Political Liberalism and Religious Ideals

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1. Introduction

In this paper I will briefly discuss two arguments which both seem to *limit* the rights of religious groups and especially religious minorities. Apparently, both arguments are based on or at least are consistent with premises that can be called "liberal". I will comment on those arguments and argue that while they raise important questions regarding the limits of the rights of religious minorities and are partly acceptable, they are not entirely unproblematic. In the concluding section I will summarize my theses.

2. Religious Minorities and Cultural Disadvantage

There has been much discussion on whether liberalism as a political theory is consistent with special minority rights. Obviously, there are many people who consider themselves as liberals and who strongly defend special minority rights. But the problem is that as far as minority rights are rights enjoyed by collectives or communities, there seems to be a tension between minority rights and liberalism which emphasises the rights of individual members of communities. No doubt, there are many ways to try to solve this tension, and perhaps there really is no problem with defending both liberalism and special minority rights, i.e. rights that belong only to certain minorities and not to citizens in general. If this is so, then it may follow that special rights of *religious minorities* are also perfectly acceptable from the liberal viewpoint, or at least, that *some* special rights of religious minorities are acceptable within liberalism.

One may try to defend special rights of religious minorities by the so-called argument from cultural disadvantage, presented by Will Kymlicka (1989, 1995, 1998, 2000) and others. To reject this argument is to reject one strategy to reconcile liberalism and special rights of religious minorities. In this section I discuss an objection against the argument from cultural disadvantage.

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Arguments for special or *group-differentiated* legal rights aim to show that in certain cases membership in a group is a relevant feature indicating that the group (i.e. its members) should have a right that the other members of the society do not have and are not justified in having. According to these arguments, for instance, Jews and Muslims may have exemptions from animal slaughtering laws, Sikhs may have a right not to wear a crash helmet, some groups may have a right not to follow dressing codes made by educational authorities, and some other groups may have exemptions from sex discrimination legislation.

Arguments for group-differentiated legal rights are not arguments for mere toleration. In one traditional sense (there are many), toleration does not incur *costs for the party who tolerates* – except that it may be unpleasant to live in a society that allows practices of which one disapproves, say, sexual discrimination or ritual animal slaughtering. No doubt, toleration in the traditional sense may incur *moral costs*. For instance, if ritual animal slaughtering is tolerated and if it is in fact morally wrong, then tolerating ritual animal slaughtering incurs moral costs (which of course may be acceptable). However, group-differentiated legal rights incur costs not only in the latter sense but in the former one too. If the members of a minority group have legal rights that no other citizen has, then rights are distributed unequally, which is presumably a (possibly acceptable) moral cost. But at the same time, it is a cost for the members of the majority too: they have fewer rights than the minority. Toleration incurs costs for the majority only if tolerated practices are permitted only for minority groups. When cultural rights, for instance, are carried out with special territorial rights, they limit the majority's (but not the minority's) right to move within the state's territory.

Since group-differentiated legal rights are costly, they need specific justification. The most common and perhaps intuitively most plausible argument for cultural group-differentiated legal rights is the *argument from cultural disadvantage*. The main idea of this egalitarian argument is simple. Because of the decisions made and practices adopted by the majority, cultural minorities are denied access to their own specific ethnic, national, and linguistic culture. Thus they are disadvantaged in realizing the good of cultural membership – whatever

its forms happen to be. But relevant group-differentiated legal rights promote egalitarian fairness and cultural equality by counteracting the superior power of mainstreamers. Therefore those rights are morally justified. (Cf. Danley 1991: 175; Cooper 1993: 438; Taylor 1992: 40-41; Levey 1997: 219-224; Nickel 1996: 480-482; Kukathas 1997: 411; Galenkamp 1997: 43-44; Waldron 1995: 105-110; Favell 1998: 255-278.)

Although the main idea of the argument from cultural disadvantage is clear-cut, the argument has several varieties. It is crucial to distinguish between arguments that defend group-differentiated rights of minorities that are in a *strongly disadvantaged* position and arguments that defend group-differentiated rights of minorities that are in a *weakly disadvantaged* position. A cultural minority is in a strongly disadvantaged position if (and only if) without relevant group-differentiated rights its members are *completely unable* to use certain moral rights or common citizenship rights that the majority is easily able to use. A cultural minority is in a weakly disadvantaged position if (and only if) without relevant group-differentiated rights it is *difficult and painful* for its members to use certain moral rights or common citizenship rights that the majority is easily able to use.

