

**TOLERATION AS INDIFFERENCE?
EXPLORING THE NEW JERUSALEM**

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ABSTRACT

This thesis probes the conceptual and practical limits of toleration by exploring theories that address how modern liberal states should cope with religiously extreme minority groups in the light of a concrete case, that of The New Jerusalem, a self-contained theocratic community in modern-day Mexico. The thesis analyses some implications of the case for understanding how modern liberal states ought to deal with illiberal religious groups that do not respect some fundamental rights of their members. It questions whether the theories and prescriptions of influential recent liberals and their critics, such as Kukathas, Kymlicka, Balint and Ayelet Shachar are adequate to protect either the rights of minority groups or the rights of individuals within communities that tend to oppress their vulnerable members. The thesis seeks to elucidate difficulties with these theories by setting them against the reality of The New Jerusalem. Placing theory in conversation with practice, it concludes that, though frequently disregarded in liberal literature, moral compromise addresses several of the same questions as political toleration, and that it could work alongside policies of toleration and differentiated treatment to reach long-lasting agreements where profound differences between individuals and communities make consensus difficult to attain.

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*I declare that this thesis is a presentation of original work
and I am the sole author.
This work has not previously been presented for an award
at this, or any other, University.
All sources are acknowledged as References.*

PROLOGUE

In July 2012, I was working for the government of Michoacán as a political adviser at the Ministry of Internal Affairs. An emergency meeting had been called by the state secretariat in response to news of a developing crisis in a remote community. The whole cabinet assembled. The governor of the state wanted to know every detail. He was informed that an ultra-conservative group styling itself “The Loyals”, allegedly instructed by the Virgin Mary, had set fire to the local elementary school on the grounds that “the devil was living there” (Castellanos, 2012), leaving more than 200 students and 48 kindergarten children without viable classrooms. Other less conservative members of the community were furious. Tensions were rising and the situation threatened to escalate into a violent conflict, not for the first time in the history of The New Jerusalem.

Yet in the immediate aftermath of the fire, no action was taken by local or federal authorities. No attempt was made to investigate the events that led to the destruction of the school, the only one in the community, or to prosecute the perpetrators. Over the next weeks, growing pressure from civil society groups, human rights organisations, the press, and the affected population—in particular, the aggrieved parents—finally spurred the federal government to act. It eventually despatched investigators into the community, who quickly gathered overwhelming evidence—videos, photographs and eyewitness reports—that a Mr. Cruz Cárdenas (*La Jornada Online*, 2012:35) led the attack on the school. In the disorder that had ensued, several people were killed and many others had been expelled from the community by force. Indeed, over the years, hundreds had been expelled and ostracised from the community at various points for refusing to obey the Virgin’s direct orders, the instruction to set fire to the school (and to dismiss the teachers) being only the latest.

Presented with this evidence, the minister of the interior decided that something needed to be done. His action was framed in constitutionalist terms, recognising the children’s right to receive “neutral, secular and compulsory elementary education.”¹ This was to assert a principle and to affirm a statutory commitment. The practical solution deemed compatible with this principle was to have the children of the community walk to the elementary school in a nearby village called “La Injertada” (The Inserted), so that they could attend their lessons there.

¹ The Third Article of the Mexican Constitution guarantees the right of every Mexican to have access to free, equal and secular education provided by the state.

One week later another meeting was called to discuss a new crisis. It transpired that the “nearby village” was separated from The New Jerusalem by a river. To go around it, the children had to walk about three kilometres. Some children had attempted to cross the river by swimming it instead. Two small children had gone into the water and had not come out. Their bodies were still missing.

At that time, like many others, I had no specialist knowledge of the community and its highly unusual character. I had assumed that the rule of law would be enforced—that a new school would eventually be built, that in the meantime appropriate temporary solutions would be put in place, that the guilty parties would be punished. What I witnessed in the wake of the second meeting was a marked reluctance at every level of government to act. In place of action, there were words, from the governor of the state, high officers in the central government, and even the federal sub-secretariat of Religious Affairs, mostly excusing inaction and advocating tolerance. The governor of Michoacán was explicit that the policy being pursued was one of toleration: “They deserve our prudence and respect; we don’t mean to disrupt nor we want to interfere with their community’s life. That is why we have been tolerant”² (Martínez Elorriaga, 2012).

