Just, Reasonable Multiculturalism?

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Philosophia Symposium on *Just, Reasonable Multiculturalism* (CUP, 2021)

Abstract

This article explains why I decided to write the book *Just, Reasonable Multiculturalism* (CUP, 2021), my appreciation of multiculturalism, and my puzzlement when I heard growing attacks on multiculturalism, describing it as one of the causes of extremist ideology and radicalization. Those attacks brought me to write this book.

I discuss some of the main themes of my book: male circumcision, which was the most difficult chapter for me to write; Amish education that brought to my attention a new concern, child abuse, of which I was not aware at first; legal precedents concerning women and minorities and, finally, the two countries I examined in which security considerations underlie and trigger discrimination against minorities: France and Israel.

Key words: circumcision, culture, France, Israel, liberalism, multiculturalism, racism, religion, tolerance

I have been wrestling with questions pertaining to culture, religion and identity from a very young age. We are all products of our upbringing and mine was infused with a mosaic of conceptions, colours, smells and tastes. I grew up in a home where liberalism and socialism, secularism and Jewish Orthodoxy, Zionism and universalism were meshed together in an intriguing way that forced me to think hard about my identity and about who I wish to be in this world. At home, the languages I heard were Hebrew and Bulgarian. The cuisine was Balkan/Middle Eastern. I was exposed to art from the west, east and the Middle East. My education was Liberal-Zionist. I loved reading the Bible and also the classic and Jewish novelists and poets. My grandparents were born in Bulgaria, Turkey, Palestine and Poland. Three of them were secular while one, who was for me a role model, was an Orthodox-Jew.

In my early twenties I left home to live with my girlfriend, who later became my wife, whose origins are from Ecuador and Eastern Europe. More colours, smells and tastes entered my home. I felt enriched. I began my higher education at Tel Aviv University and continued studying for my doctorate at Oxford. I was surprised that some of my most influential teachers, including Ronald Dworkin and Jerry Cohen, paid so little attention to religion and culture. The conceptions and prescriptions they offered to address and even cure the ills of the world were universalist in nature, oblivious to culture. I immersed myself in studying Rawlsian philosophy and was puzzled that he, too, seemed to overlook the influence of culture and religion on our lives. In this respect, the writings of two other Oxford scholars, Joseph Raz (1986) and Will Kymlicka (1989, 2000), were more convincing.

I started my serious academic engagement with multiculturalism at the Van Leer Jerusalem Institute. The year was 1992 and I was invited to take part in The European project that probed European influences on the Middle East, and the Middle Eastern influences on Europe. The research group, composed of Israeli-Jews, Israeli-Arabs and two Germans worked together for three years and produced many papers. I focused my research on the practice of female circumcision in the Middle East and on the clash between Jewish Law (*Halacha*) and liberalism. I published a few articles during the years but it was Prime Minister David Cameron who drove me to think about writing a book on multiculturalism. In 2011, Prime Minister Cameron (2011) went as far as saying that multiculturalism had failed and that it had fostered extremist ideology and radicalization among British Muslims. PM Cameron (2011) said that

