

R.E. Lowe-Walker

Intercultural Deliberation and the Politics of Minority Rights



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Introduction

The model of intercultural deliberation advanced in this book rests on a simple idea: how we talk about an issue is as important as the issue itself. The significance of this modest notion has deepened along with the idea of politics as a dialogue, which has steadily gained momentum since the 80s, when theorists such as Barber, Cohen, Bessette, Elster, Gutmann and Thompson, Nino, Benhabib,¹ and others brought deliberative democracy to prominence in political theory. At the same time, multiculturalists have taken an interest in the dialogues that occur among the diverse cultures that make up a pluralist society. Dialogue, it has been observed, can serve as both a measure of social justice and a vehicle for social change. James Tully's constitutional multilogue and Bhikhu Parekh's process of intercultural evaluation,² although very different, both point to dialogue – a specific type of dialogue – as a means to meet the challenges of pluralism. The model of intercultural deliberation advanced in this book, understood as a particular type of inclusive political dialogue, resides at the intersection of deliberative democracy and multiculturalism.

Alternative articulations of intercultural dialogue, like Seyla Benhabib's complex multicultural dialogue and Monique Deveaux's principled deliberation,³ offer a great deal in terms of political discourse, but very few, if any, approach the problems of pluralism and political dialogue from an analytical perspective. All too often, political theorists espouse the virtues of equality and cultural recognition while taking as a given the fact of cultural

difference. If difference is merely recognizing that there are differences between cultural beliefs, values, or practices, then the questions typically focus on how to navigate those differences in political associations. Avigail Eisenberg and Jeff Spinner-Halev, for example, frame the question as a question of jurisdiction in the “minorities within minorities” debate. To what degree should the liberal state tolerate oppressive practices within a minority group and at what point can the state legitimately interfere with practices that are deemed by the state to be discriminatory?⁴ The forms of discrimination under scrutiny vary. Susan Moller Okin focuses on certain cultural practices that subordinate women,⁵ while Jacob Levy is concerned with norms that relegate some citizens to second-class status on the basis of sexual orientation.⁶ Ayelet Shachar notes that multicultural accommodations can reinforce power dynamics that disadvantage weaker members within the minority group.⁷ In all these cases, the question is: At what point can the state legitimately override the rights of the group in order to protect the rights of individual members within the group? This is, to be sure, an important question; however, I suggest that an effective response ought to be shaped by more than a superficial understanding of the idea of difference. What sets my approach apart from the jurisdictional approach is that I accept that the very idea of cultural difference, along with its social and political significance, is contestable on multiple levels. Instead of asking what the liberal state can tolerate, or at what point state interference is justified, I ask: *How does our understanding of difference affect how we treat the claims of minority groups?* This analytical approach offers unique insights into the conceptual underpinnings that undermine the fact of cultural difference and, as a result, serves to clarify certain types of resistance to core concepts of pluralism. This, then, is the starting point of this discussion, and at its heart there is a paradox that speaks directly to the issue of cultural difference and what sort of dialogue is required to bridge the intercultural divides at play in a pluralist society.

It is a paradox articulated at the level of political theory, deployed by liberal democratic institutions, and it can be observed in the political discourse of mass communications. Put simply, it is a way of dismissing minority rights claims before they are properly understood. The minority rights paradox is not merely an assessment of the logical structure of claims; it is a dialogical exchange consisting of the minority claim, the response to the claim, and the minority rejoinder. Minority groups, it is thought, are paradoxically claiming rights that are unsupported by the values upon which the claimants base their claim. On the one hand, minority claims are made on

the basis of rights secured by a liberal democracy; on the other hand, the claims undermine the legitimacy of liberal reasoning – the same reasoning that legitimizes the rights on which the claims are made. Minority groups respond that liberal institutions exert a cultural bias against them and, as a result, it is their culture – to which they have a right – at stake in their claims. The self-referential implications of this paradox are as follows: either the minority claim negates its own justification, or the underlying justification renders the claim moot. Either way, the label of paradox effectively puts an end to the conversation, and by stifling political dialogues about minority rights, the label of paradox may unjustly justify dismissing legitimate claims.

The label of paradox presupposes a particular approach to evaluating rights claims that does not always successfully negotiate the plurality of worldviews constitutive of a modern liberal democracy. Recent debates over issues like same-sex marriage, religion and secularism in education, and Indigenous sovereignty indicate that the diversity in a pluralist society is not limited to differences of beliefs, values, ideals, or practices. There is also a great deal of diversity with regard to how those differences ought to be understood.

