CULTURAL DEFENSE, HATE CRIMES AND EQUALITY BEFORE THE LAW[1]

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Abstract

The so-called "cultural defense" before the courts, which seeks full or partial-exculpation based on the cultural identity of either the defendant or the plaintiff, and the newly established category of "hate crimes", which enhances the criminal sentences in cases in which the criminal acts from motives of prejudice, are two examples – tending in opposite directions – for culturally based exceptions to the principle of equal enforcement of the law, the intent of which is to treat everybody as an equal. The justification for these departures from equal enforcement is that the law is allegedly biased in favor of the cultural majority within the population. However, if one accepts this claim, one should (i) complement these measures by creating a consistent set of rights and duties for the cultural communities, (ii) limit these rights and duties to a merely legal, not comprehensive culture**,** (iii) subject it to legislative review and (iv) define clear legal relationships between the cultural communities. The "personal status" of traditional as well as of new cultural communities (both with membership on a voluntary basis and under the respect of Mill's "no harm principle") may provide us with elements of a real equal treatment of individuals belonging to different cultures
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Key words: multicultural society, cultural bias, equality before the law,protection of cultural minorities

The distinction formulated by Dworkin between treating everybody as an equal and treating everybody equally is well-known. For instance, it leads to the allocation of social benefits not to all people irrespective of their wealth or poverty, but only to poor peoples as well as to certain kinds of persons with specific needs. Yet, this legislation that differentiates different kinds of situations is supposed to be applied to everyone in the same way. This we call equality before the law. Exceptions are foreseen only for those who cannot be held responsible for their actions, i.e. insane persons, children, etc.

In the following, I shall address the notion of "cultural defense", which occurs in defense attorneys' pleas before the courts after a law has been adopted and jurisprudence developed. The argumentation developed by the cultural defense is grounded in the complaint that equality before the law does not ensure that everybody be treated as an equal, since the law is allegedly culturally biased in favor of the majority of the population. In the following, I shall inquire if, to what extent and in what form a "cultural defense" may be justified.

By the term "culture defense", one understands arguments made before the courts that draw on the cultural belonging of the plaintiff or of the defendant in order to obtain either full or partial exculpation for her deed, i.e. no punishment or less punishment, or to reach in the realm of private law (for instance in the realm of family law or business law) a more favorable arrangement. While cultural defense is

intended to favor persons influenced in their legally relevant behavior by a specific cultural belonging, one can observe legal arguments that result (even if unintentionally) in bringing disadvantages to persons influenced in their legally relevant behavior by a specific cultural belonging. The category of "hate crime", which has recently been established in the United States and which has its equivalent in other Western countries, enhances the criminal sentence in cases where a prejudiced motivation can be ascribed to the offender. The causality between her prejudices and her crime may be either a strong relationship or a weak one. A hate crime is any offence motivated in any degree by the offender's prejudice.

In the following, I would like to inquire about the normative presuppositions and implications of these new concepts and ask whether they are consistent with the law's treating everybody as an equal.

One can see in cultural defense and hate crimes two examples – tending in opposite directions – for culturally based exceptions to the equal enforcement of the law. Admittedly, this assertion that they tend in opposite directions is controversial. The first reason is that, while hate crime is recognized as such by the Hate Crime Statistic Act (1990) in the United States and by diverse legislations in Europe, cultural defense still lacks legislative recognition. The second reason is that they are intended to protect and benefit the same cultural groups. In fact, one of the main arguments in favor of both is that they are necessary to ensure truly equal consideration of all persons. Indeed, hate crimes contain a specific discrimination among all potential victims of crimes -– i.e. among all citizens – in disfavor of a certain category of persons defined by their race, their ethnic origin, their religion, their gender, etc. The victims of this discrimination are most frequently the same persons who are already victims of other discriminations (discrimination in access to education, in income, housing etc.). The cultural defense, it is argued, intends to correct a culturally biased legislation that advantages (even with no intention to do so) the members of the cultural majority. While the category of hate crime is allegedly shaped for protecting cultural minorities against a higher criminality of which they are victims, the cultural defense is intended to protect against being too severely punished or disadvantage by the enforcement of legislation.