After weeks of pressure from the media and much negative public opinion, the minister of the interior of the state of Michoacán announced that a utility bridge would be built to enable the children to cross the river safely. The uneasiness I felt about the initial government response meant that I wanted to see the solution for myself. When I visited the community, one month later, I was taken aback to find a flimsy, rickety construction that already seemed on the brink of collapse. I was especially surprised and dismayed that the sequence of highly provisional and shifty accommodations I had witnessed was being justified by appeals to toleration. How was it possible, I wondered, that toleration, an idea that implied to my mind protection against religiously-inspired zealotry, an ideal routinely invoked as central to the liberal tradition, one of the defining values of classical and modern liberalism, and a necessary constituent of any liberal society, could be invoked to justify quiescence in the face of violations to the fundamental rights of adults and children? What conception or conceptions of tolerance, or toleration, licensed this (what seemed to me) deceitful form of indifference to manifest injustice?

These thoughts and experiences were the seeds out of which this thesis grew. The thesis strives to understand the theoretical interaction between toleration and indifference, to take a

² The translation of this and all direct speech quotes from Spanish language into English is mine.

closer look at how, in practice, one modern liberal state actually dealt with a religiously extreme minority group, and to assess the adequacy of its practice in the light of the best recent normative work on toleration and the rights of minority cultures.

INTRODUCTION AND METHODOLOGY

The core research question of my work, the guiding thread that connects the different debates, reflections and theories I engage with in these pages is: How should modern liberal states deal with religiously extreme minority groups that do not respect the fundamental rights of their members? This primary question implicates others that are closely related to it: what are the limits of toleration and according to which criteria are they drawn? At what point does toleration—or at least do particular conceptions of toleration—begin to slide into indifference? How does The New Jerusalem pose a problem to the idea of toleration in general, and to the Mexican liberal state in particular? Is the appeal to toleration used by the Mexican state to justify non-intervention in The New Jerusalem wrong? If so, why is it wrong?

One thesis, two aims

In addressing these questions, the thesis has two aims. The first aim is to provide a normative analysis of a specific case, The New Jerusalem, a millenarian and messianic community located in the western state of Michoacán, Mexico. Its members are faithful to the Virgin of The Rosary. They believe the end of the world is coming soon, and that members of the community alone will be saved: *ergo*, exclusion from the community implies exclusion from paradise. In discussing the disputes that have arisen between the community and the contemporary Mexican state, exploring their grounds and the principles adduced when resolution was pursued, the thesis brings the case to the attention of a wider academic audience and demonstrates its interest to scholars working on the political life of modern Mexico. It also shows some of the ways in which Mexican intellectuals and political actors have approached questions of diversity and difference in the setting of the modern liberal state.

The second, more ambitious aim, is to bring to bear some lessons of the case for current thinking about multiculturalism, toleration, and diversity, and to enrich and develop the existing academic literature on these topics. The intricacy and complexity of the case, and indeed its extremity, drive home the difficulties that arise when contemplating both in practice and in theory the tensions that arise between community or group rights, individual rights, and

the rights of the state. Reflection on the case, I argue, brings to light some of the shortcomings of both multicultural and liberal contemporary theories that seek to resolve conflicts between individual rights and group rights through the lens of political toleration. By setting such theories against reality, my work brings to light conceptual and practical gaps that only become apparent when confronted with the intricacies of truly complex cases, such as the case of The New Jerusalem, where secular imperatives of order and justice are regarded as irrelevant or of secondary importance both in theory and in practice.

It is important to emphasise that while the argument of thesis proceeds from the analysis of a specific case, it is not a “case study” in the technical sense of that term.³ I am not attempting to identify patterns in, nor gathering data about, the detailed nature of the state of affairs at The New Jerusalem. Instead, I am interested in the idea invoked by the Mexican state to imbue its treatment of the members of the New Jerusalem community with moral authority, the idea of toleration, and in what toleration means in practice for people inside the community. i.e., I ask: “Does this particular state’s toleration *in situ* mean indifference to the fate of its own citizens?”, not “how do the members of the community experience and/or rationalize their situation”? In other words, I examine the problem from the perspective of the state, not from the perspective of those affected by the state’s decisions. Likewise, my methodological framework is theoretical, not empirical, because it concerns a political-moral question: what states *ought* to do, not *what* states happen to do. However, in order to frame the theoretical point appropriately, it is necessary to engage with some empirical work (requesting, organising and reviewing a number of official documents related to The New Jerusalem’s crisis in 2012 that provide details of the Mexican state’s response to the crisis) that will be further described below.

