Lukes, Oxford University Press, 1999, 87-111.

<sup>7</sup> On the grounds of this conclusion, see Kymlicka, *Politics in the Vernacular*, Oxford University Press, 2001

<sup>8</sup> This position is commonly associated with the communitarian tradition and with cultural relativism. In contrast with liberalism, they are less concerned with the separateness of persons and tend to prioritise collective goods and ends. I have addressed this contrast as regards to the justification of cultural rights in Torbisco Casals 2006

<sup>9</sup> Kymlicka (1995)

<sup>10</sup> By “societal culture” Kymlicka means a territorially concentrated culture that is usually centred around a common language that is used in public and private life, rather than a culture based on shared religious beliefs or customs. Participation in a societal culture is, according to Kymlicka, what makes autonomy and choice meaningful. See Kymlicka (1995; 2001, p. 25).

<sup>11</sup> Kymlicka (1995, 127).

<sup>12</sup> For two different categorisations of group rights, see Kymlicka (1995) and Jacob T. Levy, “Classifying Cultural Rights”, in *Ethnicity and Group Rights, NOMOS XXXIX*, ed. by Kymlicka and Shapiro (1997, 22-66), New York University Press.

<sup>13</sup> Even acknowledging this connection, it is possible to claim that access to any societal culture –not necessarily *one’s own* culture, but the majority one, for example – would be a sufficient guarantee, as some critics have pointed out. Yet this is a weak objection. Even if gradual assimilation was assisted by the state and was turned into a *real* option, it is unclear why members of minority groups should be pressed into giving up their cultural or linguistic identity and bear the costs of integration into another cultural group. Assimilation can plausibly be construed as an object of choice, but should not be seen as a *duty*. I have defended this argument in Torbisco Casals, 2006, 169-174.

<sup>14</sup> See Kymlicka (1995, 109-110).

<sup>15</sup> I have defended a notion of group rights that is linked to liberal ideas about freedom and equality in Torbisco Casals

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(2006); on the dispute over the concept of group rights, see P. Jones, "Human Rights, Group Rights and People's Rights", *Human Rights Quarterly*, 21, 1999, pp. 80-107