Yet, as Jacobs and Potter observe, there are many crimes that can be qualified as hate crimes although prejudice is not their main cause but, rather, a merely superficial aspect. They provide convincing examples of "crimes involving low-intensity prejudices that bubble to the surface during ad hoc conflicts" – that is, crimes "involving epithets rather than 'hard core' ideologically driven violence by people identified with extremist groups or causes" (Jacobs & Potter 1998, 147). They also emphasize that members of minorities may also be incriminated in hate crimes, even in crimes against member of otherwise privileged groups or of the culturally dominant group. And a significant percentage of prejudiced offenders are themselves members of minority groups. Even if the statistics did not confirm this view, we could still observe that, while cultural defense claims on the basis of cultural belonging either full or partial exculpation, or a full or partial exemption from complying with the ordinary law, the qualification of hate crime leads to a higher punishment on the basis of prejudices influenced by cultural belonging. Therefore, part of the punishment is justified by the offender's beliefs and opinions. Insofar as these beliefs and opinions are culturally motivated, part of the punishment refers to cultural belonging. A

murder committed in order to save what is considered in a specific culture the "honor" of one's family against the shame caused by another member of the family could also be handled as a hate crime, although it often is not. The same crime motivated by merely personal psychological factors – for instance by jealousy or hate toward a specific person – cannot be handled as such. Thus, the common characteristic of both the category of hate crime and cultural defense is that they either partially or fully shelter some persons from the enforcement of ordinary laws on the basis of their cultural belonging. In this way, there is for members of some cultural groups a kind of de facto immunity in the Hohfeldian meaning, since the power to change some relationships of the individuals concerned is denied to legislation. Whereas immunity from duties is currently more emphasized, for instance by Alison Dundes Renteln's very precise Cultural Defense (2004), immunity from ordinary rights also exists and might be extended in the future.

A kind of cultural defense consists in arguing that at the time the defendant committed the crime she is accused of, she ignored for cultural reasons either that it was a crime or that it was such a serious crime as it is. It certainly does not exonerate the criminal from her responsibility, because ignorance of the law is in general no excuse: everybody is supposed to know what the law requires. However, ignorance may in some cases provide the defendant with extenuating circumstances, although this kind of cultural defense is not formally acknowledged as such. Rendeln refers to cases in which mere warnings (Rendeln 2004, 50) or a suspended sentences (Rendeln 20004, 54) have been issued.

Yet, there is a second sort of argument invoked by the cultural defense: one cannot require from someone belonging to a specific cultural group that she put aside those of her normative convictions about how to behave rightly that belong to this group. It is for instance particularly obvious in the case of Siripongs v. Calderon (1998), quoted by Rendeln (2004, 42). Siripongs, a Thai, participated in the robbery of a convenience store during which two clerks were killed. "Although he admitted to being present in the robbery, he professed that he was innocent of the murders and that his accomplices were responsible for the killings. He was unwilling to name his accomplices. Because he would not furnish information about them, the court did not find his account credible". (Renteln 2004, 42). Rendeln presents the arguments in defense of Siripongs made by Philips, the expert who wrote an affidavit in favor of Siripongs: "[…] if a Thai commits a bad or evil act, he must work extremely hard in doing good things to compensate for what he has done. […] Making known his accomplices' identities would not reverse what had happened. The two people who had been killed would remain dead. […] The critical notion at work here is that assignment of blame is not the critical issue". She adds: "According to the Thai view, a Thai person, if not punished in this life, will receive his due in future lives. Philips also speculated that if the accomplices were relatives, he might have declined to identify them for this reason. Because of the Thai notions of deference to authority and of reciprocal obligations from the Thai perspective, Siripong's action made some sense." (Renteln 2004, 43f.). Although the American courts require Siripongs to take an oath to tell the truth, the whole truth, and nothing but the truth, and although he knows this, Siripongs deliberately refuses to tell something that he does not even deny he knows. Moreover, although the fact that Siripongs did not display any emotion during his trial was seen by the