To bring my materials under control I come at the problems raised by the New Jerusalem through the classic debate between liberals and multiculturalists over the rights of minority groups (as communities) versus the rights of their members (as individuals), which I supplement with more recent discussions over the duties of states towards such groups and towards individuals, especially children. I also go beyond the Anglophone literature to Mexican debates which provide a local context for ways in which the crisis in The New Jerusalem was construed.

My argument moves through three stages. First, I establish the precise character of the problem posed by The New Jerusalem, which has been addressed normatively with reference to the idea of toleration. Next, I clarify the normative questions it raises, before turning to

³ For a comprehensive definition of a case study see Vennesson in Della Porta and Keating, 2008.

consider whether the justifications offered in the existing literature adequately cover the problem in view and if not, why not. Last, I begin to outline in response an approach that is more adequate to the problem than those I met within the literature hitherto.

This thesis makes several relevant contributions to the existing academic literature. The first contribution relates to the fact that my work is doing something that has never been attempted before: to explore and analyse The New Jerusalem from the perspective of political theory. To date, The New Jerusalem has been largely neglected by academic writers. There are a few interesting ethnographic works, mostly made by journalists and a few anthropologists (e.g., Varela 2012; Warnholtz 1988; Del Val 1986; López Castro 1984), but none from the perspective of the normative political theory. This approach is valuable, first, because it allows for more refined normative distinctions between different kinds of toleration; and second, because it clarifies just what is at stake in the current political impasse over the holy city.

The second contribution of this thesis lies in the fact that I have given an English voice to an almost unknown case that, owing to its exceptional complexity and its distinctive characteristics, has the potential to shed light on instances where modern states have to deal with ultraconservative insular religious groups within their jurisdictions. This work also seeks to make The New Jerusalem visible and academically available beyond the local realm as a live example of how Mexico's last and only theocracy has managed to survive within a modern liberal order creating a state of exception; a real instance where fundamental rights, even children's rights, are being overlooked for the sake of political expediency.

A third and related contribution of this thesis is to address the problem normatively and in doing so to look again at the idea of toleration and issues of difference and religious diversity. There have always been problems with appealing to toleration, and The New Jerusalem is a way of exploring some of those problems. At the same time, there are hard questions to confront about the relationship between theory and practice and whether, and how far, appeals to toleration, in theory, imply compromise in practice, specifically compromising the moral ideas that the modern liberal state, in its stated commitment to the rule of law, claims to uphold as indefeasible. The theoretical connection made between the problem posed by The New Jerusalem and the response allows us to question if political toleration is always the most adequate solution to the problem of accommodating diversity when accommodation in practice means going against values and rights that are considered fundamental both by the law and by the wider community.

This thesis also contributes theoretically to the ongoing debate on the dispute between individual rights and group rights by showing how the *right of exit*, considered by many liberal

theorists (see Kukathas 2003, 1992a, 1992b; Williams in Heyd 1996; Balint 2018, cf., 2017, 2013) to be a sufficient condition to secure the individual value of autonomy, may mean nothing for practical purposes when the members of the religious minority group happen to be millenarians. This work establishes how, in at least one case, the *right of exit* is insufficient to protect vulnerable members of a religious minority. They strongly believe that the end of the world is about to come and that leaving the community would equal death and eternal damnation. One might deal with this problem at the level of theory by stipulating that the agents in question fail to meet the criteria identified as meriting the use of the epithet “autonomous” to describe them, but that does nothing to address the practical problem.

I do not pretend that this thesis can or does provide a theoretical model that resolves the tensions between group rights and individual rights in practice. Neither can it offer universal solutions to the problems that contemporary theories of toleration make it their business to consider. Instead, this work contributes to ongoing normative discussions of toleration by scrutinising and making explicit some of the shortcomings of those theories in the light of practice: this research brings to surface difficulties that only become evident when they are set against real complex cases that challenge the capacity of modern states to accommodate illiberal diversity. The pure light of ideal theory dazzles the eye, but it can obscure as much as it reveals. I modestly offer a glimpse at a rather general level of how moral compromise could work alongside policies of toleration to provide both principled and practical support for agreements between individuals and groups who remain deeply divided in practice and at the level of ultimate principle. How to shape and implement those arrangements, however, is beyond the scope of this work. Still, I hope my research could be a point of departure for other endeavours that continue to grapple with the extremely demanding practical challenge of living civilly and tolerantly with others whose beliefs and practices we find obnoxious. This challenge seems likely to be with us for as long as there are human beings living in proximity with one another and sharing the same social space.

