1

Liberalism and the Accommodation of Group Claims

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1. Setting the Stage

One of the most persistent criticisms of liberalism is that the priority it assigns to freedom and individual rights is not simply disruptive of conventional social norms but also undermines the value of community. The communitarianism that arose in the 1980s is a recent example of this response to liberalism as a political project as well as a political theory. Some communitarians are more liberal than others (for example, Michael Walzer and Charles Taylor are more so than Alasdair MacIntyre). But if anything unites communitarians, it is the conviction that basic freedoms and other requirements of liberal justice are secondary (at best) to a person's achieving the good of community. Liberals reply that they can accept that individuals realize a large part of their good through participation in social groups (not just families and friendships, but larger associations too), and that the values of community are worth pursuing for their own sake. Liberals, however, reject the communitarian contention that certain communal interests are to be *politically* enforced, taking priority over equal basic liberties and opportunities and the freedom to define one's own good.

Multiculturalism is the heir to this non-liberal doctrine and perhaps its natural development. It is no accident that many communitarians are also theorists of multiculturalism. Like communitarians, multiculturalists insist that a person's good is primarily defined by membership and active participation in a (dominant) community of some kind. But whereas communitarianism is an ideal theory outlining the bases of social unity in terms of everyone's pursuit of communal ends, multiculturalism takes cognizance of the fact that often there are a multiplicity of cultures coexisting within the same society and under one government. It then

provides communitarianism with a non-ideal theory which says how societies and their governments should deal with the real world of 'difference'. Put in the most simple terms, multiculturalists advocate that, because achieving one's cultural 'identity' is so central to a person's good, each distinct cultural group in a multicultural society should recognize and respect the cultural practices of others and not impose its norms, particularly its liberal norms, on them. For the liberal emphasis on individuals' equal freedom to find their own good makes achieving one's cultural identity difficult, if not practically impossible, and undermines the distinctness of cultural groups. Multiculturalism prescribes a policy of not just toleration, but also of accommodation of disparate cultural groups, many of which do not endorse liberal social or even political norms.

Brian Barry's *Culture and Equality* is a liberal response to multiculturalism and its criticisms of liberalism. The book is a sustained attack on multiculturalism's main theses and proponents from the perspective of the kind of egalitarian liberalism associated with John Rawls's *A Theory of Justice* (see Barry 2001: 7f, 16) Barry has been one of Rawls's more informed and probing liberal critics. But for all his differences with Rawls, he still sees 'justice as fairness' as the major statement of 'the classical ideal of liberal citizenship' and the egalitarian 'demands of social and economic citizenship' that define egalitarian liberalism (*CE*: 7). Furthermore, he sees multiculturalists as denying the equality of basic liberties and fair opportunities that define equal liberal citizenship; moreover, they even help to undermine the economic claims of the poor by trying to shift political focus away from questions of distributive justice to a 'politics of recognition' of different cultural groups (*CE*: 325).

Barry's attitude towards multiculturalism is evident early on: 'I have found that there is something approaching a consensus among those who do not write about it that the literature of multiculturalism is not worth wasting powder and shot on' (*CE*: 6). What makes critical engagement with multiculturalism worthwhile for Barry is that it receives such widespread sympathy, if not allegiance, in academia and American intellectual life, and those who write on multiculturalism are almost uniformly sympathetic to it. While non-philosophers (such as Robert Hughes and Todd Gitlin) have responded to multiculturalism on behalf of liberalism, Barry sees a sustained critical treatment from within political philosophy as long overdue.