- <sup>16</sup> Kymlicka distinction between internal restrictions and external protections is formulated in Kymlicka (1995, 35).
- <sup>17</sup> Examples. Common assumption beyond this approach, too.
- <sup>18</sup> B. Parekh, *Rethinking Multiculturalism. Cultural Diversity and Political Theory*, Palgrave, 2000; cite others
- <sup>19</sup> See Kymlicka's response to Okin in "Liberal Complacencies", in *Is Multiculturalism Bad for Women* (1999)
- <sup>20</sup> Evidence provided by Kymlicka (1999) and Kymlicka and Banteng (2004), "Do Multiculturalism policies erode the welfare state?", in P. Van Parijs, *Cultural Diversity versus Economic Solidarity.....*
- <sup>21</sup> The primary goal then is to transform the character of the public sphere and of the institutions and practices that dominate the life of the political community, which are often biased in favour of the majority culture. *Add recent data.....*
- <sup>22</sup> Kymlicka (2001, 21). As Kymlicka writes, "the overwhelming majority of debates about minority rights are not debates between a liberal majority and communitarian minorities, but debates amongst liberals about the meaning of liberalism".
- <sup>23</sup> Kymlicka Liberal complacencies (1999)
- <sup>24</sup> Several critics have pointed out this problem. *cite*
- <sup>25</sup> I have recounted the chronology of events and explored this controversy in France in Torbisco Casals 2006, 209-214.
- <sup>26</sup> Officially, Article 141-5-1 No. 2004-228 of the National Code on Education. Although the law also applies to the wearing of the Jewish skullcap (or *kippa*), the Sikh turban and to any Christian cross that is too visible, most commentators acknowledge that it was mainly aimed at ending the increasing numbers of Muslim girls attending public schools with their heads partly covered. See, for instance, Judge (2004), Kramer (2004).
- <sup>27</sup> The aftermath of September 11 exacerbated fears of radical indoctrination of French Muslims by Islamic networks, and then the unanticipated results of the first round of the French Presidential elections of 2002 came about, with Jean-Marie Le Pen, the extreme right candidate for the National Front, shockingly winning a second position with an anti-immigration discourse.
- <sup>28</sup> Kukathas, "Is Feminism Bad for Multiculturalism?", *Public Affairs Quarterly*, vol. 15., no. 2, 2001.
- <sup>29</sup> *Wisconsin v. Yoder*, 406 U.S. 205 (1972). To this day, Amish parents can remove their children from school at an earlier age than that stipulated by the law. Indeed, they were exempted from abiding by the general law that makes education compulsory until the age of sixteen. Other courts, domestic and international, have decided on similar cases, where the underlying problem has to do with the compatibility of individual and group rights. In 1970, the Canadian Supreme Court also decided on the legitimacy of the power held by the Hutterite Church over its members (*Hofer v. Hofer*, 1970, SCR 958). Likewise, the UNCHR confronted a similar case in *Sandra Lovelace v. Canada* (1977).
- <sup>30</sup> Thus, as in the headscarf case, such demands raise questions that go beyond the interpretation of freedom of religion, involving a debate on the morality of what Spinner-Halev dubs "partial citizenship" statuses, based on reasons of cultural defence. Spinner Halev, *The Boundaries of Citizenship*, Johns Hopkins UP, 1994.
- <sup>31</sup> The liberal state, Okin thinks, should actively intervene to protect women from being victims of cultural practices that violate their rights. See Okin, "Feminism and multiculturalism. Some tensions", *Ethics* 108, 4, 1998, 676. It is unclear, though, whether by intervention Okin means coercive legal intervention via criminal law. This point remains ambiguous in her writings.
- <sup>32</sup> As Kymlicka himself stresses (1995, 164), it is one thing to identify the moral grounds for a liberal theory of multicultural justice and another one to impose this theory. This is a crucial clarification. Although the autonomy approach would consistently lead to deny group rights to illiberal communities, other considerations may urge to accommodate these groups: avoiding hardening of the conflict, lack of state legitimacy to impose changes, compensation for past injustices, etc..
- <sup>33</sup> See, for instance, Parekh (2000).
- <sup>34</sup> The centrality of state neutrality as a political virtue is common to the most influential contemporary liberal theories. Scholars such as Dworkin, Rawls and Ackerman invoke this as a standard to assess the legitimacy of political and legal decisions. *Citations....*
- <sup>35</sup> Note that if the opposite was true – that is, if claims of culture were viewed as unreasonable, or not fundamental enough to be taken into consideration in assessing the relative fairness of laws and institutional schemes - then the

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debate between multiculturalism and feminism would not involve a genuine conflict. The logical avenue would be to systematically prioritise the overriding interests of individual women. Note, too, that, as a political virtue, toleration does not entail that the state should be neutral, or take a hands-off approach, in relation to *all* expressed interests or goods, but only of those that are essential for freedom. It is important to remind that a moral theory of rights aims at accommodating only basic interests or needs, and not mere secondary preferences. Which are precisely those fundamental interests or needs is of course contested. But if we depart from the idea that cultural claims only express secondary preferences or “expensive tastes”, then the state should not necessarily tolerate them as a principled matter