Chapterization

In pursuing its aims, the thesis moves through six thematically consecutive chapters:

The first chapter, *The New Jerusalem and the Crisis of 2012*, provides a brief historical account of the community, its character, and its fortunes. It introduces the case of The New Jerusalem alongside an analysis of the policy implemented by the Mexican government to deal with the crisis. Chapter 1 addresses the following questions: What has happened at The New

Jerusalem and how does it pose a problem to the idea of toleration in general, and to the Mexican liberal state in particular? When did the crisis begin? Who are the main actors? What was the Mexican government response to the crisis of 2012, in what terms did it seek to justify that response? And finally: what does the millenarian character of the community imply for the adequacy of that justification, given the demands laid on the actions of its members and their interactions with the outside world by the impending threat of divine judgement and the impossibility of salvation beyond its walls? This chapter shows how the problem of The New Jerusalem came to be connected to, and construed through, the idea of toleration via official representatives of the Mexican state and so provides a bridge to the more theoretical discussions that comprise the subsequent chapters.

Chapter 2, *The Idea of Toleration*, offers a conceptual analysis of the notion of toleration, the idea invoked by state actors to justify their response to the crisis at The New Jerusalem. This analysis is given not because toleration somehow *determined* the Mexican state's response—I am not making any claim to that effect—but because articulating and demarcating the complex of principles being invoked by the state authorities under the rubric of toleration brings out more clearly than the messy adaptations to the circumstance of professional politicians could ever hope to do the moral structure of the severely limited range of fundamental options open to them. In addition to emphasising the importance of understanding toleration as a political practice, rather than as a moral virtue or as an attitude, this chapter locates the theoretical differences between tolerance and toleration, repressive tolerance, false tolerance, and toleration as indifference, drawing out some of the ambiguities in the idea the Mexican government is evoking in its stance towards The New Jerusalem. I reflect on whether we could talk of “over-tolerance” and how, if at all, we might pin down the “elusive” nature of the term (Heyd, 1996). Finally, I address critiques of toleration made by authors such as Marcuse and Arteta, while I also advance my criticisms of certain understandings of toleration that verge on indifference or modern forms of relativism. At the same time, it sets the scene for the third chapter by clarifying the conceptual character of toleration before turning to its role in wider argument between liberals and multiculturalists about the appropriate response to diversity and difference in modern states.

Chapter 3, *The Rights of Minorities and the Rights of their Members*, aims to clarify the role of toleration in the arguments of seminal authors such as Chandran Kukathas (2003;1997;1992), Brian Barry (2001), Will Kymlicka (1999; 1997; 1996; 1995; 1994; 1992; 1989), Michael Walzer (2006; 1997) and Charles Taylor (1994; 1992; 1989) who address the question of how far, if at all, modern democratic states should tolerate groups at the expense of

the rights of individuals inside those groups. It does so by working through a series of questions in turn: are there any group rights? can the rights of religious minorities (as communities) trump the rights of their members (as individuals)? In the end, which claim, the individual's or the group's, should prevail? This discussion connects the case of The New Jerusalem with the notion of toleration as it figures in wider discussions of the problems of granting minority groups special rights. At the same time, it provides the necessary intellectual context for an investigation into the precise forms this debate has taken in Mexico, analysed at length in the fourth chapter.

In Chapter 4, *The Debate on Group Rights in Mexico*, I explain how the contemporary debate between group rights and individual rights explored in chapter 3 played out in Mexico, where it has come to focus ever more sharply on the group rights of indigenous peoples. The disputants in Mexico range from liberal theorists such as José Antonio Aguilar Rivera and Jesús Silva-Herzog Márquez, on the one side, to communitarians like the philosopher Luis Villoro on the other, sometimes reproducing, sometimes departing from the arguments made by the Anglophone scholars discussed in chapter 3. Taken together these ongoing debates provide the terms which help me to parse the core question of my research: what should modern liberal states tolerate and why? The Mexican debates provide, in addition, the background against which the decision of the Mexican state authorities to justify their workings in the language of toleration appears in its proper light. For the Mexican debates were not conducted primarily in the pages of academic journals and monographs, but rather in the pages of a national newspaper. They involved the public expression of political and moral opinions that aimed to shape the public culture and generate support for particular men, parties and groups as much or more than they aimed to articulate conceptual truths. In other words, the Mexican government, while formally appealing to principle, was at the same time appealing to existing constituencies of opinion and popular conceptions of what the Mexican state was like and what it had sufficient political license to do and to avoid doing.