Versions of the argument from cultural disadvantage can be interpreted in different ways. Typical formulations suggest that the argument from cultural disadvantage says that disadvantage is a *sufficient condition* for relevant group-differentiated legal rights. But this is not the only way to use the argument. One might argue that cultural disadvantage is a necessary condition or a necessary and sufficient condition for special rights. Or one might claim that cultural disadvantage is simply relevant, although it is neither necessary nor sufficient for special rights.

It is clear that one may use the argument from cultural disadvantage to defend the special rights of cultural minorities. Consider the following argument: Because we do not know which religion, if any, should be followed, there is a general moral right to practice one's own religion. But if Jews do not have exemptions from animal slaughtering laws, they are unable to practice their religion – and changing one's religious beliefs, in the face of external forces, is practically speaking impossible. Therefore, Jews are justified in having the group-differentiated legal right to ritual slaughtering – even if this may cause

animal suffering and mean that the majority has fewer rights than the Jewish minority.

Is this argument tenable? Perhaps not. An obvious problem with the argument is that animal slaughtering laws that prohibit ritual slaughtering do not necessarily threaten anyone's freedom of religion. As professor Brian Barry (2001: 35) has pointed out, if a person's religion prohibits eating meat which is produced in a way which law allows, she could decide not to eat meat at all (some Orthodox Jews are vegetarians) or to reinterpret her religion so that it permits the consumption of humanely slaughtered animals. There is an important and morally relevant distinction between being in a strongly disadvantaged position and being merely in a weakly disadvantaged position. As John R. Danley (1991: 177), who writes about the rights of cultural groups in general, argues, a "comparison of cultural membership with the possession of a handicap is disingenuous", for most "individuals with handicaps would readily give them up if they could, but they cannot", while "members of minority cultures are usually not at all willing to give up membership in their culture, but they can". Barry makes a similar point:

> A disability – for example, a lack of physical mobility due to injury or disease – supports a strong prima facie claim to compensation because it limits the opportunity to engage in activities that others are able to engage in. In contrast, the effect of some distinctive belief or preference is to bring about a certain pattern of choices from among the set of opportunities that are available to all who are similarly placed physically or financially. The position of somebody who is unable to drive a car as a result of some physical disability is totally different from that of somebody who is unable to drive car because doing so would be contrary to the tenets of his or her religion. To suggest that they are similarly situated is in fact offensive to both parties. Someone who needs a wheelchair to get around will be quite right to resent the suggestion that this need should be assimilated to an expensive taste. And somebody who freely embraces a religious belief that prohibits certain activities will rightly deny the imputation

> that this is to be seen as analogous to the unwelcome burden of a physical disability. (Barry 2001: 36-37.)

This argument sounds tenable and it tells something important about the relative importance of different group-differentiated rights. If the purpose of a given group-differentiated right is as important as the purpose of another group-differentiated right, then it is more important to have a group-differentiated right which is *necessary* to have in order to achieve the purpose than to have a group-differentiated right which is not, literally, necessary to have. Disabled persons necessarily need certain special rights, such as exemptions from parking regulations. But the members of religious minorities are not strictly unable to practice their religion even if they are not granted special rights.

However, a few comments are in order here. While it is true that there is a difference between the moral relevance of being in a strongly disadvantaged position and the moral relevance of being in a weakly disadvantaged position, surely there is also a moral difference between being able to practice one's religion *without* difficult and painful experiences (a minority that is not in a disadvantaged position) and being able to practice one's religion *with* such experiences (a minority that is in weakly disadvantaged position). Some group-differentiated rights *may* be justified just in order to prevent difficult and painful experiences. Even if one can choose and interpret his or her religion, choosing one's religion is very different from choosing, say, one's clothes.