The complications brought about by the promise of pluralism are central to contemporary political theory, particularly the literature of liberalism. How does a liberal nation find legitimacy across boundaries of religion, culture, and ethnicity when the tenets of those comprehensive worldviews are, in some cases, mutually exclusive with regard to a criterion of legitimacy? The question has been framed and reframed by theorists such as Rawls, Taylor, Kymlicka, Benhabib, Barry, Waldron, Appiah, Nussbaum, Tully, Ivison, Young, and Gutmann and Thompson (to name a few),⁸ who have all in one way or another responded to tensions within the liberal picture between the equality of citizens and pluralism. Some appeal to the idea of normative agreement on essential values that supersedes other types of disagreement. Others look to a set of core principles about which, it is argued or asserted, there can be no reasonable disagreement. Still others focus on procedural normativity and the promise of fairness as a means to settle disagreements between divergent comprehensive worldviews. I do not proffer one articulation of the question as the “right” one, or suggest that one approach is the “right” approach to democratic arrangements across the board. Instead, I problematize the idea of cultural difference and draw upon an array of literatures – philosophy, anthropology, law, argumentation, education, conflict resolution, and politics – to shed light on the complications of pluralism. As the claims of minorities find their way into the courts,

legislatures, and social consciousness, they raise important questions about biases built into public policies, laws, and institutional arrangements – biases designed to uphold core liberal ideas about the freedom and equality of all citizens. What interests me are cases where those biases seem to turn upside-down and function to oppress rather than to liberate, to reinforce inequalities rather than to equalize the rights of citizens. Unpacking the politics of paradox brings background presuppositions forward and raises important questions about those presuppositions – questions about culture and its role in political processes; questions about religious reasoning and its relationship to a secular state; and questions about what justice demands of an authentically pluralist society.

Cultural minority groups face an uphill struggle on two fronts. First, as political actors, they are often weakened due to their relatively small numbers (and in many cases their depressed economic circumstances); second, as distinct cultures with distinct values, beliefs, and practices, their reasoning is often misrecognized as irrelevant to the claims being made. As a result, the minority group, which is already marginalized by the system, is expected to overcome the paradox by translating reasons for, and justifications in support of, their claims into acceptable, liberal terms. Non-liberal minorities respond that this burden is particularly oppressive because it unjustly delegitimizes their worldview and any claims made from within their conceptual framework. Religious fundamentalists, for example, opposed same-sex marriage legislation in Canada in the early 2000s on two fronts. In the media, there were moral arguments based on biblical principles. However, the legal case was couched in terms of rights with the following question: Is section 1 of the proposal, which extends capacity to marry to persons of the same sex, consistent with the Canadian *Charter of Rights and Freedoms*? At the time, certain religious groups argued that significant features of their claims were lost in translation when they have to be translated into the language of rights.⁹

In recent years, cultural minorities, particularly Indigenous peoples, have been given increased opportunities to protest the historical injustice of colonialism and the attendant tradition of social and political oppression. There is the recognition that the destruction of Indigenous civilizations was unjust and that the descendants of those broken civilizations deserve a leg up (that is, special rights and privileges) to overcome the long-term effects of the injustice. However, in negotiating what form compensation or special privileges should take, arguments are levied against self-proclaimed non-liberal cultural minorities – that special recognition for minority rights

claims threatens civil and political liberties. Some Indigenous philosophers, like Dale Turner, are critical of any approach that is unable to extend full cultural recognition in political dialogue.¹⁰ These threats are good reason to look closely at the claims and their implications for a functioning liberal democracy; however, a potential threat is not reason enough to dismiss minority rights claims before the thrust of the claim and its implications have been given due consideration.