Chapter 4, then, plays a dual role in the thesis. On the one hand it extends the range of theories being discussed; and considers the implications, if any, of discussions of indigenous rights for the case of the New Jerusalem; at the same time, it reinforces a point that the thesis wishes to emphasise about the relationship between theory and practice, namely that it is complex, and that in politics what is done in practice is never the simple embodiment of principle.

Chapter 5, *Theory vs. Practice: Toleration and The New Jerusalem*, doubles down on this point by bringing my analysis of the theories and concepts surveyed in chapters 2-4 back

to the problems posed by the crisis in The New Jerusalem. It focuses in particular on the difficulties posed by religious groups for whom the costs of exit are always and necessarily too high to make any supposed right to exit meaningful. In this chapter, I survey the theories and prescriptions of some outstanding contemporary political theorists, such as Kukathas, Kymlicka, Balint, and Ayelet Shachar and critically assess how adequate their models are to protect individual rights within minorities that tend, like The New Jerusalem community, to oppress their own minorities. I include a brief explanation of some important judicial cases, such as the well-known Yoder case (1972), and the not so well-known cases of *Santa Clara Pueblo v. Martinez* (1978), and the *United States v. Wheeler* (1978), where individuals sought the state's protection against their own communities, as these help to clarify the ways in which, historically, liberal constitutional states have endeavoured to rationalise their practice.

These cases also raise doubts about whether and how far jurisprudence can succeed where political theory fails in offering clear-cut answers to the kinds of question, about the rights of individuals versus the rights of groups or corporate bodies like the state, with which this thesis is concerned. Much recent writing on multicultural rights—Shachar 2008, 2001; Festenstein 2005; Spinner-Halev 2000, 1994—relies on jurisdictional arguments which distribute rights to agents in different spheres of activity, but if and when jurisdictions are multiple and overlapping, such arguments, by themselves, merely push the problems back a step, because if and when jurisdictions *do* overlap we still need to know which claim, the individual's, the group's, or the state's, ultimately trumps its rivals and why.

This penultimate chapter, by bringing to light some of the shortcomings and theoretical loopholes of the aforementioned theories, sets the scene to propose a normative solution to the puzzle of how Mexico, or any other modern liberal state should best address cases as complex as The New Jerusalem: how and when they should intervene in cases where rights of different sorts are *prima facie* in conflict and where harms of various sorts seem unavoidable.

The sixth and final chapter, *Compromise and Toleration: A Normative Proposal*, offers a sketch of one possible normative solution in cases of this kind. Approaching the theoretical problems that became evident in chapter 5 from a different angle, it suggests that the idea of compromise, suitably understood, brings added value when put to work in tandem with toleration. The tendency in the existing literature has been to construe toleration as an *alternative* to compromising; as something required in the absence of compromise. My provisional suggestion is that a form of moral compromise, complemented by a conditional arrangement of political toleration, could be a feasible way to deal with complex cases where toleration, as traditionally understood, seems to fall short of protecting individual rights within

minority groups that tend to oppress their minorities and compromise, as conventionally understood, seems to require the differing parties to acquiesce in the violation of their own rights.

I attempt to substantiate this suggestion by advancing my own account of what I believe could and should be done in The New Jerusalem to improve the life of its inhabitants, emphasizing children's rights. Concrete examples are provided of how to implement a comprehensive form of political compromise which will, I hope, shed some helpful light in similar cases where liberal states have to deal with insular religious groups that hold illiberal values and practices. But in order to make sense of the solution, it is necessary to begin with the problem.

—Chapter 1—
THE NEW JERUSALEM AND THE CRISIS OF 2012

Those who can make you believe absurdities
can make you commit atrocities.

—Voltaire

This chapter provides a historical account of the origins, character and crises of The New Jerusalem, a millenarian religious community founded in 1973 by a defrocked priest who discovered via an intermediary that his dislike of the present state of the world and of changes in the Catholic Church post-Vatican II was shared by the Virgin Mary. The chapter explains what has occurred in The New Jerusalem since its foundation and how it poses a problem for the idea of toleration. It focuses in particular on the crisis of 2012, when some community leaders objected on religious grounds to the secular education provided by the state and expressed their objections by attacking parents, burning down the local state school, and locking the gates of the community. I examine the Mexican government's response to the crisis and set out the route by which it came to be connected to the idea of toleration via official representatives of the Mexican state. The remainder of the thesis analyses the normative implications of the case for thinking about multiculturalism, toleration, and diversity.