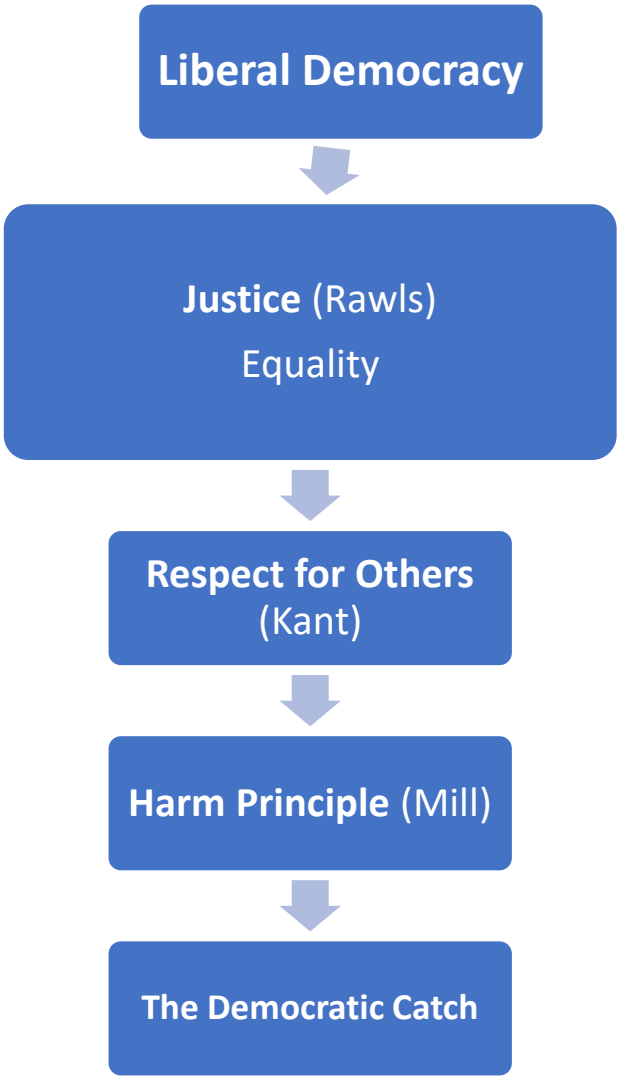
under the "doctrine of state multiculturalism," different cultures have been encouraged to live separate lives, "apart from each other and apart from the mainstream," and "We have failed to provide a vision of society to which they feel they want to belong. We have even tolerated these segregated communities behaving in ways that run counter to our values."

I thought that PM Cameron's attack on multiculturalism was not only uncalled for but also inflammatory. Those words, uttered by the British prime minister, divided the British society more than it already was. Up until that point, I was used to hearing other attacks on multiculturalism: that it endangers democracy, and that it is bad for women and children, but to say that multiculturalism promotes extremism and terrorism was something that I did not expect. Then I decided it is about time to write a comprehensive book on the themes of liberalism, multiculturalism and tolerance. The main thesis that I put forward is that *it is* possible to reconcile liberalism and multiculturalism. To show this, while building on scholars who inspired me (including Kant, Mill, Rawls, Kymlicka and Habermas) I developed a theory of just, reasonable multiculturalism according to which it is possible to maintain liberal democracy and, at the same time, enjoy the beauty that the myriad of cultures and religions bring with them. The most difficult question relates to the extent of interference that the liberal state is legitimate to pursue when it is challenged by illiberal cultural practices within liberal society.

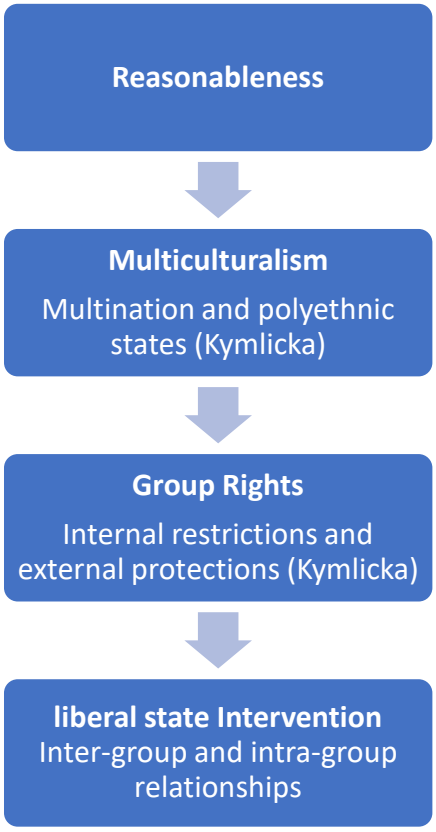
The book explores whether the challenges against multiculturalism are justified. I outline the theoretical assumptions underlying a liberal response to threats posed by cultural or religious groups whose norms entail different measures of harm. I do this by examining the importance of cultural, ethnic, national, religious, and ideological norms and beliefs, and what part they play in requiring us to tolerate others out of respect. I proceed by formulating guidelines designed to prescribe boundaries to cultural practices and to safeguard the rights of individuals. Subsequently, I apply them to real life situations.