jury as evidence for the absence of remorse, it was interpreted by Siripongs' defense as characteristic of Thai culture. Yet, remorse is an element that intervenes in the severity of the punishment, because in a preventive perspective it matters whether one can expect the criminal to become a recidivist. Siripongs was finally sentenced to death and executed in 1998. Clearly, Siripongs not only violated the law while committing his crime but also during his trial by not naming his accomplices. If such a cultural defense were taken into account by the counts, this would amount to a permanent immunity from all rules of penal process that contradict the plaintiff's culturally influenced convictions. And a mere immunity means inequality before the law.

Now, whenever there is a collision between the law and the normative convictions of a criminal that influenced his crime, the view of any theory of penal law is that punishment must either change her convictions, or at least disable them from influencing her actions and, last but not least, prevent them from influencing the behavior of the rest of the population (general prevention). This goal of punishment – i.e. future compliance to the law – is entailed in special prevention as well as in retributivism. Compliance to the procedural rules of a penal process, the goal of which is to identify the criminal and her motives, is part of the wider goal of modifying the behavior of the criminal and influencing the behavior of other citizens in the future. Therefore, granting immunity from the procedural rules of penal process also means renouncing the enforcement of other parts of the law. In fact, Renteln's Cultural Defense also deals with family law, law on drugs, animals, dead persons etc. – in short, not only with penal process and penal law, but also with civil and public law.

By doing this, one clearly renounces the possibility of changing the culture of the person who is incriminated. But law-makers and judges are constantly contributing to the modification of citizens' culture, although they certainly are not the only factor in cultural evolution. Furthermore, the renunciation of the possibility of changing a criminal's culture may backfire as a basis for cultural defense. If the criminal could not escape the cultural determination by her culture, one may either argue that she is not responsible (in a retributivist perspective) and thus should be exempted from punishment, or one may argue in the opposite direction that the criminal is unable to change and should therefore never be free again, i.e. she should receive either lifelong incarceration or be sentenced to death (in a preventive perspective).

The problem raised by this situation is not the failure of territorial homogeneity – i.e. the failure to enforce the same law on the same territory – which would allegedly lead to a weakening of state authority. Of course, modern states have been built through a process of increasing uniformity and integration of the legal system. However, the degree of uniformity significantly varies from one country to the other. First and foremost, even countries that officially strive for a high degree of uniformity of their legal system and that are characterized by a high degree of centralization of power have experienced and sometimes are still experiencing a juxtaposition of different rules of law. France, for instance, whose leaders understand equality before the law to imply the same law for all citizens, has a dual rule of law. While the huge majority of the population is submitted to the law enacted by the French parliament, 95% of the citizens of the French islands of Mayotte are ruled by a type of Koran Law in such domains

as family and property law, commercial contracts, etc. On the French islands of Wallis and Futuna, traditional law even extends to part of the penal law. In colonial times (in French Algeria until its independence in 1962, and in most of the colonies of democratic European countries until their independence), most of the local population was under customary or traditional law, which included penal law. This kind of statute is not linked to the territory, but to the person (the French constitution calls it "statut personnel", personal statute: see French Constitution, Art. 75). Diverse personal statutes also exist in countries like Malaysia. Personal statutes not only concern the last European colonies and Non-Western countries. One can also see a kind of personal statute in some aspects of private international law: Divorce, inheritance, etc. are not ruled according only to the law of the country of residence, but according to the law of the country in which the wedding was performed, etc.