There is what could be called an imperializing tendency in Western rights discourse, a propensity to subject everyone to the moral authority embodied in the content of a Western conception of rights. This is what Tully calls the “empire of uniformity.” It is an authoritarian tendency of some contemporary political theorists to characterize questions about diversity in terms of constitutional uniformity. As Tully puts it: “The constitution lays down the fundamental laws which establish the form of government, the rights and duties of citizens, the representative and institutional relation between the government and the governed, and an amending formula,” as if (and this is the important bit) the system was impartial with regard to alternative systems and therefore *the* universal system of rights.¹¹ However, the abstracted rationality of universal human rights discourse is far from neutral and has often been used to privilege economic rather than altruistic aims.¹² Is there a deep connection between liberalism’s claim of neutrality and the imperializing tendency of rights discourse? Does this imperializing tendency unjustly marginalize non-liberal groups in political discourse? If the political agenda is determined by reasons that are predetermined to be legitimate political reasons, then the reasons of cultural or religious minorities that do not consider themselves liberal or that do not consider liberal reasoning to be the source of political legitimacy may be marginalized by the allowable agenda in liberal democratic processes. I focus on sub-national groups that challenge the legitimacy of a political agenda that they say is inherently conservationist and ultimately oppressive.

Responses to this sort of challenge vary, but the broad strokes run something like this: a non-liberal agenda is, by its very nature, illegitimate in a liberal democracy, and therefore the state is justified in suppressing non-liberal ideas and/or activities by force if necessary. While I agree that an anti-liberal agenda is an illegitimate enterprise in a liberal democracy, it is important to note that “non-liberal” refers to something quite different from “anti-liberal.” There are cases where extremist groups overtly claim rights as some sort of weapon, and often these claims are hopelessly internally inconsistent. I set these cases aside and focus on much harder cases, cases where

groups are not espousing anti-liberal sentiments. These groups consider their worldview to be something other than a liberal worldview – differing from but not necessarily opposed to key features of liberalism. The mistaken conflation of non-liberal with anti-liberal rests on presuppositions not only about the political situation but also about the nature and degree of difference between peoples of various religious, cultural, and ethnic backgrounds. These presuppositions about cultural difference shape the thematic framework of the book; they include a particular view of cultural relativism, of political universalism, and of public reason. Within this framework, it is possible to see the coercive effects of presuppositions about difference and to evaluate the legitimacy of those impositions on religious, cultural, and ethnic minority groups. The questions raised about legitimacy point to the need for a new approach to minority issues, one that integrates a plurality of worldviews and the concomitant diversity of ideas, beliefs, and values in an inclusive deliberation about minority rights.

A more nuanced view of cultural difference clarifies the need for substantive inclusion for minority groups and offers insights as to how that inclusion might be achieved. It is the inclusive nature of deliberation that makes it a good candidate for dialogues about minority rights claims. The term “deliberation” has, for some political theorists, become an umbrella term for political dialogue. Consequently, political deliberations include features of other types of dialogue, such as inquiry, negotiation, and bargaining. In sharp contrast to this broadening of the term “*deliberation*,” I employ the term in its narrower and more well-defined sense. Deliberation is an ongoing process that involves equals reasoning together in good faith to make a consensual decision. This is important because good faith is a defining feature of deliberation that is not found in other types of dialogue and good faith, I will argue, is a vital feature of an inclusive deliberation. Inclusion is a necessary response to the pluralism and diversity brought about by the types of freedoms endemic to modern liberal democracies. Of course, an inclusive deliberation, if it is to include claims based on non-liberal worldviews, poses significant and worrisome problems for a nation built upon and stabilized by liberal principles. But the threats posed by alternative worldviews are often based on misrepresentations of difference as oppositional difference rather than innocuous or complementary difference.¹³ In Part 2 of this book, I survey some of the most influential accounts of deliberative democracy in order to suggest what a deliberative decision-making process should look like if it is to facilitate an inclusive political dialogue.

By the end of Part 1, it will be clear that the minority rights paradox has dialogue-restricting and dialogue-ending implications. Whether the dialogue is between two minority groups or between a minority group and the state, the label of “paradox” poisons the well in that it characterizes the claim that is under scrutiny, and in some cases the claimant also, as unreasonable. Once they are cast in an unreasonable light, the claims and the claimants are excluded from political dialogue. What is needed is a political decision-making apparatus that can function inclusively with regard to minority rights claims and, in doing so, offer not only substantive recognition of worldviews but also a mechanism through which the contested nature of liberal political practice finds expression in political activity. To escape the paradox, a political dialogue must function inclusively in terms of how claimants shape their claims, and the reasoning, reasonableness, and political identity of the claimants. Part 2 is organized around these three requirements: dialogical inclusion, public reason, and political identity.