Theory and Applications of Just, Reasonable Multiculturalism

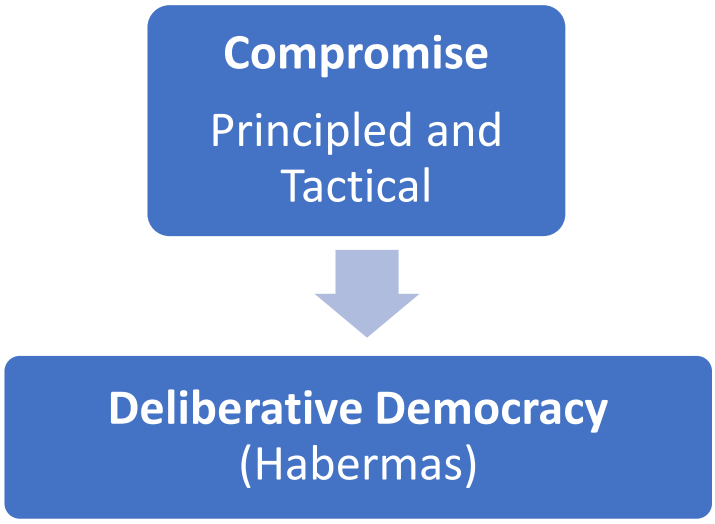
1.


Liberal Democracy
Justice (Rawls)
Equality
Respect for Others (Kant)
Harm Principle (Mill)
The Democratic Catch

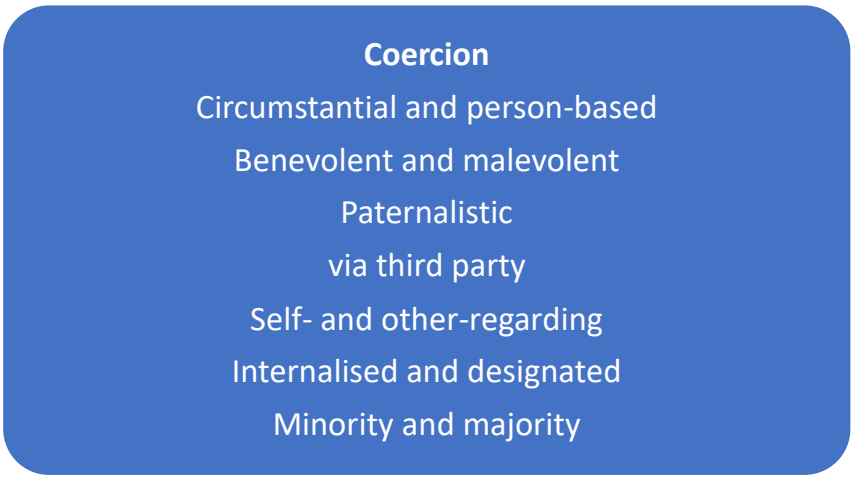
2.


Reasonableness
Multiculturalism
Multination and polyethnic states (Kymlicka)
Group Rights
Internal restrictions and external protections (Kymlicka)
liberal state Intervention
Inter-group and intra-group relationships

3.


Compromise
Principled and Tactical
Deliberative Democracy
(Habermas)

4.



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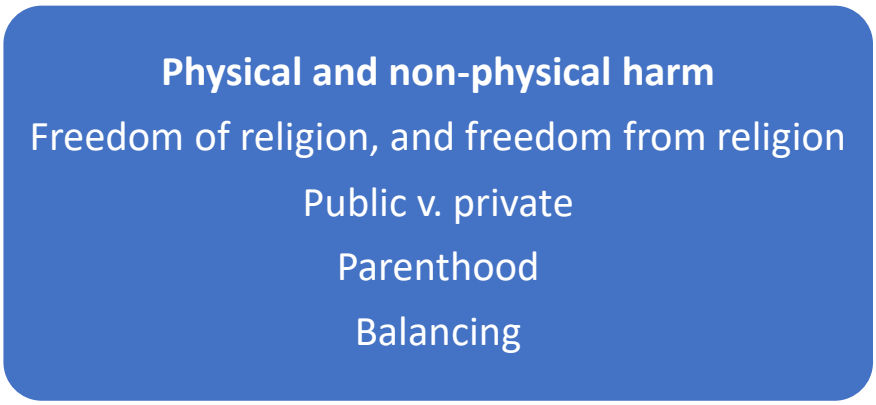

6.

The book balances group rights against individual rights. In delineating the limits of state intervention in minority groups' affairs, I draw a distinction between physical harm and non-physical harm. The first category includes practices such as scarring, suttee, murder for family honour, Female Genital Mutilation (FGM), female circumcision and male circumcision. The

second category includes arranged and forced marriages, divorce and property rights, gender segregation, and denial of education to women and children.