- <sup>36</sup> As it is well known, Mill’s limit of harm to others plays out as a limit to this sphere of individual liberty. This key exception raises complex issues as to what types of activities or actions can be regarded as harmful, but I will circumvent this debate here.
- <sup>37</sup> Liberal citizenship is largely defined in terms of inclusion into the political community. As far as the legal status is concerned, it denotes a direct and unique political relationship between the individual and the state; so, all citizens stand in the same relationship to the state and have the same rights. To the extent that group rights entail the recognition of asymmetries and differentiated statutes, they seem to threaten this ideal of universal incorporation. For a discussion on the limitations of this account, Iris M. Young, “Polity and Group Difference: A Critique of the Ideal of Universal Citizenship”, *Ethics* 99 (2), 1989; and *Justice and the Politics of Difference*, Princeton UP, 1990.
- <sup>38</sup> The following remarks are mainly based on his *The Liberal Archipelago* (2003), which builds on the main arguments he had developed in earlier works, especially in Kukathas: “Cultural Toleration”, in *Ethnicity and Group Rights* (1997, NYU Press, 69-104 “Liberalism and Multiculturalism. The Politics of Indifference”, *Political Theory* 26, 1998, 686-699.) and also, “Is Feminism Bad for Multiculturalism?”, *Public Affairs Quarterly* 2001.
- <sup>39</sup> This is so, Kukathas claims (2003, chapter 2), because the central feature of human nature and conduct is the commitment to the demands of conscience rather than rationality or self-interest.
- <sup>40</sup> Kukathas (2003, 23).
- <sup>41</sup> Kukathas (2003, 19).
- <sup>42</sup> Kukathas (1997, 94, 92).
- <sup>43</sup> Kukathas (2003, 8, 22).
- <sup>44</sup> Kukathas (2003, 25).
- <sup>45</sup> Kukathas (2003, 25).
- <sup>46</sup> Kukathas explicitly argues that the assumption of a close society only begs the question of how diverse peoples can live together under conditions of freedom. See Kukathas (2003, 6).
- <sup>47</sup> See Kukathas (2003, 31, 32).
- <sup>48</sup> Kukathas (2003, 16-17).
- <sup>49</sup> Kukathas (2003, 100).
- <sup>50</sup> This is a major difference with mainstream contemporary political theory, as Kukathas himself acknowledges. He offers different reasons to justify this approach, the main one is that, to his mind, the main question in political philosophy is about power rather than about justice. Kukathas (2003, 5, 7).
- <sup>51</sup> See Kukathas (2003, 6).
- <sup>52</sup> W. Galston, “Two concepts of Liberalism”, *Ethics* 105, 1995, 524, 528.
- <sup>53</sup> Galston (1995, 523). However, Galston’s normative premises differ substantially from those underlying Kukathas’ theory. More significantly, he insists in the need to enforce a civil order and a basic constitution in order to make state unity and cultural diversity compatible, whereas Kukathas’ account allows dissident groups to reject the authority of the state altogether. See for discussion Galston, *Liberal Pluralism. The Implications of Value Pluralism for Political Theory and Practice*, Cambridge UP, 2002, 15-38. On his concept of ‘expressive liberty’, see Galston (2002, 28). In addition, at the core of Galston’s view lies the idea that diversity should be protected as an outcome of what he dubs ‘expressive liberty’; in contrast, Kukathas rejects the view that diversity is a value in itself. See Kukathas (2003, 29, 32)
- <sup>54</sup> Certain deviations from this standard are sometimes justified, but only transitorily in order to make them fully effective. Group-based measures such as compensatory policies or affirmative action in relation to education and jobs, are not *prima facie* ruled out. But the case for these measures tends to be made in contexts where the duty of state neutrality (understood as non interference) has been previously breached; for example, when a government has been actively involved in practices of oppression of certain groups.
- <sup>55</sup> Kukathas (1995, 238-239; 2003, 5, 75-77, 95); Galston (1995, 531-533; 2002, 9-110)