The New Jerusalem has passed under the radar of most political scientists and political theorists. What attention it has attracted over the years has come mostly from journalists conducting interviews and reporting from the field. Correspondents working for local diary columns and the national press have written features, opinion pieces, and dispatches, producing cumulatively an ongoing contemporary history of The New Jerusalem: giving voice to what they heard, describing what they saw and what they found out during their intermittent visits to the community. Martínez Elorriaga (2012, 2007) and Rodríguez Lozano (1982), from the Mexican national newspaper *La Jornada*, carried out long interviews with the residents of The New Jerusalem. The latter wrote a chronicle of the city to which the present account of its history and goings-on is indebted. In a different idiom, writer Jesús Lemús published a novel called “Cara de Diablo” (Face of de Devil) that combined anecdote and detailed description in developing a vivid picture of what he calls “Mexico’s only and last Theocracy” (Lemús, 2014).

Some academic writers have gone beyond journalism and imaginative prose to explore the workings of the community through a disciplinary prism. Among these worth mentioning are the articles of the legal scholar Ortiz Pinchetti (1974) and the ethnographer Warnholtz’s

1988 study “The New Jerusalem: A Study of Millennialism in Mexico” where, in addition to a historical account of its origins and development, an analytical description of the community’s complex social structure is provided. Another outstanding ethnographic work (perhaps the most illuminating of all) is that of Leatham (1997, 1993), who carried out extensive fieldwork with frequent visits to the walled city, often disguised as a pilgrim. To this list, I must add the work of López Castro (1984), a researcher from El Colegio de Michoacán, whose article, “The New Jerusalem: a town from the unknown”, sought to reconstruct the cosmogony of its inhabitants. Del Val (1986) published an outstanding research paper called “The New Jerusalem: a reactionary experience?” which included statistical data about the city’s economy. There is also the extended article by the anthropologist Varela (2012), that explores in depth the anthropological and sociological situation in The New Jerusalem.

Each of these works elucidates different aspects of the community’s life, but no extant work explores analytically the moral-political problem posed by the mere existence of The New Jerusalem within, and formally under the jurisdiction of, the Mexican State. It is my aim to fill this gap, but I must begin with a brief account of the city, its origins, and the practical response of governmental officials at local, regional, and federal levels to the crisis that eventuated there in 2012. This descriptive account provides the springboard for a philosophical analysis of the normative problems which the case brings sharply into focus. The link between these two stages in the argument is provided by the idea of toleration, which was invoked, more as a self-exculpatory slogan than as a philosophical term of art, by officials who wished to justify their inaction.

This point needs to be made emphatically and kept in mind throughout the thesis. I am not suggesting that the invocation of the word “toleration” implied a worked-out philosophy on their part, or that the course of inaction that they preferred was somehow caused by a principled commitment to the idea of toleration. Political action has its own conventions, rules, and institutions around which other conventional structures build up over time. The language of principle abounds but when those engaged in practical politics—the taking and executing of everyday decisions about government and administration—appeal to principle, they tend to be describing the commitments which guide their preferences in that particular set of circumstances. They are saying, in effect, “I do not propose (or I am not authorised) to shift from this position at this time”. Rather than positing a pre-formed, universally right embodiment of principles formulated by means of philosophical reflection, they are justifying their actions as much by considerations of habit, expediency, prudence, custom, what the

situation demands, what their superiors require or expect, and what a given constituency is likely to accept as legitimate, as by some universal ideal of conduct.

The point may be put like this. What, as a matter of fact, is done, is one thing. How what was done is justified, or how those who did what they did attempt to justify it, is another thing. Whether what is done is or was justified, whether it was the right thing to do, is something else again. This chapter is concerned with what was done, the ways in which political actors attempted to justify what was done, and the ways in which that justification was received by commentators and other political actors and representatives of organised civil society institutions. In the subsequent chapters, I turn to the normative questions at the heart of the thesis, questions about the philosophical validity and moral acceptability, the rightness or otherwise, of the purported justifications. Accordingly, the later chapters address the idea of toleration and the wider normative theories in which it can be implicated.