The final part of the book includes two country case studies, France and Israel. France and Israel represent interesting cases because they are republican (France) and ethnic (Israel) democracies. Both countries exhibit perfectionism rather than neutrality on religious matters (Cohen-Almagor, 1994). The discussion illustrates the power of security considerations in restricting claims for multiculturalism. The threat of violence and terrorism justifies in France the enforcement of a strict dress code, especially for Muslim women, while in Israel this threat leads to the discrimination of the Arab-Palestinian minority. It is argued that both discriminatory practices are unjustified.

My research led me to distinguish between female circumcision and FGM. While FGM should not be tolerated by the liberal state as this practice amounts to torture, a symbolic minor scar on the major labia is arguably no more harmful than male circumcision. It cannot be considered as more mutilating the body.

Male circumcision

When I was planning my book, I did not think about writing on male circumcision. However, discussions with scholars and decision-makers prompted me to tackle the issue. Some asked me *not* to write at all on male circumcision. Others asked me not to write on male circumcision *if I intend to write about female circumcision*. Still others argued that if I write on female circumcision then I *must* write about male circumcision. Each person has an agenda and the advice was in accordance with the agenda. Jewish clergy and decision-makers do not wish to mention male circumcision and female circumcision together so as to avoid any discussion about similarities between the two practices. People who oppose male circumcision wish to highlight similarities between this practice and Female Genital Mutilation (FGM). I took pains to explain the differences and similarities between female circumcision and FGM, and between female circumcision and male circumcision. The differences between FGM and male circumcision are too striking to make a reasonable comparison between the two practices.

The writing of the male circumcision chapter proved to be most complicated. In the spirit of compromise, I strove to find a solution that would promote the best interests of new-borns, avoid torture and respect tradition. Finding such a solution was not easy as Jewish law (*halacha*) objects to anaesthesia by injection and the traditional circumcisers (*mohalim*) are not qualified nor allowed to perform injections. Upon consultations with religious authorities of different denominations as well as with physicians, decision-makers and scholars, after some months of deliberations I was able to devise a proposal for humane male circumcision. The procedure should be conducted with local anaesthesia. If performed by a qualified physician, ring block (or inhalation anaesthesia) combined with oral sucrose and EMLA cream is required. If performed by a qualified circumciser, non-invasive local anaesthesia and oral sucrose are required.

According to some studies the combination of dorsal block, subcutaneous ring block and concentrated oral sucrose had the lowest pain scores and is therefore perceived to be the most effective anaesthetic for male circumcision. Some countries may consider training circumcisers to perform this procedure. According to my proposal, *mohalim* will not be required to study for a medical degree with specialization in anaesthesia. Instead, they will be required to participate in a designated course on anaesthesia for male circumcision. Such a course will be much shorter compared to studying for a medical degree. It will still require hundred hours of training, and that 20–30 procedures should be done under direct supervision. The training should encompass some neuroanatomy and physiology, anatomy and physiology of the male reproductive tract, pharmacology of anaesthetic agents and agents for treating complications. Each country will specify the knowledge and skills that training should achieve

in order to receive an official accreditation. Each national medical association will ensure that only people with the right qualifications will be able to perform male circumcision with this skilful form of anaesthesia.

Amish education

Sometimes, one carries research on one issue and stumbles on another important and related matter. Then the scholar needs to decide whether to diverge from the preliminary research plan and invest in deciphering the related issue. Such diversion is warranted if the unexpected, related matter is significant and if it impacts the original subject of research. Case in point was my research on denying education to Amish adolescents. My research showed that it is very difficult for people who left the Amish community to fully integrate into the American society as the limited education that they received in the Amish community does not equip them with sufficient credentials to integrate into the larger American society on equal terms. My research also revealed a disturbing pattern of child abuse. The image of the Amish as a peaceful community that is protective of its youth was shaken. This phenomenon of child abuse is much too serious and disturbing to be ignored. This finding added another justification for state intervention in the affairs of the Amish community so as to insist that their children should receive the same education as children of the wider American community. Balancing between the different interests, I suggested that the Amish should be able to teach their own history, norms and tradition. They should protect their children against abuse and provide opportunities to curious children who want to know more about the world. The Amish should have a class for adolescents who are deemed to be different, rebellious, curious, interested in the wider world, and for adolescents whose parents wish for them to have opportunities which they would not have under the Amish education system.