Culture and Equality is divided thematically into three parts. In Part I, Barry concentrates on the idea of equal treatment. He takes on the multiculturalist view that equal treatment requires treating people according to their different culturally derived beliefs and practices. He argues that this misconstrues the liberal ideal of equal treatment, which requires that people be treated according to the same rules. Part II focuses on the claims of groups and particularly the multiculturalist idea of 'group rights'. Barry addresses the argument that liberal principles tend to undermine or destroy the independence of minority cultures and that these groups should have special group rights to protect their cultural practices. He focuses especially on the claims of illiberal religions (the Amish, for

example) and religious practices of sex discrimination (*CE*: ch. 5); then he turns to religious and other groups' claims regarding the rearing and education of children (*CE*: ch. 6). Then in Part III Barry addresses philosophical arguments for multiculturalism that proceed from the idea that moral universalism is false (*CE*: ch. 7). The book ends with a discussion of the adverse practical consequences of enacting multiculturalist programmes (*CE*: ch. 8). Here, Barry argues mainly that these policies do not benefit the people they are designed to help, and prevent the enactment of liberal social programmes that really would benefit the disadvantaged members of minority groups.

Liberalism for Barry is a universal doctrine that applies to all persons in all societies as a matter of right and justice. It requires equal basic liberties, a strong view of equal opportunities and guaranteed economic resources for all persons. Societies whose institutions are not sufficiently developed to provide all these rights and goods still have a duty to work towards institutions that eventually will. Barry will have nothing to do with Michael Walzer's and other multiculturalists' position that the rights and liberties people ought to have depend on the 'shared understandings' or practices of their cultures (*CE*: 136). This is cultural relativism and it is ultimately incoherent; moreover, it makes justice dependent on the values and views of dominant elites, and discriminates against minorities who do not share the understandings of a majority (*CE*: 196).

Barry sees multiculturalism as regressive. It is 'anti-egalitarian', if not in intention, then certainly in effect (*CE*: 12). The privileges it provides to special interests are 'conducive to a politics of "divide and rule" that can only benefit those who benefit most from the status quo' (*CE*: 11). He finds it especially ironic that the multiculturalist left would seek to revive the romantic doctrine that each cultural group has an identity uniquely suited to it which ought to be preserved, cultivated and, if necessary, even resuscitated. Since cultural identity is not chosen but is largely based on descent, the multiculturalist left's embrace of 'romantic nationalism' flirts with the worst twentieth-century right-wing ideologies (*CE*: 260–1).

For Barry, equal treatment is an integral feature of liberalism. Equal treatment does not imply equal impact, he says, but governing everyone according to the same legal rules. Almost any law will affect people differently, and, by itself, there is nothing inherently unfair about this (*CE*: 34). He rejects, then, the 'rule-and-exemption' approach to religious and other minorities advocated by multiculturalists, which exempts minority practices from general legal requirements. So he opposes the exceptions made in Britain's animal slaughter laws which allow Jews and Muslims to use traditional methods of ritual slaughter, as well as Britain's exemption for Sikhs from weapons and motorcycle helmet laws (*CE*: 41–6). He further argues that the United States Supreme Court, in *Oregon* v. *Smith*, was right to deny Native Americans the right to use peyote sacramentally in exception to anti-drug laws, since (regardless of the wisdom of anti-drug laws) to constitutionally require an exemption for religious use of illegal drugs would violate liberal equal treatment (*CE*: 170ff, 183f), I will return to this subject in section 2.

Multiculturalists contend that liberalism provides inadequate protections for multicultural 'differences'. Liberalism protects the integrity of minority groups and cultural practices mainly by assigning priority to, and enforcing such equal basic rights as, liberty of conscience and freedom of thought, and freedom of association. Barry argues (*CE*: ch. 4), that freedom of association especially provides for a liberal culture of tolerance that allows for the diversity and flourishing of many different cultural traditions. Freedom of association implies permission for groups to treat their members in illiberal ways, as unequals (for example, as in religious and other traditional restrictions on women's roles) and by limiting individual freedom as a condition of membership (e.g. religious dietary and sexual conduct restrictions). As Barry says, 'It is no part of liberalism . . . to insist that every group must conform to liberal principles in its internal structure' (*CE*: 147). So long as restrictions on conduct are voluntarily assumed by members, there is no violation of liberal political norms. But many multiculturalists reject liberal diversity and argue instead for 'deep diversity', which involves imposing coercive *political* restrictions on the liberties of members of minority cultures, to prevent them from deviating from cultural norms (*CE*: 128). Barry perceptively explains how such proposed restrictions imply a rejection of liberal freedom of association. For essential to freedom of association is a person's right to refuse associational demands and to exit associations at any time (*CE*: 149f). Groups may restrict individuals' freedom in many regards as a condition of membership, but they may not coercively restrict the freedom to disavow affiliation when a person is no longer willing to accept the conditions of membership.[1]