Another relevant issue here is related to reinterpretation of one's religion. A problem is that it is hardly up to an individual believer how to interpret his or her religion, even if it is up to her which religion (if any) she chooses – at least from a legal point of view. (In practice, individuals do not always even have a right to choose.) The fact that reinterpretations of religious doctrines are often institutionalized so that individual members are unable to affect those reinterpretations implies that it is particularly difficult for an individual believer to change uncomfortable parts of her religion. This raises further questions regarding the notion of *choice* involved in religious commitments.

Perhaps we should follow Barry (2001: 320) and distinguish between "cases in which what is being asked for is a waiver of the application of the

criminal law and cases in which what is being asked for is relief from the demands made by educational institutions or employers". Naturally, it should be much easier to justify exemptions from the demands made by educational authorities or employers than to justify waivers of the application of the criminal law. Decisions should be made on case-by-case basis. It is tempting to think that if there are good grounds to give exemptions to the application of a given norm of the criminal law, then the justification of this norm is questionable in general, not only in certain cases. (Cf. Barry 2001: 321.)

3. Religious Groups and the Principle of Secular Rationale

A popular version of liberalism asserts that a person who defends her political or ethical viewpoints in public should present reasons that are *shared* by her audience. This *shared premises requirement* seems to limit the rights of religious groups and especially religious minorities, since the basic assumptions in their arguments may not be shared by common people at all. In this section I evaluate the implications of the shared premises requirement and Robert Audi's application of it, the *principle of secular rationale*.

The background of the shared premises requirement comes from the liberal political theories defended by John Rawls (1993), Kent Greenawalt (1988) and Bruce Ackerman (1989), for instance. Their question is: what moral (not legal) limits does civility impose on public political debate and discussion by the citizens of a modern pluralist democracy? The answer is clear: participants in public political debate should offer (and sincerely hold) public reason for their views *and* try to avoid arguments that are not based on shared premises. According to Ackerman, for instance, citizens should "put the moral ideals that divide us off the controversial agenda of the liberal state" and be prepared "to engage in a restrained dialogic effort to locate normative premises that both sides find reasonable" (Ackerman 1989: 16,19).

The Rawlsian justification for the shared premises requirement is the following. First, "the fact of pluralism" (the fact that people have different opinions concerning ethical, metaphysical and religious matters) is not a mere historical condition that will soon pass away. Instead, it is "a permanent feature of the public culture of modern democracies". Secondly, a "public and

workable agreement on" the controversial ethical, metaphysical and religious matters "could be maintained only by the oppressive use of state power". But the use of power in an oppressive way is out of the question. Therefore, since political philosophy "is concerned with securing the stability of a constitutional regime, and wish to achieve free and willing agreement on" central political questions, "we must find another basis of agreement than that of a general and comprehensive doctrine" which is necessarily based on controversial ethical, metaphysical and religious claims. (Rawls 1999: 425.) As one commentator recently put it, defenders of political liberalism accept the following principle: A necessary condition of legitimate coercive political authority and acceptable political decisions is that they can be (and perhaps have been) publicly justified to each person who is subject to them. (Wall 2002: 385.)

In Robert Audi's view, the shared premises requirement implies the principle of secular rationale. According to it,

> one should not advocate or support any law or public policy that restricts human conduct unless one has, and is willing to offer, adequate secular reason to this advocacy or support. (Audi 1989: 279.)

Audi explains that the

> principle is normative, not genetic; thus, it allows advocacy that is religiously *inspired*, for example by one's reading of the Bible, and, in addition, allows one to be *more* impressed by the religious arguments for one's position than by the secular grounds to it. This principle also permits expressing religious as well as secular reasons in the course of advocacy (…). (Audi 1989: 279.)

The principle of secular rationale is an inclusive principle in a sense that it requires to include public reasons to one's argument. The principle is not exclusive, since it does not require excluding non-public reasons. The main

justification for the principle of secular rationale rests on the justification of the shared premises requirement. The idea is that if people present religious arguments in public and do not support them with other arguments, there is a danger that those arguments will be accepted in legislation and political decision-making. State may use its power to apply those suggestions. But this would violate rights of those who do not accept the religious reasons that have been presented (and officially accepted). From their point of view, it would mean oppressive use of state power.