The liberal state is required to protect vulnerable populations. At present, the American government neglects its duty of care. Abuse is more likely to happen in isolated communities because those communities do not have, or are lacking, the apparatus of prevention, deterrence and support that are commonly offered to avert abuse and help victims. Indeed, the Amish is not the only community where child abuse takes place. Complaints about child abuse were raised by members of the Ultra-Orthodox (*Haredi*) Jewish communities, in American Prep schools, in the Catholic Church, and in the Israeli kibbutzim. All are closed, discrete communities that try to keep to themselves without involving the police when faced with the challenge of sexual abuse. Experience shows that self-regulation, where the community regulates itself, is often deficient. The Amish protect the abusers, not the abused. However, sexual abuse, incest and pedophilia are not an "internal, "personal", group problem. Liberal democracy is required to step in and help children in need. Otherwise, the abuse might continue unabated for years, inflicting untold suffering and destroying many lives. The Amish education system should include sex education, discussions on children's rights, mental health counselors, adequate child support, monitoring and reporting mechanisms, and experienced external advisors who ensure that children are not exploited, sexually or otherwise.

Legal cases

The book is an interdisciplinary study in the fields of political philosophy, political science, law, culture and gender studies. I discuss some legal precedents from Europe, North America and Israel. Let me mention the main discussions.

As can be expected, I criticise the *Wisconsin v. Yoder* (1972) decision, where the United States Supreme Court dealt with the Amish refusal to send their children to public schools after the eighth grade. The Supreme Court upheld the principles of State non-interference in religious matters and of parental school choice. The Court assigned more importance to children's integration into the Amish community than to their integration into the wider society.

It acknowledged that the State has the power to impose reasonable regulations for the control and duration of basic education. Yet this paramount responsibility to provide universal education is not totally free from a balancing process when it impinges on fundamental rights and interests. On my part, I argued that a liberal court should weigh the conflicting considerations of autonomy and paternalism. While the court observed the tension between parental paternalism and state paternalism, it ignored the autonomy of children and their right to shape their future as they see it for themselves. The Supreme Court reasoning is inconsistent with basic liberal principles, and the conception/interpretation that the Court gave to the right of freedom of religion is problematic and contested. The majority of the Court defined freedom of religion primarily in terms of the group's ability to live in accordance with its doctrine, rather than the individual's ability to form and revise his or her religious beliefs.

The American Supreme Court also preferred group rights over equality rights and gender autonomy in *Santa Clara v. Martinez* (1978). Julia Martinez and one of her children, Audrey Martinez, challenged the Santa Clara Pueblo membership ordinance that disqualified Martinez's children because she had married outside the tribe. The same ordinance did not place similar restriction on men. Martinez appealed to the American justice system, claiming that this ordinance discriminated against her on basis of gender. Although the Martinez children were raised on the reservation and continued to reside there as adults, they were denied basic rights. As a result of their exclusion from membership they were not eligible to vote in tribal elections or to hold secular tribal offices. They had no right to remain on the reservation in the event of their mother's death, or to inherit their mother's home or her possessory interests in the communal lands.

The Supreme Court, *per* Justice Thurgood Marshall who delivered the opinion of the Court, declined to assist Martinez, preferring to confer on the Pueblo strong tribal autonomy. I, on the other hand, argued that the severity of rights violations within the minority group, the insufficient dispute-resolution-mechanisms, and the inability of individuals to leave the community if they so desire without penalty justify state intervention to uphold the dissenters' basic rights.

Similarly, I oppose the Canadian Supreme Court decision in *Hofer v. Hofer* (1970), a case that illustrates the problematics of denying reasonable exit right to members who may wish to leave their community. *Hofer v. Hofer* dealt with the powers of the Hutterite Church over its members. Members of the Hofer family, life-long members of a Hutterite colony were expelled for apostasy. They demanded their share of the colony's assets, which they had helped create with their years of labour. When the colony refused, the two ex-members sued in court. In their defence, the Hutterites argued that freedom of religion limits individual freedom. People who wished to leave the community are not entitled to community assets. The Canadian Supreme Court in a six to one decision accepted this Hutterite claim, holding that the appellant never had any individual ownership of any of the assets of the Colony. Freedom of religion enables the community to live in accordance with its religious doctrine notwithstanding whether its way of life may limit individual freedom.

