Makale:

Critics of Will Kymlicka’s Liberal Minority Rights Theory: Failure to Protect Religious Minorities

(Will Kymlicka’nın Liberal Azınlık Hakları Teorisinin Eleştirisi: Dini Azınlıkların Korunmasında Başarısızlık)

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Özet

Bu makalede, Will Kymlicka’nın modern siyaset ve hukuk dünyasının son on beş yılına damgasını vuran, çok-kültürlü vatandaşlık doktrini diğer adıyla liberal azınlık hakları teorisi olarak bilinen yaklaşımı; Ayelet Shachar, Bhikhu Parekh ve Seyla Benhabib gibi siyaset bilimcisi ve hukukçu akademisyenlerin yaptıkları eleştiriler çerçevesinde incelenmiştir.

Çalışmanın, giriş bölümünde modern liberal demokrasilerde azınlık haklarının korunmasının önemine değinilmiştir. Ardından, Will Kymlicka’nın liberal azınlık hakları teorisi, dini azınlıkların korumada başarılı olması mümkün olup olmadığı sorgulanmıştır. Ayelet Shachar ve Beraber Yönetim başlığı altında, Shachar’ın Will Kymlicka’nın teorisine dini azınlıkların korumada başarılı olamayacağı noktasında ele alınmıştır. Devamındaki bölümde ise, Bhikhu Parekh ve Yeniden Çok-kültürlülüğü düşünmek başlığı altında, Parekh’in, Kymlicka’nın liberal azınlık hakları model teorisine özellikle göçmenler konusundaki önerilerine karşı yaptığı eleştiriler ele alınmıştır. Sonraki, Seyla Benhabib ve Kültürün Talepleri bölümünde,

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Benhabib’s Kymlicka’s model to kadın-erkek eşitliği noktasından feminist görüş bakışıyla eleştirilere yer verilmiştir. Makalenin son kısmında ise, laïklik kapsamında dini özgürlüğün anlamı da ele alınmıştır.

Sonuç olarak, Kymlicka’nın çok-kültürlü vatandaşlık, azınlı hakları teorisinin, etnik ve dil azınlıklarını koruma başarı sağlayabileceği, fakat dini azınlıkları koruma noktasında zayıf kaldığı sonucuna ulaşılmıştır.

Abstract

In this paper, an evaluation or various criticisms of Kymlicka from the perspective of Shachar, Parekh, and Benhabib, political scientists and legal scholars, will be made in order to understand and present a clear view on Kymlicka’s liberal minority rights theory. Kymlicka’s theory has for more than fifteen years remained most persuasive in the realm of minority rights.

Initially, the importance of the protection of minority human rights in modern liberal democracies was defined. Second, I questioned Will Kymlicka’s liberal minority rights and whether it could be successful. Under the subsection of Ayelet Shachar and Joint-Governance; according to Shachar, Kymlicka’s claims to protect religious minority rights are not successful. In the subsection of Parekh and Rethinking Multiculturalism, Parekh is negative regarding Kymlicka’s theory on the proposals about immigrants. Then, under the subsection of Seyla Benhabib and Claims of Culture; Benhabib’s critics will be explored. How it is insufficient in terms of Kymlicka’s theory from the perspective of gender equality. Lastly, I will explore the meaning of religious freedom within the discourse of secularism.

In conclusion, Kymlicka’s multicultural citizenship, or in other words minority rights, could be successful in order to protect ethnic and linguistic groups, yet is questionable in the protection of religious minority groups.