It is rather commonly thought that the principle of secular rationale is hostile to religious arguments in general and that it is *not* particularly hostile to religious arguments presented by the members of religious *minorities*. This claim has some plausibility, but it is important to notice that it is often difficult to distinguish between secular ethical arguments and religious arguments, presented by the members of religious majority. Many "secular" ethical viewpoints have religious background in society's major religion. If the arguments based on those "secular" values are acceptable – as they are according to the secular rationale – this gives much more space for argumentation for the members of religious majority than to the members of religious minorities. (Surely a law that prohibits murders can be legitimately supported even if the *Bible* states "thou shall not kill".) Thus, in this respect the principle of secular rationale is especially nasty principle from the point of view of religious minorities.

Is the principle that Audi defends tenable? The principle of secular rationale cannot be criticized by pointing out that some religious people will never accept arguments based on secular values. First, the principle does not forbid presenting religious arguments provided that supporting secular reasons are presented as well. Second, the principle of secular rationale – that one must offer secular reasons – is clearly a *prima facie* moral obligation. If a certain violent group of believers listened only to religious arguments that are *not* supported by other reasons (which sounds odd), then the principle of secular rationale might allow for purely religious arguments to be directed toward them (insofar as it is possible to "direct" an argument which is publicly presented).

But should we reject the shared premises requirement? Many people think so, and the objection goes as follows. It is true that legislators, judges and officials should be as neutral as possible regarding the metaphysical and religious beliefs of citizens, and it is true that in democratic societies there are various religious beliefs. However, this does not imply that legislators, judges and officials should not support any law or public policy unless they have secular reasons for this support. Liberal theorists argue that citizens should use secular reasons because they believe that these reasons are, contrary to religious reasons, neutral – in the sense that they are shared among citizens. But this belief is false: there are no secular reasons that are both (1) shared by all citizens and (2) informative enough to determine solutions to controversial political problems. Therefore, it is no more neutral to use secular reasons than to use religious reasons, and thus legislators, officials and occasionally even judges are justified in using religious reasons even if these reasons are not always supported by secular reasons. But if this is so, then it is clear that citizens too are free to use religious public arguments even if they have no secular reasons to support their views. Thus, the principle of secular rationale is wrong.

As is well known, many philosophers have expressed the concern that there are not enough shared premises in pluralist democracies. Waldron (1993: 839), for instance, writes that "any putative consensus is always going to be partial and indeterminate in an actually existing society". In Michael Perry's (1991: 9) view, "there may often be no relevant normative premises shared among those engaged in political argument", and "even when relevant normative premises are shared", they "fall far short of resolving the argument". And Philip L. Quinn (1995: 44) argues that shared premises "will fairly often fail to determine a balance of liberal political values that can be seen to be reasonable by all citizens of a democracy". It goes without saying that those who have defended the inclusive ideal are familiar with and have discussed the objection that the shared premises requirement is unreasonable.

Three points are in order here. First, sometimes political argumentation involves many clearly unshared secular premises. If a public argument, say, for legalizing euthanasia, is based on the secular view that only healthy people are

valuable, the premise of the argument is certainly not shared – even though it is not religious. Second, it is obvious that there are no secular premises that are literally shared by *every* citizen of a given society. Shared secular premises are always shared only by most of us: *some* people can reject, and have rejected, even the view that pain is often a bad thing – or that Florence is in Italy. Third, in a political disagreement, it is impossible to present arguments in which all the premises are shared by the disagreeing parties. If parties agree about the premises (and logic), they agree about the conclusion, and there simply is no disagreement at all. When disagreeing parties "share" premises, they usually share only "basic premises" or "value premises", not the premises that determine what the basic or value premises *imply*. For instance, people "share" premises when they agree that fatal and extremely painful disease is a bad thing (secular value premise), but disagree whether euthanasia should be legalized simply on that ground.

If the critics of the inclusive ideal argue that there are secular premises that can be used but are not shared, or that there are no secular premises that are literally shared by every citizen, or that it is impossible to present arguments in which all the premises are shared by the disagreeing parties, they are certainly right. However, these points (which no one would deny) do not warrant rejection of the principle of secular rationale. Rather, they require that the principle should be reformulated so that it is sensitive to the elements mentioned. That is, the principle should be reformulated to say that, in democratic societies, citizens should not publicly support any law or public policy unless they have and are willing to offer secular arguments, in which *basic or value premises are shared by most of us*.