I side with the minority opinion as expressed in Justice Louis-Philippe Pigeon's dissent. Pigeon J. argued that the usual liberal notion of freedom of religion "includes the right of each individual to change his religion at will" (1970, p. 984). Hence churches "cannot make rules having the effect of depriving their members of this fundamental freedom" (Ibid.: 984). The proper scope of religious authority is therefore "limited to what is consistent with freedom of religion as properly understood, that is freedom for the individual not only to adopt a religion but also to abandon it at will" (Ibid., p. 984).

In a liberal democracy, people have a capacity to form and revise their conception of the good. Hence, the power of religious communities over their own members must be such that individuals can freely and effectively exercise that capacity. While we appreciate culture and

tradition, perceiving them as a part of a chain that is important to members in any given culture, this consideration has to be balanced against religious freedom. Religion and culture are matters of personal choice and include *freedom from religion and culture*. Citizens in a democracy should enjoy the ability to choose their way of life and to change it at will. The way to deal with people who wish to leave the community is through deliberation, not coercion; through compromise and mutual respect, not by showing contempt; by acknowledging members' contribution to the community, not by denying recognition; showing respect for their labour, not punishing and penalising them. Fair distribution of assets is just and reasonable. People should have a share of the communal resources. A community that keeps its members through means of punishment and deterrence, that denies them mechanisms of deliberation and does not seek compromise when disagreement arises is not a model to follow, certainly not in the confines of liberal democracy.

Women are paying a high price for the unjustified and unreasonable whims of men. In Israel, a group of women called Women of the Wall insists on praying as they wish at the Western Wall (known also by the name the Wailing Wall), which is the most important and holy place in Judaism. The Western Wall is the only structure remaining from the Holy Temple, rebuilt in glorious style and splendour by King Herod, and destroyed by the Romans in 70 AD. The place is governed by an orthodox institution that opposes the idea that women pray like men, with prayer shawls (*tallit*) and *Tefillin* (Jewish phylacteries). They deny women this tight. The Women of the Wall group petitioned to the Israeli Supreme Court, asking it to intervene in support of women's equality. The Court held that the Women of the Wall were entitled to pray in the manner of their choice in the Western Wall compound but in order to prevent injury to the sensitivities of other worshippers, chiefly Orthodox men, the Court suggested a compromise according to which the government would arrange for them in another prayer area at an adjacent site called Robinson's Arch (*Director General of Prime Minister's Office v. Anat Hoffman,* 2000). The Women of the Wall opposed this proposal as they wish to pray in the manner they see appropriate at the women section, adjacent to the men section in front of the Western Wall.

The Western Wall is the most unsuitable place in the world to wage religious rivalries. A compromise needs to be found so that all Jews, notwithstanding their gender and/or interpretations of *Halacha*, will be able to pray freely in accordance with their beliefs. There is a women section at the Wall's praying area. All women should be able to pray there. If their way of prayer is offensive to some, it is possible to enact regulations by which the Women of the Wall will be able to pray at a specified, known-in-advance time, and those who might be offended can avoid being adjacent to them at the time of the prayer. But it is unjust to discriminate against women and argue that only men are allowed to pray in a certain way, and that women must accept the Orthodox-male dictate or be prohibited from prayer at the most important place for them altogether. A liberal Supreme Court should intervene on behalf of these women, demanding equal rights for all, not only for some.

I also defend women's right to choose their dress in accordance with their religious beliefs. I criticise the 2014 European Court of Human Rights decision that upheld France's burqa and niqab ban and accepted the French government argument that it encouraged citizens to live together (*S.A.S. v. France,* 2014). The Court held that there had been no violation of Article 8 (right to respect for private and family life), and no violation of Article 9 (right to respect for freedom of thought, conscience and religion) of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Court opined that the conditions of "living together" was a legitimate aim for the measure at issue and that, particularly as the State had a lot of room for manoeuvre ("a wide margin of appreciation") as regards this general policy question on which there were significant differences of opinion, the ban imposed by the Law

of October 2010 did not breach the above Convention. The Court also held that there had been no violation of Article 14 (prohibition of discrimination) of the Convention.