Personal statutes obviously mean difference before the law, but this does not imply inequality before the law between citizens subject to different statutes. Let us take again the example of Mayotte and Wallis and Futuna. Each citizen governed under the Koranic personal statute is free to abandon it and accept the ordinary statute at anytime, but he cannot then re-enter the Koranic statute. Someone subject to the ordinary statute cannot decide for the Koranic statute. These features were based on the expectation and the wish of authorities that the Koranic statute would gradually die out as it was renounced by its bearers. Yet, the percentage remained stable at a level above 95%. In French New Caledonia, the option to re-enter the traditional statute is open, and the traditional statute does not appear to be unattractive. Since one does not observe that citizens of European origin who have always been under the ordinary rule of law would like to change their statute, the result of the no-envy test (on the no-envy test, see Dworkin 1981, 285-287) is that equality before the law is fulfilled in spite of the duality of rules of law. One can affirm that two options are unequal if everybody prefers one of them to the other. In the case mentioned, nobody envies the option that she does not hold. Thus, the two statutes are different, but not unequal. One cannot say that the citizens are unequal before the law. (Of course, this remark does not mean that this or any other colonial situation of dual rule of law should be considered positively, nor does it imply any positive judgment about colonization in general, on which I have a critical opinion).

Now, the difference between these examples and the cultural defense lies in the following features:

(1) The cultural belonging to which the legal defense refers consists only in specific immunities. Now, a rule of law also contains rights and duties. The task of a defense attorney is obviously not to formulate the cultural duties. Yet, the official acknowledgment of a cultural defense by the law-makers should consistently lead to the definition of culturally conditioned duties. Each person potentially concerned by a culturally conditioned specific defense would have to have declared her adoption of this statute not after the crime but prior to it. In India for instance, where there are personal statutes, divorce is prohibited to the Catholics.

(2) Not all the culturally influenced normative convictions and behaviors to which the cultural defense refers belong to another legal culture. Most of them refer, rather, to more general cultural or moral values and habits. The compensation of evils by goods, and the obligations towards the members

of the family evoked by Mr. Siripongs, do not belong to Thai legal culture but, rather, to Thai moral culture, social habits and psychology. The official acknowledgment of the cultural defense by the law-makers should lead to sorting out foreign legal cultures from other foreign cultural elements. In the same way, many elements of the dominant culture of our societies are not accepted as excuses before the courts. For instance, we may have to testify against family members or to reveal secrets when asked by the court. Another example is the cannibal from Rottenburg (Germany), who a couple of years ago recorded on video the statements of his consenting victims, who with full awareness agreed via internet to be eaten piece by piece. The qualification of the crime should be "homicide on demand" (Tötung auf Verlangen), punished by a maximum of five years in prison. Public opinion thought that the only appropriate penalty would be a life sentence on the charge of first degree murder (Mord). Public opinion simply confuses the horror of a crime with the legal gravity of a crime. Last but not least, a Christian could also argue in a way very close to Siripongs that remorse, forgiveness and mercy take moral precedence before revenge and, furthermore, that since the last judgment will render justice after our death, punishment is not the point.

(3) There should be a legitimate legislative power for defining and modifying the legal culture alternative to the dominating rule of law. In the case of the aforementioned islands, there is a local assembly in charge of this task. Without such a legislative power, there would be only the kind of statute as the one offered by Will Kymlicka in Multicultural Citizenship (1995) for the Aboriginals of Canada. Unlike the Anglo-Canadian majority of the population and the french-speaking minority of Quebec, Aboriginals are not ruled in Kymlicka's model by a parliament, but by traditional rules that they cannot modify. These rules include the exclusion of the non-Aboriginal widow of an Aboriginal, the expropriation of any Aboriginal who wants to leave the community and adopt other rules, etc. Sooner or later, the fixation of such immutable rules would no longer match the own normative convictions and behaviors of these communities. In fact, an increasing number of Aboriginals, as Kymlicka itself observes, experience a tension between the attraction of modern life and the traditions of their community. The advantage of the "culture defense", i.e. the possibility of invoking one's own moral rules and normative convictions, would then be abolished. In such a case, the cultural immunity must be seen more as an instrument for maintaining unchanged outdated rules for the sake of tradition – treating human beings as objects in the collection of a kind of museum, as it were – than as a means of remedying culturally influenced discriminations.