Barry's most trenchant criticisms are directed against liberals who seek to accommodate multicultural aspirations. Will Kymlicka especially is criticized, since 'he presents himself as [a liberal]' (*CE*: 137), but in fact he is not, since he would compromise liberalism's universalistic and egalitarian core in the name of the 'romantic nationalism' that he advocates (along with Charles Taylor and multiculturalists generally). Barry bases these criticisms on Kymlicka's (and Michael Walzer's) willingness to grant national minorities (such the Quebecois) rights of self-government within a liberal constitution, and allow them to make exceptions 'to measures imposed by a liberal state to prevent violations of liberty and equality' (*CE*: 138). Barry cites (as an example) Kymlicka's willingness to allow Pueblo tribal councils the authority to limit freedom of conscience and impose sexually discriminatory political membership rules. And against Kymlicka's contention that his 'asymmetric federalism' does not involve any inequality for Canadians outside Quebec, Barry contends that Kymlicka ignores the obvious inequality that allows Quebec representatives to vote on laws that apply not to Quebec but only to the rest of Canada (*CE*: 311). In fairness, I should point out that Kymlicka does object to the Pueblo violation of liberal liberties previously mentioned, but opposes the US government's 'imposing liberalism' by coercing the Pueblo council (Kymlicka 1995: 165). Since Kymlicka sees a violation of rights here, it perhaps presumes too much to say that 'Kymlicka clearly buys into the idea that

human rights are a form of "cultural imperialism"' (*CE*: 138). This is especially so if not all equal liberal liberties (e.g. equal political rights to vote and hold office) are also human rights.

A philosophical notion of respect for persons as such (or as citizens) informs most liberal thinking and is one basis for the idea of human (and liberal constitutional) rights. The liberal idea of respect is different from the idea of 'recognition' that attracts multiculturalists (e.g. Charles Taylor, Iris Young, Nancy Fraser and James Tully, among others whom Barry discusses). The 'politics of recognition' does not deny the universalist idea of respect for persons as such; rather, it insists that a condition of equal respect is that the diverse cultural practices and values affirmed by different persons receive recognition of their equal worth. Barry finds this position incoherent: 'Unless discriminations are made, ascribing value to something ceases to have any point' (*CE*: 269). Liberal requirements of equal respect, equal treatment and equal rights are *political* duties of justice owed to persons, and do not depend on moral recognition of the equal worth of their lifestyle. One does not have to affirm another's religion as equally worthy of belief as one's own conscientious convictions in order to respect equal liberty of conscience. Likewise, Barry says in response to Andrew Sullivan's and others' arguments, 'We should totally reject the notion that the only way in which the case for equal rights for homosexuals can be made is to establish first the equal worthiness of homosexual and heterosexual lifestyles' (*CE*: 279). It is not only bad philosophy, but also a self-defeating political strategy (*CE*: 276–7).

In the next two sections I focus on two particular discussions of Barry's, and argue that he exaggerates the degree to which liberals must oppose certain measures advocated by multiculturalists. Liberalism is more flexible, I argue, than Barry's depiction of it.