Introduction

In fact, Kymlicka’s theory does not provide the requisite political space for religious minorities, and therefore in his weakness that resolution will be sought after here. In broader perspective, it is to say that today’s liberal democracies are in crisis in terms of the protection of religious minorities, especially post 9/11. However, I will abandon Kymlicka at this juncture and instead resolve the discrepancy in leaning towards Ayelet Shachar’s point concerning the real question around religious minorities. This real question surrounds the fact that liberal democracies may provide enough protection for ethnic and linguistic minorities but not for religious ones. The French model of secularism or its Turkish counterpart, incidentally a poor copy of the former, may provide quite lacking in this regard. Anglo-Saxon soft secularism, for instance as in the U. K. or the U. S., could provide a more compatible solution for liberal democracies. Of course, one should note that secularism began and developed in the Western world as a reaction to church or ecclesiastical superiority, or perhaps even tyranny. It would be a mistake of transference, which appears to be the case, however, as it was when the Western world takes a look at the religious issues in Islamic states. One would be mistaken to simplify the approach to religion as such, to think the issue is the same around the world and in all
religions. However, the exception of Iran (consisting in mostly Shia Islam) does not allow the religious leaders to control the state. In the Ottoman era, many religious leaders lost their position because of disagreement with the Sultans concerning the expansion of ecclesiastical expansion of political powers. Islamic nations did not admit of the kind of antagonism or war against the religious leaders or mosques in the political sphere as it is in the traditional Western understanding. In the end, Kymlicka’s theoretical evaluation is crucial for understanding this difference and a real liberal democratic state.

A) Ayelet Shachar and Joint Governance

Schachar claims that Kymlicka’s group-differentiated rights theory is a good beginning, which provides different rights for different groups, but that Kymlicka does not provide an attempt to discover institutional models for these groups. Shachar rightly challenges that “Kymlicka pays relatively little attention to” religious minorities, effectively dissolving them arbitrarily into ethnic or merely immigrant groupings which leave them with only a claim to poly-ethnic rights. However, Shachar acutely observes that central debate of multiculturalism is occupied primarily by religious minority issues.

Where I also distinct myself from Kymlicka. This a point especially salient in today’s world, in pronounced democracies such as France, Britain, the U. S. and Germany with regards to Jews and Muslims.

Shachar criticizes Kymlicka concerning his misperception in which minority cultures impose internal restrictions on their members are undeserving of equal protection. In addition, Shachar criticizes Kymlicka’s argument that if a group is illiberal the majority is unable to prevent violations of individual rights, astutely challenging that a system should be established which blocks crucial internal restrictions on members of the group.

Shachar also rightly observes that Kymlicka fails to answer properly why minority groups involve “unfair in-group practices,” and why those groups need state accommodation for these practices. She offers her theory of “joint governance,” as an alternative model, in which:

“the challenges of multiculturalism by recognizing that some persons will belong to more than one political community, and will bear rights and obligations that derive from more than one source of legal authority...it is based on the awareness that the paradox of multicultural vulnerability arises from three sets of intersecting and conflicting interests: those of the state, those of the group, and those of the individual who belongs to both.

Shachar’s theory based on “transformative accommodation,” which:

2 Id, at 26.
3 Id.
4 Id, at 30.
5 Id, at 31.
6 Id, at 42.
7 Id, at 88-9.
“aims to establish an ongoing dialogue between different sources of authority as a means of eventually improving the situation of traditionally vulnerable group members without removing them from nomoi [minority] groups…transformative accommodation stand three core principles. They are: 1. the “sub-matter” allocation of authority; 2. the “no monopoly” rule; and 3. the establishment of clearly delineated choice options…Like the federal-style accommodation design, transformative accommodation does not grant jurisdiction in an “all or nothing” fashion. [It] significantly restricts the power of the state. At the same time, however, it also imposes limits on the nomoi group: it denies it a monopoly over its members in each of these social arenas…the central question becomes how the state must intervene to protect the interests of individuals put at risk by their nomos, while still allowing their group maximum jurisdicational autonomy.”

Shachar shows us in her book’s appendix, how the transformative accommodation model works in the arenas of immigration law, education, and criminal justice. Her model reminds me the Ottoman millet system in fact.

B) Bhikhu Parekh and Rethinking Multiculturalism

Parekh’s first disagreement with Kymlicka seems to concern immigrants. He finds it quite strange that Kymlicka’s theoretical arguments include somewhat of a preconception that those who immigrate are subject to lesser law merely because they migrate voluntarily. There is nothing to explain how it is then that those fleeing from oppression would conceive of being treated as second rate citizens when fleeing from the same, for why would they flee expecting lesser treatment?