(4) The co-existence of several personal statutes under the same authority requires clear rules for the relationships between bearers of different personal statutes. Renteln admits that the cultural defense has more validity and should be granted more significant weight in cases in which the victims belong to the same community, which happens for instance in 80% of the violent crimes committed in the US (see Jacobs & Potter 1998, 16f.). In cases where the criminal and the victim belong to different communities or where an offender belongs to the second or third generation of immigrants, cultural defense should be granted a much weaker influence in the determination of the degree of guilt and in the sentence. In the colonial system, the ordinary rule of law mostly had the priority over the traditional law

for the relationships between persons living under different statutes. In the islands of Mayotte, Wallis and Futuna and New-Caledonia, this is also the case. Until January 1st, 2005, when the possibility of entering polygamous relations was abolished on Mayotte, matrimonial law dictated that a citizen under Koranic personal statute could marry several women living under Koranic law, but only one woman, if this woman was under the ordinary statute of the French rule of law. The same rule still applies in private international law recognized by France and most Western countries in cases of polygamous marriage performed by foreign authorities. In some matters, the relationship between persons living under different personal statutes is governed by international or bilateral treaties.

All four of these elements (specific legal duties, a specific legal culture, a legitimate legislative power and clear rules for the relationships between different statutes) are required for a legitimate cultural defense as well as for the claim of culturally based specific rights. In cases in which the third element (a legitimate legislative authority) is missing, there is a personal statute, which in my view is illegitimate.

Interestingly enough, the idea of the cultural defense, which concerns immigrants, has not been extended to this kind of personal statute, which exists and is defended for traditional local minorities. Kymlicka deals with Aboriginals and with immigrants in opposite manner. Immigrants are allowed minor adaptations of the law. According to Kymlicka, Sihks should be authorized to wear their turbans instead of helmets while riding motorcycles. On Mayotte, some judicial sentences (excluding penal matters) are issued by Cadis, i.e. by traditional Koranic judges for the citizens under the Koranic statutes. Why, then, should the Koranic personal statute not be offered as an option to any immigrant in continental France whose cultural background is Islamic? In the late 1990's, several conservative politicians of the Bible Belt developed a similar idea, suggesting that a second form of legal marriage be offered that would allow almost no possibility of obtaining divorce and thus would fit better with Christian commitments.

Such an option among personal statutes would certainly outrage many people on the European continent. It would certainly outrage them much more than the practice of an unofficially acknowledged cultural defense, whereas the existence of personal statutes for traditional minority groups in some remaining colonies and in Non-Western countries does not seem to disturb many people.

The main reproaches that are likely to be addressed against such a suggestion would be the following ones. (1) Even if entered on a voluntary basis, the personal statute would contain aspects that do not treat everybody as much as an equal as the ordinary rule of law does. (2) First and foremost, the personal statute may entail some aspects that conflict with fundamental rights or human rights. (3) The immigrants should recognize a territorial principle and comply to the law of the country they freely entered and not ask for special statute.

(1) Concerning the first reproach. In the additional document 7 of the European Convention on Human Rights (1984), France made a reservation: The enforcement of the convention should not conflict with the local law on Mayotte, Wallis and Futuna and New Caledonia. Controversial aspects of that local law are, for instance, the denial of rights to illegitimate children, inheritance privileges granted

to males, etc. A few years ago, the court of appeal also nullified a sentence of death by stoning issued by a traditional Koranic judge on Mayotte.

(2) Concerning the second reproach. With respect to the groups of immigrants in the United States concerned by the cultural defense, Renteln presents her position as a middle ground between the two following views. On the one hand, Renteln calls the position of the United Nations "absolutist". This position "condemns traditional practices" (Renteln 2004, 49). More exactly, the United Nations has a catalogue of legal dispositions that violate human dignity, whether issued by traditional law or by another legal system. On the other hand, the position adopted for instance by Jill Korbin accepts any behavior in accordance with the rules of one's own community. Renteln develops an intermediate standard "that proscribes traditional practices only in certain extreme cases" (Renteln 2004, 49). In my view, the difference between the UN standard and Renteln's position lies in the items that should be put on the list of traditional legal treatments to be prohibited. She excludes from her list some rituals, such as scarifications of children, disciplinary rubbing of children, some touching of children. However, both she and the United Nations proceed by putting together a list of prohibitions.