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- <sup>56</sup> Kukathas (2003, 15).
- <sup>57</sup> Kukathas (1995, 238-239; 2003, 5, 75-77, 95); see also Galston (1995, 531-533; 2002, 9-110).
- <sup>58</sup> See “Anarcho-Multiculturalism: The Pure Theory of Liberalism”, 38; nuance: Kukathas is not primarily worried about fairness but legitimacy.
- <sup>59</sup> Kukathas, 2001, 9.
- <sup>60</sup> See only Galston (2002, 29, 56); Kukathas (2003, 24-25; 93).
- <sup>61</sup> Kukathas (2003, 229). Note that this, too, shows the profound discrepancy between this approach and an autonomy-based conception of liberal multiculturalism
- <sup>62</sup> Kukathas, 2001, 11.
- <sup>63</sup> To be sure, there are other versions of this model that project a more positive outlook of the state and a broader interpretation of the notion of harm which, overall, leads to accept broader limits to toleration and to assign a greater role to common institutions. For instance, despite conveying an account of liberalism that takes deep diversity seriously, Galston (1995, 15-38; 523-28) explicitly engages with the issue of justice that, as indicated, he relates to “expressive liberty”. Social unity plays a significant role in his theory, too, and he insists on the need to enforce the fundamentals that allow to sustain a constitutional civil order. The limits of toleration are therefore more prominent in this theory.
- <sup>64</sup> Kukathas (1992a; 1997, 87-89; 2003, 75, 93).
- <sup>65</sup> Kukathas (1997, 89).
- <sup>66</sup> Kukathas (2003, 93, 96).
- <sup>67</sup> This is one of the main points that Kymlicka makes in his *Multicultural Citizenship* (1995)
- <sup>68</sup> See, for all, Gellner, *Nations and Nationalism*, Oxford, Blackwell, 1983.
- <sup>69</sup> To stress and make sense of this aspect has been one of the central contributions to the liberal debate by contemporary legal and political theorists such as Kymlicka (1989, 1995), Raz and Margalit (1990), Tamir (1993), Miller (1995) and Taylor (1993, 1997). *[citations missing]*
- <sup>70</sup> Kymlicka (1995, xx)
- <sup>71</sup> Taylor, “Nationalism and Modernity”, in *The Morality of Nationalism*, Ed. by R. McKim, J. McMahan, OUP, 1997.
- <sup>72</sup> This is vital in guaranteeing the passing on of the traditions and conventions associated to that particular culture to successive generations Kymlicka (1995, 111). Similarly, Taylor (1997, 34).
- <sup>73</sup> See for a general discussion of these problems, see Kymlicka and Patten (eds.), *Language Rights and Political Theory*, OUP, 2003.
- <sup>74</sup> Notice that this is the same critique that was previously made against the autonomy approach – yet in this case the failure is not related to the preservation of pluralism but the protection of individual freedom.
- <sup>75</sup> Okin, “Mistresses of their Own Destiny: Group Rights, Gender and Realistic Rights of Exit”, *Ethics* 112, 205-230; similarly, Anne Phillips. *Multiculturalism without Culture*, Princeton UP, 2008
- <sup>76</sup> Okin (2002, 205).
- <sup>77</sup> See also Phillips (2008, 178)
- <sup>78</sup> On the notion of “oppression”, see I. M. Young, 1990; I have explored this notion in relation to women’s oppression in a previous Sela contribution (Torbisco Casals, “La institucionalizacion de la diferencia”, 2004).
- <sup>79</sup> Surely, the phenomenon of adaptive preferences is not alien to women living in mainstream liberal democratic cultures. They, too, experience constraints to their autonomy derived from social structures that systemically disadvantage them. The type and degree of these constraints differ significantly from those experienced by women in illiberal patriarchal ones. But the fact remains that most women experience barriers in all cultures and the psychological processes that help to consolidate domination are quite universal. The following section examines the implications of the cross-cultural dimension of women’s inequalities and discrimination for the debate on group rights.
- <sup>80</sup> See Kukathas (2003, 107-109). This is a major objection against Kukathas theory. To his critics, he opposes the indisputable fact that people do leave anyway.
- <sup>81</sup> However, even the most libertarian theory would presumably accept the need for state intervention when this is intended to preserve the preconditions for freedom to be meaningful, such as physical integrity and security. Women who face imminent threats as a result of their attempt at exiting their cultural groups should be able to rely

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on certain public protection mechanisms. Unfortunately, this is precisely what is at stake in some cases. Take the case of the so-called “honour killings” that have shocked Germany in recent years. In Berlin and other cities a number of Turkish women have been murdered by family members in retaliation for running away and challenging the rules that allegedly shape their identities (for example, by not wearing a headscarf, refusing to marry within the community or having a sexual relationship with a non-Muslim man). In Islamic culture, women are the bearers of the family decency and honour. These killings thus obey to the need of defending the honour of the family and it is thus undertaken by a fellow family member. Here, the state – even the libertarian state - needs to intervene to restore the minimal sense of security in the potential victims, since this is a minimal precondition for freedom to be meaningful.

<sup>82</sup> Also, for human rights to exist in a meaningful sense a significant degree of agency is indispensable. A formal declaration of freedom of speech, say, is normally insufficient to uphold this right; even if such declaration is contained in a constitutional clause, specific regulations are necessary to prevent coercion, discrimination or violence against those who exercise it.

<sup>83</sup> Galston (2002, 104).

<sup>84</sup> See Galston (2002, 122-123).

<sup>85</sup> Brian Barry, *Culture and Equality*, Cambridge, Mass., Harvard University Press, 2001, 148-151. On this basis, a number of proposals are concerned with offering a more detailed account of the types of obstacles that constrain exit rights and with exploring ways of overcoming them. Barry distinguishes between “intrinsic”, “associative” and “external” costs of exit, assessing whether the liberal state can legitimately intervene to minimise those costs.....