A survey of the most influential accounts of deliberative democracy, from Gutmann and Thompson to Cohen,¹⁴ generates a picture of deliberation as an inclusive process. Inclusion is necessary to legitimate the outcomes of political processes; however, it is important to note that not all accounts of deliberative democracy are the same. Deliberative theories are importantly differentiated by the priority and relationship between the various features of deliberation. I explore these theoretical relationships and their practical implications in order to put forward an inclusive approach to negotiating the content and conceptual apparatus of minority rights claims shaped by alternative worldviews.

Some accounts of deliberation give priority to the reasoning and the reasonableness of claimants at the expense of substantive equality; in some cases, this raises significant problems for the minority groups facing the paradox. When reasonableness sets limits on the character of deliberative participants, individuals may be unjustly excluded. When standards of reasoning constrain the way in which claims can be structured, minority groups may be unjustly denied equal status, access, or influence. Other accounts of deliberation give priority to equality, rather than reasonableness, which limits an inclusive deliberation in that it cannot be tied to one particular cultural idiom, argument form, or conceptual framework. Through equality, the inclusive public reason of deliberative processes makes room for alternative worldviews, reasoning styles, and content in political decision making.

Some accounts of deliberation, however, seem to rest on liberal principles, and, therefore, public reasoning is inevitably shaped by the background conditions of liberalism. How, then, could such a deliberation include the claims of non-liberal groups? The response must be, again, to order features in such a way that the deliberation is inclusive without posing a threat to the stability of the liberal democratic state. While certain principles may underpin deliberative reason, those principles need neither exclude claims made from alternative frameworks nor impose the content of liberal principles on deliberative participants. A deliberative process can be functionally independent of liberalism and offer a means to negotiate the problematic nature of dialogue between liberal states and minority groups that espouse world-views other than liberal. The priority of equality gives shape to an inclusive dialogue with regard to divergent reasons and reasoning styles.

The process of deliberating with unlike-minded individuals, it is thought, enlarges understanding, encourages tolerance, and generally makes citizens better citizens. This is the transformative feature of deliberation, and it is also one of its most controversial features. Critics reject the very idea that deliberation can significantly alter individuals. For others, the worry is that there is no guarantee that participants will be changed for the better. In fact, there is evidence to suggest that deliberations can have a negative impact on identity. Members of a minority group, for example, might be persuaded to adopt majority perspectives at the expense of the welfare of their own group. In the case of minority rights, the harmful effects of the transformative feature are problematic, I think, when transformation becomes a requirement of the process such that a deliberation is considered legitimate only if participants are deeply changed.

When legitimacy is dependent on a comprehensive notion of transformation, certain groups or individuals may be illegitimately excluded. A lesser degree of transformation occurs in reasonable deliberations, but transformation generally is not necessary to legitimate deliberative outcomes. Deliberative legitimacy, independent of transformation and distanced from reasonableness, is dependent upon the equality of participants. The emphasis on equality may have implications for identity. If elements such as character and disposition are removed from the deliberation process, identity may be inadequately recognized in the decision-making process, as individuals and groups are forced to relegate their worldview to the backbenches in order to participate in the deliberation. Such a deliberation would functionally exclude reasons based on identity claims and consequently subvert the degree of inclusion necessary to address the paradox. In

response, I suggest that identity, understood as the expression of a package of traditions, values, and beliefs, is very much a part of the deliberative process – not as a fixed “reason” to support claims but as an explanatory standpoint indispensable to expanding the epistemic resources of the deliberative process to include alternative worldviews. Deliberating rights claims gives recognition to identity because it is a process that calls upon all the relevant resources available regarding the issue at hand. Attributes of identity such as character, reasonableness, and disposition are considered resources rather than features of an individual or group that determine their suitability to participate in political dialogues, or the suitability of their reasons or reasoning styles.

This deliberative approach to political decision making reasons through the minority rights paradox by promoting, rather than stifling, political dialogue between groups or individuals with differing worldviews. When the decision-making process is no longer predicated on presumptions of universalism, then alternative reasons, reasoning styles, and ways of understanding the world become public and are able to carry political force through deliberative processes. The very conceptual conditions in which the politics of paradox emerges are brought under scrutiny through deliberative processes. Those conditions thus become an object of the deliberation rather than a dialogical constraint. Intercultural deliberation, as I will present it, generates the space necessary to recognize reasons and reasoning from various worldviews in political decision making. The minority rights paradox, once reinforced by opposition and misrecognition, is overcome first by recognizing the pluralist nature of political association and, second, by engaging the content and concept of minority rights claims through an inclusive, genuinely intercultural deliberation.