(3) The invocation of a territorial principle relies on the assumption (i) that the majority alone decides about the rules for all, leaving no possibility for alternative options, and (ii) that there is a seniority rule in favor of indigenous groups over immigrants.

I shall not elaborate on this third reproach, which contradicts the treatment of each as an equal. The majority principle should decide only anytime a decision must be taken for the entire community. Every time when it is possible to open a diverging option without harming the members of the majority, this option should be open. Considering each as an equal excludes considering seniority at a place.

The concern with fundamental rights and human rights is exemplified in various ways in Renteln's Cultural Defense, for instance in the case of Christian scientist parents not caring for their child when it is seriously sick but providing mere spiritual help in the form of prayers. Now, fundamental and human rights are the basis for the treatment of every person as an equal. Invoking cultural defense against charges of violation of fundamental and human rights would then contradict the principle underlying the cultural defense itself. Indeed, the cultural defense consists in complaining that the law is culturally biased in favor of the majority, i.e. that the law does not treat everybody as an equal. In order to claim immunity in relation to human and fundamental rights, the cultural defense must refer to specific convictions and cannot invoke the principles of any neutral rule of law. Thus, the first and the second reproaches are one and the same. Interestingly enough, whereas these reproaches intend to exclude any personal statute in our countries, in which we consider there to be a quite satisfying rule of law, they have often inspired the claim for personal statute for Western citizens abroad. Originally, the colonial dual system of statute has been instituted in order for colonists not to be submitted to the local traditional law, reputed to be unjust. Some Western consulates still attempt to avoid the enforcement of corporal punishments on their citizens when sentenced to severe corporal punishments in the Far East.

Now, there are real cultural biases in our law, i.e. measures that neither serve the protection of human and fundamental rights nor ensure to the a treatment of every individual as an equal. Let us take

four examples. (1) If practiced among consenting adults, with no coercion and appropriate information, polygamy does not infringe the principle of every person being treated as an equal. The prohibition of polygamy under the Mormons leads rather to a worse situation for the concubines and the children than a legalization of polygamy might do. (2) In France, a law adopted in 2004 has prohibited pupils from wearing the Islamic veil at public schools because it is considered a symbol of women's subjection and unequal statute. However, bearing the veil is not prohibited at universities and entering into polygamic marriage was allowed in Mayotte at the time the law on the veil was adopted. The Land of Baden-Württemberg passed a law in 2005 prohibiting teachers from wearing the veil, just after a teacher successfully claimed before the federal constitutional court the right to wear it if no provincial law objected. The then minister for education, now German federal minister for education, Annette Schavan tried to make (catholic) nuns teaching at public schools exempt from the prohibition on the veil by asserting that the catholic veil had no religious meaning, which was promptly contradicted by the catholic monastic orders themselves. (3) It is likely that if Chinese restaurants in Europe would decide to offer dog and cat meat that was not produced from tortured animals, some legislation would prohibit it. Renteln (2004, 1986) report that in the United States "Sokheng Caea and Seng K. Ou are arrested and jailed for attempting to eat a dog, even though there was no law against it at the time." in clear contradiction to the principle nulla poena sine lege. (4) The first drug that was prohibited in the United States was opium, the drug of poor Chinese a century ago. Marijuana, the last drug to remain legal, was permitted during the period of the prohibition of alcohol and was first prohibited in 1940, being the drug of the Mexicans, when alcoholic beverages had once more been made legal. Nowadays, Columbian peasants are still accustomed to consuming coca leaves.

There are many more examples which demonstrate how our legislation is obviously not neutral, but rather based on culturally specific convictions of the majority. Therefore, the arguments that are invoked in support of these legal provisions can be seen as being in the public debate a kind of cultural defense against the complaints of cultural partiality. If legislation is not culturally neutral, but depends on a cultural defense, why should cultural defense of the kind supported by Renteln not be authorized?