Conversely, I side with the United Nations Human Rights Committee that considered the complaints of two women who were fined for wearing the niqab (*Miriana Hebbadj v. France,* 2018; *Sonia Yaker v. France,* 2018). The women argued that the prohibition is not proportionate to its objective, as it is permanent, applies in all circumstances to all public spaces and its violation is a criminal offence. Both women contended that the prohibitive law negated their civil and political rights to freedom of thought, conscience and religion. This right includes freedom to have or to adopt a religion or belief of choice, and freedom to manifest one's religion or belief in worship, observance, practice and teaching. People should not be subjected to coercion which would impair freedom to have or to adopt a religion or belief of choice. Minorities should not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion as long as they do not harm others. Women's dress is not and cannot be said to be harmful to others.

France

My research also shows that the French understanding of liberalism is quite different than Anglo-Saxon liberalism. My research led me to believe that while the liberal motto of the French Revolution -- *liberté, égalité, fraternité* -- is still symbolically and politically important, its practical significance as it has been translated to policy implementation has been eroded. We have witnessed the emergence of a new trinity -- *indivisibilité, sécurité, laïcité* -- at the expense of the old one. This is evident when analysing the debates concerning cultural policies in France in the face of the Islamic garb, the burqa and the niqab, which are perceived as a challenge to the French national secular *raison d'être* and to the French Republic. Preserving and maintaining the Republic is far more important than freedom of culture and religion. As is evident from my stand on the *S.A.S* ruling, I think the French attitude to the Islamic garb, and the restrictions it imposes on women, are neither just nor reasonable.

After publishing *Just, Reasonable Multiculturalism*, I continue my research on the French Republic and its treatment of the Muslim garb. I published a larger article (Cohen-Almagor, 2021a) and later also a short book (Cohen-Almagor, 2022). While I understand the reasons for the French antagonistic attitude to the niqab and the burqa, I am still thinking that the French attitude is neither just nor reasonable.

Israel

The chapter on Israel is a revised version of an article I co-published earlier with an Israeli-Palestinian scholar, Mohammed S. Wattad (2019). Democracy is not merely about majority rule. Democracy is majority rule *while preserving the rights of minorities*. Take away the second half of this definition and the system of governance is no longer a democracy. In Israel, 21% of the population are Palestinian-Arabs. This is a significant part of the population. Palestinian-Arabs are entitled to enjoy the same rights and liberties as the Jewish majority. Religion should not serve as grounds for discrimination.

In Israel we witness not only majority coercion of minorities but also minority Jewish-Orthodox coercion of the Jewish secular majority. I criticize discriminatory and coercive state conduct vis-à-vis vulnerable minorities. It is argued that Israeli leaders have tried to settle tensions between Judaism and democracy at the expense of liberalism. Consequently, Israel has adopted illiberal policies and practices that are discriminatory in nature, preferring Jews over others. An important distinction is made between *formal* citizenship and *full* citizenship. Israeli Jews can be said to enjoy full citizenship: they enjoy equal respect as individuals, and they are entitled to equal treatment by law and in its administration. The situation is different with regard to the Israeli-Palestinians, the Bedouin and the Druze. Although they are formally considered to

enjoy liberties equally with the Jewish community, in practice they do not share and enjoy the same rights and liberties. If Israel aspires to be an egalitarian-liberal democracy, it should respect secularism and not discriminate against non-Jews.

Conclusion

Just, Reasonable Multiculturalism (2021) explores the main challenges against multiculturalism. It is argued that liberalism and multiculturalism are reconcilable provided that a fair balance is struck between individual rights and group rights. It is further argued that reasonable multiculturalism can be achieved via mechanisms of deliberate democracy, compromise and, when necessary, coercion. Placing necessary checks on groups that discriminate against vulnerable third parties, commonly women and children, the approach insists on the protection of basic human rights as well as on exit rights for individuals if and when they wish to leave their cultural groups.

The book front cover shows the wall that surrounds the old city of Jerusalem during dusk. For me, this is one of the most beautiful scenes in the world. I always quiver when I am lucky to be in Jerusalem as the night falls and I watch the illuminated wall. But this is not the main reason why I choose this photo. I chose this photo due to its symbolism. Jerusalem is multicultural and it is holy to the three monotheist religions. In the name of religion, a lot of blood was shed in Jerusalem when people preferred their religion over basic humanity. We need to transcend the walls that separate people. We need to emphasise the things that unite us while respecting differences. I prefer erecting bridges than building walls. Then we will be able to see the light.

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