2. Freedom of Religion and Sex Discrimination

The first of these issues has to do with Barry's discussion in chapter 5 of *Culture and Equality* of anti-discrimination laws as they apply to the internal workings of religious institutions. Barry says: 'It is no part of liberalism . . . to insist that every group must conform to liberal principles in its internal structure' (*CE*: 147). In response to Ian Shapiro's suggestion that the Catholic Church be denied tax-exempt status because it recognizes only male priests, Barry says he thinks this is mistaken. Assuming that churches should have favourable tax exempt status at all (a position which Barry disagrees with), 'their doing so should not be contingent upon their abandoning their position on the necessary qualifications for holding religious office' (*CE*: 168). He develops this argument in the following section, 'In Defence of "Asymmetry"'. Here again he concludes that whether or not priests should be all male is a 'purely internal dispute within a church' (*CE*: 176) and that the Catholic Church should not be prohibited or penalized for its rejection of a female priesthood.

I agree with Barry here, but I want to raise some questions about this matter in relation to his discussion of the 1990 Supreme Court case, *Department of Human Resources of Oregon* v. *Smith* (494 US 872 (1990)). In *Smith*, the Supreme Court, in an opinion by Justice Scalia, held that the Native American Church's sacramental practice of ingesting peyote was not protected by the First Amendment 'free exercise' of religion clause. Barry says: 'The implication of Smith . . . is that if an act of some kind is illegal in general, the mere fact that someone performs an act of that kind in pursuit of religion does not protect it' (*CE*: 190). In this context Barry takes up Cass Sunstein's argument that exempting religions from sex discrimination laws is inconsistent with the Court's position in *Smith*. Barry disagrees, saying there is no incoherence in the two positions: 'For the Court's position is that it is open to legislatures to create exemptions from general laws if they so choose, and the exemption from sex discrimination laws for religious bodies is covered by the provisions of the law on discrimination itself' (*CE*: 173). The real issue then (the issue Sunstein should raise, even if he does not do so explicitly) is, should *any* religious exemptions have been allowed by Congress to the sex discrimination laws to begin with? Barry clearly thinks so. Indeed, he appears to argue that specific legal exemptions should be unnecessary, since sex discrimination in religious hierarchy is a practice that would be constitutionally protected by 'free exercise' (*CE*: 175–6).

The liberal position endorses Barry's claim that the Catholic Church should not be required to comply with sex discrimination laws when it comes to deciding who may administer Christian sacraments, or who may serve in favoured positions within the Catholic hierarchy. If one believes that a male hierarchy holds the keys to heaven, then this purportedly apostolic practice should be constitutionally protected by freedom of religion and association. But if Catholic doctrine (like Native American Church doctrine) had taught for two millennia that serving transubstantiated peyote at Mass was necessary to salvation, then so too should sacramental peyote be protected. I fail to see why one can be prohibited but not the other. But here Barry endorses Justice Scalia's opinion in *Smith*, that in not allowing a religious exception to drug laws prohibiting peyote the law is consistent with the 'free exercise' clause of the Constitution. It is this position of Barry's that I cannot understand.

This is not to say that the Amish should be exempted, as the US Supreme Court held in *Wisconsin* v. *Yoder* (406 US 205 (1972), majority opinion written by Chief Justice Burger), from sending their children to school until the age of 16, like everyone else in Wisconsin and other states where Amish reside. In *Yoder* the Court held that the First Amendment 'free exercise' clause required an exemption for the Amish (who were willing to provide an eighth grade education for their children). The Court said that, because of its impact, 'Compulsory school attendance to age 16 for Amish children carries with it a very real threat of undermining the Amish community and religious practice as it exists today' (see Barker et al. 1999: 132). The problem with this decision is that questions of parental control of children's non-religious education, and of how long children are

schooled, are not central to the content of Amish doctrine or sacrament. And even if they were, still the Amish practice of no more than rudimentary education undermines the rights of children to develop their capacities so they can effectively exercise basic liberal rights and take advantage of opportunities. *Yoder* is multiculturalism with a vengeance, for it ensures that Amish children will not be prepared to leave the Amish fold and take up a life outside the faith. It preserves the Amish community at the expense of the civic freedom and individual development and independence of its members; as such, it is inconsistent with a liberal egalitarian position.[2]