Although I shall not make a plea for Renteln's cultural defense for the reasons mentioned above, we must acknowledge that there is a case for the complaints about the cultural biases of our legal system. Facing this situation, at least two modifications of our legal systems are required.

First, the law should be under constant scrutiny to ascertain whether some of its provisions should be modified because of their cultural biases, in order to allow for as many lifestyles and behavioral choices as possible under John Stuart Mill's no harm principle. For example, dog meat should be authorized in restaurants provided that it is not from tortured animals.

Secondly, partial cultural statutes may be introduced on the basis of free membership and provided there remains the possibility of leaving the personal statute anytime, albeit not suspend it. The Mormons are today complying with the law by having one official wife and several concubines, all living together with their children. Creating a personal statute including polygamy would provide the women who live in such relationships and their children more rights and more protection from the law. It would

also make possible a better control in the case of child abuse within these communities, for instance. Indeed, contrary to cultural defense, the statute would not primarily grant immunity, but preserve the power of law-makers in Hohfeld's meaning and care for the consistency of each legal statute, i.e. for each set of rights and duties. Other forms of legal marriages might also be offered. This kind of arrangement would not be different to certain forms of commitment that already exist, such as the Kirchensteuer, the Church Tax in Germany and in Switzerland. A fixed additional percentage of the income tax is charged by the state authorities on members of Churches and paid on Churches. Everyone is free either not to belong to any Church or to leave any Church anytime by a mere declaration. One could also imagine legal form for people wishing a more solidaristic organization of society than the current one.

The goal of one such legal personal statute cannot be achieved by way of mere associations. In the same way, a concubine relationship does not entail the same duties and rights as a marriage. There are at least three decisive differences between membership in a mere association and a legal personal statute. Firstly, as I mentioned above, a legal statute depends on legislative procedures that can establish and modify it. It is submitted to public deliberation that ensures in a better way the participation of all citizens and thereby better guarantee that everybody is treated as an equal and in accordance with fundamental and human rights. It also ensures the integrity of the law, for instance by regulating the relationship between specific statutes and the ordinary statute in a fair and legitimate way. By doing so, it would allow cultural minorities, whether they are traditional or immigrant minorities, not to be culturally disadvantaged, but it would also submit traditions to a strict legal definition and a check for compliance to fundamental rights and treatment as an equal. Secondly, it would apply not only to communities that already exist, but also to potential and emerging communities, thus waiving the opposition between traditional cultural minorities on the one hand and a modern majority seen under the fiction of a culturally homogeneous majority on the other hand. Thirdly, it would allow a smoother cultural evolution inside each cultural group. By doing so, it would offer a universalist and liberal alternative solution to the communitarian view on communities as closed groups that constitute themselves outside any legal framework between individuals for whom the belonging to these groups is constitutive of their identity, i.e. not a matter of choice. Indeed, cultural groups would not necessarily be ethnic groups. Fourthly, both the combination of a law that would open some more options and offer a personal statute would represent something new not only for the immigrants' and traditional minorities, but also for the majority of the population under the ordinary statute. In this way, the necessary effort of adaptation and of integration would be shared by all and not only by traditional and immigrant's minorities. Fifthly, putting convictions and dreams about some manners of traditional culture into legal form may have the desillusioning effect of resulting in a better understanding of the basic principles of the liberal rule of law, and eventually in better social integration and less hate crimes. Furthermore, it would reduce the gap between Western countries and many other countries, the former being less used to personal statutes and often more reluctant to it, and the latter being more experienced with them. Moreover, it would

make it easier for Western countries to efficiently criticize many existing unfair personal statutes and unfair cultural communities in other countries not as personal statutes and cultural communities in general, but as unfair personal statutes. Reducing global differences would result in remedying local injustices and promoting a fair diversity.

Universalism does not mean promotion of uniformity, but the requirement that everybody be able to pursue happiness in their own way.

Notes

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