Parekh claims that Kymlicka does not show a proper respect of illiberal cultures “in their authentic otherness” because Kymlicka defends minority rights as long as these groups are consistent with liberal principles. Another serious charge made by Barekh is that Kymlicka establishes a hierarchy for minority rights, and he rightly challenges that “it is difficult to see what general principles inform this hierarchy of rights. He asserts further that Kymlicka appeals to such disparate criteria as “territorial concentration [national minorities], history of independent existence, institutional completeness, past commitments, consent, the level of poverty in the immigrant’s country, and the receiving country’s degree of responsibility for it.” Moreover, Barekh claims “there is no obvious reason, why we should accept the liberal premise in the first instance.”

He somewhat agrees with Kymlicka that a multicultural society cannot survive without having “a common sense of belonging among its citizens.” He arrives at a conclusion similar to Kymlicka’s in that, “although multicultural societies are difficult to

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8 Id, at 118, 126, 143-4.
9 Id, 151-165
10 See Bhikhu Parekh, Rethinking Multiculturalism: Cultural Diversity and Political Theory, 2nd ed. (New York, Palgrave, 2006) at 103. In his footnote, at the same page, Parekh became agreement with Kymlicka and he states that “I do not think it is wrong for liberal states to insist that immigration entails accepting the legitimacy of state enforcement of liberal principles, so long as immigrants know this in advance, and nonetheless voluntarily choose to come.”
11 Id, at 108.
12 Id, at 109.
13 Id, at 111.
14 Id, at 341.
manage, they need not become a political nightmare and might even become exciting if we exuviate our long traditional preoccupation with a culturally homogeneous and tightly structured polity and allow them instead to intimate their own appropriate institutional forms, modes of governance, and moral and political virtues.”

Parekh, like Kymlicka, claims that “religious [Kymlicka almost deny religious basis], cultural, and ethnic communities, women, and others should therefore be able to bring to the public agenda their respective views and experiences, which they can best do only if they speak in their own voices.”

Parekh’s main challenges against Kymlicka, is that individual rights or autonomy can be used to harm or eliminate minority groups. It is a serious challenge, as Kymlicka does not accept internal restrictions in the name of liberal principles. For how are we to go about violating individual autonomy if in an instance the individual does not adhere to liberal principles where the group does? I believe that there has to be an institution or system aimed at reducing these particular kinds of conflicts, which is where Shachar’s system might come in useful in terms of justice distribution. It will be asserted by the author here that we should in fact either flat out accept or deny internal restrictions automatically. Second, there should be the establishment of institutions to solve internal cases that do arise. Third, each case must be examined with respect to who holds the ultimate right, the individual or the group. Of course, our priority should first be individuals and then groups. This does not require however that a group cannot restrict or limit its members’ practices. In the end, I will assert that individuals have the right to challenge traditional group practices alongside exit rights. The provision of both rights effectively ensures that a group may impose internal restriction in the aim of preserving its culture without imposing harm upon its members since they ultimately will have the choice to disengage themselves from the group. The issue belongs to the group. Thereby, also, will any group that is too extremely internally restrictive self-destruct by the pure nature of the individuals’ will not to be harmed. The state duty is providing these two rights concurrently; the challenge and exit right, while checking the internal restrictions for implications of any manner of harm against its own members.

C) Seyla Benhabib and the Claims of Culture

15 Id, at 344.
16 See Bhikhu Parekh, “Redistribution or Recognition? A Misguided Debate” in Stephen May, Tariq Modood, and Judith Squires, eds., *Ethnicity, Nationalism, and Minority Rights* (Cambridge, CUP, 2004) at 207. His article rightly observes that “…identities are valued, recognized, respected, and cherished when they meet the society’s criteria of success, and in ours these are economic and political. Groups at the bottom of the economic and social hierarchy therefore need to fight for justice and equality and become powerful if their identities are to be respected, not superficially, out of goodwill or in response to moral blackmail, but s their due. The politics of recognition remains impotent unless it is embedded in the politics of redistribution.” At 208.
Siobhan Mullally observes that Benhabib’s goal is to defend universalism via an exploration of gender and community. She notes accurately that “multicultural justice emerges at the interests of such [cultural] conflicts and paradoxes; there are no easy ways to reconcile either in theory or in practice rights of individual liberty with rights of collective cultural self-expression.” Culture is an identity for Benhabib, and thusly that states went through culture wars because of identity politics. She illustrates her primary concern in that, “there is a profound and unavoidable connection between cultural diversity and gender-related differences.” This provides a distinction of angles between Kymlicka and Benhabib. According to Kymlicka cultural diversity arises out of national minorities and ethnic groups.