Still, laws like those in *Smith* are different. Anti-drug laws, even if, on the face of it, neutral, directly prohibit a religious sacrament of the Native American Church. This is different from the unintentional impact that neutral laws (such as compulsory school attendance) have on the ease of practising or raising one's children in a religion. Only the most compelling reasons of justice, those regarding the protection of others' fundamental rights, should be allowed to outweigh the freedom of religious doctrine, sacraments and liturgical practices. And the integrity of religious doctrine, sacrament and liturgy is just the issue when questions are raised about the all-male Catholic hierarchy, the sacramental use of peyote or (for that matter) the sacramental use of wine during the Prohibition era.[3]

Granted, there may be difficulties applying this position. It requires that courts and legislatures engage in the kind of inquiry that Justice Scalia sought to rule out in *Smith*, namely the consideration of whether a state prohibition of conduct is sufficiently compelling to outweigh a question of doctrinal or sacramental significance. But, as Justice O'Conner said in dissent in the *Smith* case:

> The Court's parade of horribles [which Scalia enumerated] as, 'the prospect of constitutionally required religious exemptions from civic obligations of almost every conceivable kind – ranging from compulsory military service . . . payment of taxes . . . health and safety regulation . . . child neglect laws . . . compulsory vaccination laws . . . drug laws . . . traffic laws . . . social welfare legislation such as minimum wage laws . . . child labor laws . . . animal cruelty laws' not only fails as a reason for discarding the compelling interest test; it instead demonstrates just the opposite: that courts have been quite capable of applying our free exercise jurisprudence to strike sensible balances between religious liberty and competing state interests. (Forster and Leeson 1998: 152)

The Court's minority position implies that, in deciding whether a religious practice is constitutionally exempt, courts must consider not just how compelling the state interest is, but also whether a religious practice is more or less central to that religion's doctrine. Otherwise the necessary balancing of conflicting religious and state interests cannot be carried through. But there is no way to escape this, except by watering down the 'free exercise' provision so that it provides little substantial protection for religious practices. But this seems to be just the implication of the Scalia opinion in the *Smith* case.

So my question is, how can Barry accept both (1) 'that *Smith* was rightly decided' (*CE*: 174), even though it prohibits a sacramental practice that does not endanger others' basic rights and liberties, and also (2) that there is a constitutional right for Catholics to discriminate in decisions regarding the gender of its priesthood?[4] His stated position seems to be that sex discrimination in the priesthood is protected on grounds of both freedom of association and freedom of religion.[5] Now it may be that the sacramental use of peyote does not receive protection under freedom of association. But given its centrality to the liturgy of the Native American Church plus the fact that it does not pose a threat to others' basic liberties, I do not understand the liberal basis for arguing that sacramental peyote should not be protected by freedom of religion.

To summarize: Barry exaggerates the degree to which the liberal egalitarian account of justice he relies on always requires equal treatment according to the same legal rules. Sometimes there are legitimate liberal objections to rigid application of this requirement of formal justice. Equal treatment under one rule may involve not just unequal impact, but unequal treatment under another rule. Then the important question for liberals is not (as multiculturalists maintain) whether equal treatment damages someone's cultural identity, but whether some important right or other requirement of justice is violated. Given the priority liberals assign to equal liberty of conscience, there should have been an exception made in *Smith* to drug laws for sacramental practices that themselves do not violate anyone's basic rights or other important requirements of justice. No doubt Justice Scalia (who wrote *Smith*) and the Court would not have enforced a general prohibition on alcohol against the use of wine during Catholic Mass. There is no difference with the sacramental use of peyote (assuming it is a central part of the Native American Church's liturgy). In *Smith*, equal treatment under drug laws resulted in unequal and unjust treatment under the First Amendment.