<sup>86</sup> Some costs, however, are difficult to minimise, such as the psychological costs of leaving one’s own culture or losing one’s identity. Also, integration into another culture has a cognitive dimension and involves special skills that not everybody possesses. As Margalit and Raz (1993) point out, belonging to a culture is a matter of *mutual* recognition (it is a bi-dimensional process) and to the extent that effective integration significantly depends on external factors (acceptance by others) that escape the control and the will of individuals, the risks of anomie and alienation should not be underestimated.

<sup>87</sup> See Kukathas (2003, 90, 198).

<sup>88</sup> Phillips (2008, 138-139).

<sup>89</sup> Tamir (1993, 121).

<sup>90</sup> Thus, as indicated, Kukathas’s account takes deep diversity seriously and recognises the salience of claims by illiberal cultures

<sup>91</sup> On the “irrelevance” charge against Kymlicka, see supra...

<sup>92</sup> Note that divergences can be ultimately related to past grievances and current political interests rather than to genuine cultural divides over conceptions of the good or incommensurable moral values. This approach also allows to recognise this without diminishing the importance of the conflict.

<sup>93</sup> Their leaders might also have an strategic interest in reinforcing this opposition, in the context of a broader struggle to break-down existing hierarchies and press towards self-determination.

<sup>94</sup> M. Deveaux, *Gender and Justice in Multicultural Liberal States*, Oxford University Press, 2006. As Deveaux notes (2006, 7), oftentimes conflicts start from within and they become inter-cultural because dissenters seek the protection of the state.

<sup>95</sup> Leslie Green (1998)

<sup>96</sup> Okin (200 p. 32-33) is inclined to endorse state intervention through prohibition and punishment.

<sup>97</sup> For this reason, the autonomy approach draws reassurance from constitutional and human rights law setting limits to permissible regimes of accommodation. To be sure, Kymlicka and other liberal commentators warn about the perils of state intervention through the law intended to ban particular cultural practices. But the reasons they offer are mostly pragmatic, and have to do with the question of how to best implement the model rather than with its justification.

<sup>98</sup> Taylor (1993)

<sup>99</sup> Refer .

<sup>100</sup> Cite World report on women 2010

<sup>101</sup> See, for instance, Okin [2002xxx, 1999].

<sup>102</sup> Okin [2002, xx]

<sup>103</sup> Scholars such as J. Spinner Halev (“Feminism, Multiculturalism, Oppression and the State”, *Ethics* 112, 2001) justify special restrictions on intervention when there is a previous history of oppression.

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- <sup>104</sup> For instance, even if it was true that women wearing the burqa are largely forced to do so by their husbands, the banning of this garment in the public sphere might provoke their complete seclusion at home.
- <sup>105</sup> On the other hand, as Locke argued[xxx], when beliefs are strong, and the commitment to a certain value is deep, external intervention through coercive means will probably be ineffective. In particular, he argued that force and coercion in relation to religion are commonly useless, and his argument can be extended to other matters of morality as well.
- <sup>106</sup> Deveaux (2006). She illustrates this through the debate over the legitimacy of arranged marriage in South Asian immigrant minorities in Britain, where, a decade ago, some members of these groups (usually girls) started claiming that arrange marriage oftentimes became *forced* and should be banned. They went on explicitly demanding legal support and some members in their communities welcomed the prospect of increasing supervision and control.
- <sup>107</sup> This line of thought connects with the virtues of what Seyla Benhabib (*The Claims of Culture. Equality and Diversity in the Global Era*, Princeton University Press, 2002) and Parekh (2000, 268) call “intercultural” or “cross-cultural dialogue”; it provides the ground for a better understanding of other cultures.
- <sup>108</sup> [Bellamy; Tully?]
- <sup>109</sup> Although I cannot spell out the argument here, on this account trust is a malleable virtue, which emerges out of legitimacy and reliance on institutions, rather than being the product of interpersonal knowledge or deontological commitments.
- <sup>110</sup> [Explain relation and differences with deliberative democracy: different object of dialogue, open-ended process; lack of aspiration to consensus]
- <sup>111</sup> This does not mean that this approach rejects the genuine relevance of conflicts of values in dealing with cultural disputes. Yet many of them cannot be adequately elucidated if ideological, historical and strategic reasons are obscured.