A point on which Benhabib and Kymlicka appear to converge is in recognizing cultural identities as very important from the point of universal justice. However, Benhabib correctly adds that “conflicts around the rights of women and children who are members of minority cultural nations or immigrant groups within liberal democracies unable to us to see most clearly the moral and political choices involved in advocating the preservation of traditional cultural identities over and above individual rights.” She makes another important point which seems especially relevant to Turkish society in that, “the great majority of Muslim people all over the world, as well as others in whose midst they live are caught in a democratic learning experiment.”

In Benhabib’s conception, not far off from Kymlicka in this respect, democratic theories should provide and assist minority group claims regarding equality and justice for self-determination in cultural terms. Benhabib accepts Hagerman’s dual-track approach to multiculturalism, which is first, “the official public sphere of representative institutions,” including legislature-judiciary-executive, bureaucracies and political parties, and second; “the unofficial public sphere,” providing places for social movements including civil, cultural, religious, ethnic, artistic, and political associations, etc. She also recognizes “the certain forms of legal and political pluralism, including

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18 See Siobhan Mullally, Reclaiming Universalism: Gender, Cultural Diversity and Human Rights (Hard, Oxford, 2006) at 69. Mullaly rightly states “the negotiation of cultural conflicts is a key test for any defense of universalism.” The critical point is that how a universalist theory deal with cultural conflicts. In her book, at the chapter 5, Mullally lays down her attitude very clearly; “I ask whether discourse ethics can reconcile feminism with the universalistic discourse of human rights and provide the critical resources necessary for a truly global feminist movement.” At 70. However, Benhabib states that universalism is not ethnocentric. See Seyla Benhabib, The Claims of Culture: Equality and Diversity in the Global Era (Princeton, PUP, 2002) at xi. In her book’s introduction, she summarizes her ideas with a great effort. Jennifer Saul rightly challenges that “it is possible to be feminist while respecting cultural traditions.” She deals with her argument in her book, under the chapter 9, Feminism and Respect for Cultures. See Jennifer Saul, Feminism: Issues & Arguments (New York, Oxford, 2003) 261-292.
19 See Benhabib, at ix.
20 Id, at x.
21 Id, at 1.
22 Id, at 1.
23 Id, at xii.
24 Id.
25 Id, at xiii.
26 Id, at 19.
multiple jurisdictional systems and regional parliaments, may be compatible with deliberative democratic universalism.”

What Benhabib claims through Mullally’s interpretation is that, “there are no such societal cultures [in terms of Kymlicka’s beliefs]? There is no single organizing principle that encompasses both public and private spheres for distinct cultural groups.” Mullally also criticizes Kymlicka for permitting too readily an “access to a range of meaningful options [via societal culture theory]” rightly pointing out that “some cultures do not provide their members with a range of options, and do not permit their members to revise their conceptions of the good.”

Lastly Benhabib rightly challenges Kymlicka’s distinction between groups which are based on political legitimacy [mainly governing power, however, Kymlicka does not deny justice, democratic inclusion, public culture and historical memory] arguing then, that in today’s world providing rights for minorities or our treatment of groups be based on justice, democratic inclusion and exclusion.