3. Equality of Opportunity and Preferential Treatment of Disadvantaged Minorities

I turn now to Barry's treatment of equal opportunity. Rawls distinguishes two positions within the liberal tradition. First, there is 'formal equality of opportunity', the name Rawls gives to Adam Smith's idea of 'careers open to talents'. This position forbids legal and conventional impediments to educational and occupational positions on grounds of race, ethnicity, gender, religion and other characteristics unrelated to a person's qualifications to successfully execute the performance demands of (permissible) social positions. Second, there is 'fair equality of opportunity', which adds to these same prohibitions on discrimination positive requirements that society provide adequate and fair educational opportunities for all, as well as health care needed for citizens to take advantage of opportunities. Rawls also says that fair opportunity requires that society prevent concentrations of wealth, but he does not elaborate (Rawls 1999: sects

12, 14; 1993: 184, 363). These two liberal positions are to be contrasted with the idea that a certain proportion of educational and occupational opportunities should be preserved for members of salient social, ethnic and religious groups. Barry clearly rejects this position (which might be called equality of opportunity for groups); it is part of his rejection of multiculturalism and the politics of difference.

Again, I agree with Barry's position here. But enforcing proportionate representation for groups in desirable social positions should be distinguished from temporary measures that give preferential treatment to disadvantaged social classes for purposes of remedying past discrimination. Equality of opportunity for groups differs from familiar forms of preferential treatment for disadvantaged minorities that come under the name of 'affirmative action', since the former position says that under any circumstance, and even if there has not been a history of unjust discrimination, salient racial, ethnic and gender groups should be proportionately represented in favourable social positions. The kind of preferential treatment it affords is a permanent condition and part of an ideal of social relations. Familiar practices of preferential treatment are not like this. They are not intended to be permanent, but are responses to the present effects of past injustices.

Of the familiar form of preferential treatment, Barry says that it is not good politics, since 'it is bound to create resentment . . . which cannot be dismissed as unjustified' (*CE*: 115). Also, preferential treatment programmes as practised are both under-inclusive and over-inclusive. They do not normally include all the poor or all persons who have suffered a history of discrimination. And the advantages afforded most often go to middle-class minorities and not to the poor. But middle-class minorities, Barry says, should have to compete with everyone else on equal terms (*CE*: 115).

These are familiar criticisms. They would be effective criticisms on the assumption that the purpose of preferential treatment is directly to benefit the poor and immediately to compensate disadvantaged minority members for injustices done to their ancestors. As Barry's criticisms indicate, the preferential programmes now in place are grossly inefficient means for these purposes, since middle-class minorities are the main direct beneficiaries. But my understanding of the primary aim of these programmes is that they are not compensatory, or designed to immediately benefit disadvantaged minorities. Instead, they are intended to effect structural changes, by providing a secure basis for and bolstering the growth of a black middle class, with the long-term aim of increasing the bases for self-respect of black minorities as a whole. In the 1960s, when preferential treatment was first instituted, a black middle class simply did not exist in many parts of the South and elsewhere in the United States. A black middle class thrives now in many places in the South, and has a foothold even in the most backward rural areas where segregation and black poverty was (and still is) most entrenched. This is largely due to the effects of preferential programmes. Here, it should be recalled that preferential treatment for blacks in these and other areas usually replaced or at least supplemented a different form of preferential treat-

ment for whites, based on nepotism, political connections and often outright racism. These programmes have been a resounding success, even if they have now become increasingly unpopular as a result of white resentment. Whatever the wisdom of such programmes, their historical success should now – several decades later – be emphasized, even celebrated, and not regretted by the liberal press and by liberal academics. The existence of a black middle class fostered by preferential treatment programmes has given poor blacks some grounds for hoping that the deck is not entirely stacked against them and members of their class, and that the promise of fair opportunities is, to some degree at least, genuine in America.

So I am more sanguine about the role and history of preferential treatment as a remedial device than Barry is. It is not, I believe, contrary to fair equality of opportunity, in Rawls's sense, since we do not live in the ideal circumstances of a Rawlsian well-ordered society, where liberal egalitarian principles are generally accepted and realized in institutions. Some departure from the liberal ideal of fair equal opportunity is permissible in less than ideal circumstances, to rectify past and present discrimination, and when it will promote the conditions of black equality needed for a well-ordered society.