But let us leave the objection that the shared premises requirement is erroneous aside here. Perhaps arguments with secular premises are usually more neutral than arguments with religious premises, but it is hard to say whether secular premises like "freedom is a good thing" are informative enough to imply anything that is relevant to concrete questions. It is obvious that *in fact* people disagree about many premises that determine the implications of the basic premises they share. But the question remains whether people in democracies share such secular basic premises that they

should, given the evidence that is readily available and given the shared basic premises, also share views regarding the right answers to important political questions. This question is largely the same question that is at the center of the recent debate on liberal political theory. But there is no need to try to solve it here, as there is a less complicated way to criticize the principle of secular rationale.

The crucial question is whether purely religious political arguments really tend to affect legislators, judges and officials and hence the contents of laws and public policies. If they do or if there is a serious danger that they will, then a case can be made for the principle of secular rationale; if purely religious political arguments do not affect legislation and policies and if there is no serious risk, the principle is questionable. According to Audi, allowing religious arguments without supporting secular reasons causes a risk that laws and public policies are made on a secular basis. In Audi's (1989: 290) view, only if people follow the principle of secular rationale, "the issues are less likely to be decided along religious lines". On the other hand, in his essay on "Religious Language and Public Square", Sanford Levinson argues that religious arguments are safe. Levinson writes:

> Is it possible, however, that this whole quest to discover legitimating criteria that will determine what types of discourse should be admitted into the public square is fundamentally misguided? One might well wonder why any citizen of a democratic republic should have to engage in epistemic abstinence. Why doesn't liberal democracy give everyone an equal right, without engaging in any version of epistemic abstinence, to make his or her arguments, subject, obviously, to the prerogative of listeners to reject the arguments should they be unpersuasive (which will be the case, almost by definition, with arguments that are not widely accessible or are otherwise marginal)? It seems enough for those of us who are secular to disagree vigorously with persons presenting theologically-oriented views of politics. To suggest as well that they

> are estopped even from presenting such arguments seems gratuitously censorial rather than wise (…). (Levinson 1992: 2077.)

To be sure, the answer to the empirical question regarding the effects of religious arguments depends on the political context and the issue we are discussing. Sometimes religious argumentation is "dangerous", sometimes not. In any liberal democracy, there are local communities that are religiously active and homogeneous, and allowing purely religious argumentation in these communities may lead to undesirable consequences, e.g. to religiously based local regulations. On the other hand, many political contexts in liberal democracies are such that religious arguments are totally ineffective: they are considered both unwise and unjustified. In these contexts allowing religious arguments causes no danger, and indeed, its only influence may be that religious arguments help people deliberate about public issues. It is difficult to specify exactly when purely religious arguments are morally accepted. Time and place are relevant considerations, and so is the topic under discussion, since some issues encourage religious argumentation more readily than others. It is important to notice that the religious arguments presented by the members of religious majority are more easily accepted than other religious arguments. Therefore, the arguments presented by the majority are more dangerous than the arguments presented by the religious minorities. Thus, in this respect, the principle of secular rationale is a principle which especially religious majority should take into account.

4. Concluding Remarks

I have considered two arguments which seem to limit the rights of religious minorities and argued that they are partly acceptable but not entirely unproblematic. (Cf. Räikkä 2004: Chapters 3 and 11.)

The first argument was based on the point that religious minorities are hardly ever in a strongly disadvantaged position. I argued that while this is true, there is still a moral difference between being able to practice one's religion *without* difficult and painful experiences and being able to practice one's religion *with* such experiences, i.e. to be in a weakly disadvantaged position. Minorities

which are in a weakly disadvantaged position may deserve special rights, at least in some cases.

The second argument was the claim that citizens of democratic societies have a moral obligation to use secular arguments in public debates. I pointed out that if this claim were accepted without qualification, it would be particularly unwelcome for the members of religious minorities. However, I also pointed out that in most cases it is not likely that important political issues would be decided along religious lines even if purely religious arguments were granted in public debate, and that it is arguments presented by religious majority rather than the arguments presented by the religious minorities which may be risky in some circumstances.[1]

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