D) Religious Freedom: Secularism v. Religion

In this section, I will explore the meaning of religion within the discourse of secularism. Religious freedom is a fundamental right of citizens of modern world democracies. The understanding of the need to protect minorities in the modern world began with the protection of religious minorities in the early XVIIth Century. Then in the early XXth Century this also expanded to the protection of linguistic and ethnic minorities, especially with the establishment of the League of Nations and bilateral treaties between these countries. However, in today’s world, due to a fear of religious radicalism, many of us believe that if we provide more religious freedom for a religious group, even if the majority of the population belongs to it, we are in danger of losing our democracies. In particular there is a fear of theocratic states. However, modern democratic states are also prone to becoming fundamentalist in their secularism. Secularism itself behaves like a religion. I will argue that practicing hard-line secularism may in itself destroy our democracies, since it kills religious freedom in the name of protecting secularism. This misunderstanding of secularism, especially in Turkey and France destroys the peace and social consensus within society. As James Massey rightly observes “religious freedom is the condition and guardian of all other freedoms. Even individuals without any religious convictions, but who have faith in democracy, acknowledge this relationship.” Around the world, there is the misconception that “diversity of opinion” causes religious conflicts among the groups. However the reality

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28 See Mullally, supra note 181, at 86. See more about Kymlicka’s societal culture and Benhabib’s critics regarding this issue. See Benhabib, at 59-60. Benhabib rightly challenges “there cannot be such a single principle of societal culture, and also that at any point in time there are competing collective narratives and significations that range across institutions and form the dialogue of cultures.”

29 Id, at 64-8.

is that such conflicts occur because of “the absence of tolerance and understanding.”\textsuperscript{31} Massey supports this by quoting the Indian thinker, Humayun Kabir, when he says “we cannot have a democracy, without minorities, without distinct and different groups…Where there is no democracy, the question of minorities as such cannot arise.”\textsuperscript{32} This could be the case with Turkish democracy. Here I will try to show that our current fears does not have real basis, but rather that it is based on our past fears and stereotypes.

Another multiculturalism intellectual, Tariq Modood, claims that “most theorists of difference and multiculturalism exhibit very little sympathy for religious groups; religious groups are usually absent in their theorizing and there is usually a presumption in favor of secularism.”\textsuperscript{33} He warns us that we should not block religious groups from political debates on multiculturalism. Secularism should be careful to maintain dialogue between religious and non-religious groups.\textsuperscript{34} He adds that this ignorance predominates in the Western world about Muslims. I claim that, generally speaking, the same ignorance takes place in Islamic countries about Jews or Christians. More specifically, it occurs in Turkey.

The Western world believes that Islam does not separate politics and Mosques. Modood rightly claims that this is one of the biases against Islam in Europe.\textsuperscript{35} Most of the Western world accepts the bad example of Iranian Islam rather than recognizing that Ottoman practices took place successfully for seven centuries. Interestingly, the Ottoman State fought against Iranian Islamic practices. Modood argues that we can distinguish theocracy from mainstream Islam. Radical or ideological secularism could be that which claims absolute separation between state and religion, which is in practice at a moderate level in the Western Europe except France.\textsuperscript{36} Unfortunately, at the moment, Germany as well as some other European countries began to follow the example of France, especially after 9/11. The main reason for this seems to be that the U. S. media is prejudiced against Islam and the cultures of Islamic countries. Modood insists that even in Europe religion defines and shapes the dimensions of European secularism and that no absolute separation of religion and politics exists.\textsuperscript{37} For example, most state holidays are based on Christian religious feasts. Furthermore, schools in these countries often offer Catholic-based education, though not Judaism or Islamic education. Finally he acknowledges that Muslims should not be excluded from recognition in multicultural states due to their belief in Islam; anything less does not fulfill the promise of Western secularism, since for there to be equality between religions, multicultural states should not favor one over