Now consider a fourth sense of equal opportunity, which has been suggested by radical democrats. This is the view that individuals should have equal chances of succeeding in life, whatever their social position, and, where differences in natural talents exist, the less fortunate should be compensated for their shortcomings. Call this 'perfect equality of opportunity'. This seems to be the conception of equal opportunity Rawls has in mind when he says: 'It seems that even when fair opportunity is satisfied, the family will lead to unequal chances between individuals. Is the family to be abolished then? Taken by itself and given a certain primacy, the idea of equal opportunity inclines in this direction' (1999: 448). He goes on to say: 'But within the context of the theory of justice as a whole, there is much less urgency to take this course' (ibid.). In this perfect sense of equal opportunity, it seems that we would not simply have to abolish the family to provide anything close to equal chances in life, but also love, friendship, religious ties and any other form of association that might influence a person's chances of success or failure in life. It should go without saying that perfect equality of opportunity is inconsistent with liberal basic liberties. So far as anyone affirms it, it is a holdover left from the demise of Marxian utopianism. It should be banned from the cupboard of liberal ideals as a situation that is not worth aspiring to, since it comes at such great costs to liberal freedoms.

Given that perfect equal opportunity is inconsistent with liberalism, it is somewhat disconcerting to see the idea cropping up in Barry's discussion of education opportunities for children. He says:

> I believe it is essential to the maintenance of even rough equality of opportunity to make it illegal for any private school to spend more per head on its students than the average amount spent by the state system, unless the state can show that it has

> disproportionate numbers of children with special physical, psychological or educational needs. . . . Its only effect would be to prevent already advantaged parents from buying unfair educational advantages for their children. (*CE*: 206)

Let's assume that we can achieve and enforce equality of funds per child allocated for education by every school district. Would it then be appropriate to limit what private schools spend for education per child, so that it does not exceed the amount allocated for public schools? If so, would it then also be appropriate to limit the amount that parents may spend for the education of their children outside of school (private tutoring, music lessons and so on)? The problem with the suggestion of such limits is not just the degree of police supervision that would be needed to enforce such restrictions. It is the suggestion that more education and knowledge for the more advantaged (or for anyone) somehow disadvantages those who do not enjoy this benefit. Given the amount of time children devote to watching television (19 hours per week on average in the USA),[6] and the enormous influence that TV and popular culture have on children, it would be an unfortunate strategy to discourage anyone from spending more on schooling. A better solution would be to provide loans for extra private education or tutoring or music lessons for those unable to pay for them. But given that parents have different preferences for education for their children, the desire for more education should not be frustrated, but rather encouraged.

In fairness to Barry, it may be that what he means when he suggests limits on spending by private schools for education, is a limit on further spending on what he later calls 'credentialism' (*CE*: 213–14), that is, when students are prepared to compete for scarce educational and job opportunities. If so, then he may not have intended that his suggestion apply to what he calls 'education for living', or knowledge for its own sake. As Barry says of this perfectionist ideal: 'Education [for living] is if anything complementary: so far from one person's trained ability impoverishing the prospects of others, it is likely to enrich them' (*CE*: 221). But if this is true, then it is all the more reason not to limit spending per student by private schools.

4. Concluding Remarks

Some will think that Barry should be criticized for not being sufficiently attuned to some multiculturalists' main concerns. Multiculturalists are not just worried that the distinctness of cultures and their practices will be lost in a liberal society; another worry is that they are being melded into ways of life typical of middle America as it responds to the influences of global capitalism. One does not have to be a romantic nationalist to regret the effects of popular culture (including commercial television) in homogenizing life and undermining culturally and regionally distinct ways of life. The ever present depiction of brutality and carnality by the entertainment industry is not a problem liberalism can easily address by politi-

cal means. Liberalism leaves it mainly up to families to exercise control in these matters. But multiculturalists know this is something most parents, even when they are able, fail to do, however much they may regret what their children are exposed to.

Barry is right in saying that liberalism does not seek to meld all cultures into a distinct pattern. On the contrary, liberalism (unlike other political views) respects cultural differences (so long as they respect the liberal political rights of their members) by allowing freedom of association and other liberties needed for a distinct culture to survive in a diverse society. What liberalism refuses to do is to ensure a culture's survival by enforcing politically the practices of any particular cultural group. Instead, it politically permits individuals (in effect) to revise their 'cultural identities'. The consequence of this is the thriving (and dying) of many different cultural groups, accompanied by a largely traditionless and commercialized 'civil society' which individuals turn to, often to escape the confines of their particular cultural groups. It is perhaps the homogenizing effects of liberal civil society, seen by multiculturalists as largely individualistic and commercially infused, which they object to most. While its enormous commercial influences might be regulated, this individualistic mass culture is perhaps an ineradicable part of liberalism. Hegel proposed the unifying forces of 'the state' as a source of community to temper the individualistic and commercialized bias of liberal civil society. Liberals (fortunately) do not have that option. Government's role is not to enforce a community of (non-political) values, but to establish justice and promote the common good of free and equal citizens. This is the common liberal political culture that provides the basis for social unity among disparate subcultures and groups. Still, a problem (if that is what it is) remains, and liberalism's response to it (thus far) is unsatisfactory for many people. Barry thoroughly and effectively criticizes all the illicit (and a few licit) ways by which multiculturalists seek to address the problems they see in liberal political and social culture. It is to be hoped that he and other liberals might now devote greater attention to liberal means that counteract the disintegrating effects of commercial institutions in liberal civil society.[7]

Notes

I am grateful to Samuel Scheffler and R. Jay Wallace for their comments. The second and third sections of this chapter derive from a discussion paper presented at a workshop on culture and equality at Columbia University School of Law in April 2001. Sections 1 and 4 previously appeared in *The Journal of Philosophy*.

1. Freedom of association with an inalienable right of exit is one way in which liberals differ significantly not just from many multiculturalists, but also from libertarians. Essential to libertarianism is the idea of absolute freedom of contract, which allows for the alienation of one's freedom to exit associations as well as alienation of all other liberal basic liberties.
2. As Justice Douglas said in dissent in *Yoder*: 'It is the student's judgement, not his parents, that is essential if we are to give full meaning to . . . the Bill of Rights and the

right of students to be masters of their own destiny. If he is harnessed to the Amish way of life by those in authority over him and if his education is truncated, his entire life may be stunted and deformed' (quoted in Barker et al. 1999: 135).

3. Here it is to be noted that the Eighteenth Amendment (1919, repealed by the Twenty-first Amendment in 1933) prohibited 'the manufacture, sale or transportation of intoxicating liquors . . . for beverage purposes', but not for sacramental purposes. The Amendment was specifically worded so as not to apply to sacramental uses of alcohol.
4. Barry says 'it is consistent to say (1) that *Smith* was rightly decided and (2) that nevertheless the "free exercise of religion" clause of the US Constitution would require churches to be given a waiver from a law prohibiting discrimination in employment even if no provision permitting one were written into the law itself. If this is taken to be the "asymmetry thesis", it is not incoherent and is indeed correct' (*CE*: 174).
5. Barry says 'the case for "asymmetry" turns on a particular aspect of free association' (*CE*: 175). He also approvingly quotes a US court which said that it 'is a purely ecclesiastical question' who preaches from the pulpit of a church (*CE*: 175). Barry adds that questions of priest's or parson's gender is 'a purely internal dispute within a church' (*CE*: 176).
6. The figures are for children aged 3–11, with teenagers watching on average more than 17 hours per week (Robinson and Godbey 1997: 211, 209).
7. One such effort is offered by Joseph Raz (1994: 170–91).

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