\textsuperscript{32} Id, at 17.
\textsuperscript{33} See Tariq Modood, “Anti-Essentialism, Multiculturalism and the ’Recognition’ of Religious Groups” 6 The Journal of Political Philosophy (1998) at 390. In his excellent article he claims and defends that the Western world should not act based on prejudices about Muslim groups who live in Europe. I claim vice versa for Turkey should not fear of providing for freedom religious minorities who are either Christians or Jews who live in Turkey.
\textsuperscript{34} Id.
\textsuperscript{35} Id, at 391.
\textsuperscript{36} Id.
\textsuperscript{37} Id, at 392.
another. 38 Modood, like the other liberal thinkers, believes that liberal states should support or encourage individualistic religions, maintaining a neutral stance rather than taking sides. He points out that “ethnic associations, businesses, trades unions, sport and film stars and so on should support or involve electoral candidates, but churches and religious groups are restricted. It makes weak of corporate representation and how much is it democratic?” 39 I think we should take his claim very seriously because each organization, religious or non-religious, has an ambition to influence politics. In the name of secularism, we provide this opportunity to non-religious groups, but not to religious groups. This is clearly undemocratic. Instead, I believe there has to be an ongoing dialogue, as well as tolerance among religious and non-religious groups in order to establish strong and peaceful societies in modern democracies.

Some authors believe that liberalism is a tool used to cover the secularist values held by authority figures such as legislators, executives, and judges. 40 Ze’ev Falk claims that secularist rhetoric about pluralism and personal liberty, in truth, comes from secular judgments which are “against the truth of metaphysics and religion.” 41 The reality is that personal liberty and pluralism has no guidelines for moral decisions, and there is no consensus or authority on most controversial issues. There is no common standard by which to judge what is good and evil. 42 Falk claims in his final remark that “the voices of religious individuals and institutions are therefore [as] legitimate in the political arena as those of their secular antagonists; and there is no “objective” solution to the problem of “Synagogue [Religion] and State.” 43 Thus, in a broad sense, the question is how should political and social institutions in modern democracies treat people who would like to practice a different religion from that of the majority? 44 Here there is a misconception; the separation of Church [Religion] and State does not mean public institutions cannot “…accommodate [the] religious needs of people.” 45 I think this is the balance point of our democratic philosophy. A multicultural state is responsible for accommodating religious groups, just as they do ethnic and linguistic groups. Thus we have to keep in our mind the question of “how far may government properly go in compelling individuals to perform obligations of citizenship which conflict with their beliefs or conscience?” 46

Why do draconian secular systems [I am thinking here of France and Turkey] fail to protect religious pluralism and yet not lose their legitimacy in front of the public? Jonathan Fox quotes Mark Juergensmeyer who answers the question by suggesting that

38 Id, at 392-3.
39 Id, at 396. He calls that “there is a theretical incompatibility between multiculturalism and radical secularism.” When there is no recognition of religious minorities, this incompatibility becomes a practical issue.
41 Id.
42 Id.
43 Id, at 451. Falk gives little chance to the idea of “separation of Synagogue and State” may become the majority opinion in Israel. At 452.
secular nationalism currently performs societal functions in modern world democracies. However, those systems are heading towards a “loss of faith” and this causes a legitimacy crisis. Juergensmeyer explains the reasons for loss of faith in secularism. Firstly, secular nationalists’ governments do not keep their promises which were political freedom, economic prosperity, and social justice. Second, most of the time the non-Western world imported secular nationalism from outside thus the ideology does not have any domestic authority or legitimacy. Third, because of this importing from the outside, secular nationalism has been identified with cultural colonialism. Moreover, secular nationalism destroys or eliminates the traditional lifestyles of societies which are influenced by religious belief or practices. In addition, advocates of secular nationalists stand together with Western powers, which encourage people to believe in a global conspiracy against religion. These things break the legitimacy of secularism. In short, our belief in religious liberty shapes the understanding of the “relations of morality and law, ethics and human government, moral purposes of government, and moral limitations that should restrain the state’s use of coercive power.”

Mainly, this paper has highlighted the current debates of Will Kymlicka’s multicultural citizenship theory with relevance to multicultural state or societies and then it touched upon the debates between secularism and religious freedom.

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47 See Jonathan Fox, “The Influence of Religious Legitimacy on Grievance Formation by Ethno-Religious Minorities” 36 Journal of Peace Research (1999) at 290. Fox rightly argues that Jurgensmeyer uses his theory for the Third World Countries, however those arguments are also applicable to more developed countries. At, 293.
48 Id, at 291-2.