As I explained in the prologue, the subject of this thesis is not only The New Jerusalem or the unique character of this community but the normative problems raised by the presence of a millennialist city and the activities of its leaders within a modern state like Mexico, a state that boasts a liberal constitution and a formal commitment to the rule of law applied equally to all. As the problems flow from the character of the community and the dislocation between the ways of life it imposes on its members and the ways of life valorised and protected under the Mexican constitution, to understand these problems aright it is necessary to understand the community and its workings.

This is not an easy task. The community is closed to outsiders and driven by internal factions. Partisan perception colours every account that has emerged from within and even those given by outsiders. Much of the story of the community strains the credulity of modern readers, for whom accounts of divine apparitions, if they are not laughed out of court, tend to reveal more about the unhappy state of mind of those who claim to witness them than they do about the activity of God in the world.

The account I provide as an introduction to the central arguments of the thesis is meant to be as factual as existing research and reportage permit. I begin by setting out the key actors in the story of the community, before giving an account of its origins and development through the sequence of crises that brought it to the attention of the Mexican state authorities. This is not to say that the community had ever been unknown to the authorities. Rather, over time, events moved in ways that first unsettled, and more lately made impossible, the studied (and perhaps corrupt) inadvertence they had displayed until that point. The New Jerusalem became a political and public relations problem that could not be wished away. That problem is not the

primary focus of this thesis, but it does provide the cue for the normative analysis that constitutes the bulk of the thesis, and so constitutes a necessary point of departure as well as context.

As the story of the community, its origins and its bloody recent history are both arresting and little known outside a small circle of Spanish-speaking journalists and readers, there may also be some independent interest in giving an English language account of it, which I do below. To assist the reader in following the story, I begin by outlining the *dramatis personae*.

The key actors

Papá Nabor:	A former catholic priest who became the founding father and supreme leader of the community.
Mamá: (Salomé)	The first and most important seer of the community. Claimed to have the capability to be contacted by the Virgin and to reproduce her messages. Her legitimacy was never put into question by any group inside The New Jerusalem.
Mamá Chuy:	Second in importance as a clairvoyant. She had the same powers as Mama Salomé and claimed to have the ability to reincarnate the Virgin.
Mamá Margarita:	A nun, recognised as a seer by many, but not by Papá Nabor. She was a contemporary of Mamá Chuy and acted concurrently as an unofficial seer.
Santiago: “El Mayor” (“The Greater”)	He was chosen as a successor to become the new supreme leader by Papá Nabor but never took office as he was dispossessed of his rightful position by the seer Agapito Gómez Aguilar. After surviving an assassination attempt, he became the leader of “The Dissidents”.
Agapito Gómez Aguilar:	He managed to persuade Papá Nabor that he was the most powerful seer and became second in command. After Nabor’s death, he overthrew Santiago “El Mayor ” as the legitimate successor and became the new supreme leader of the community.
Saint Martín de Tours:	Inherited power from Agapito, despite being snubbed as Nabor’s successor by Nabor himself when on his deathbed. Currently the supreme leader of The New Jerusalem and the “official” successor of Papá Nabor. Martín of Tours is a (self-aggrandizing) <i>nom-de- théâtre</i> , borrowed from St. Martín of Tours (<i>ca.</i> 316-397). ⁴
Mamá Catalina:	Daughter of the seer Agapito Gómez and currently the official seer of The Holy City. She claims to have the power of hearing, seeing, communicating and interpreting the words of the Holy Virgin. Under her clairvoyance, the messages of the Virgin have struck a harsher note.
The Loyals:	Constituting around 75% of the total population. They follow St. Martín de Tours’ leadership and claim to be the loyal followers of Papá Nabor.

⁴ St. Martín of Tours (*ca.* 316-397) became the most visible protester against the torture of the followers of Priscillian, Bishop of Ávila, whose views (he promoted a very strict Christian asceticism) had disturbed the Church in Spain. Priscillian was charged with sorcery and executed on the authority of the Emperor Maximus, a Spaniard. Two Spanish priests, Ithacus and Idacus, had clamoured for similar punishment to Priscillian’s followers. St Martín of Tours stopped them, saving the lives of thousands of members of Priscillianism.

They are the most conservative group and have a very narrow and intransigent view of what sort of moral behaviour is acceptable.

The Dissidents: They are a minority group of about 25% of the entire population. They follow Santiago “El Mayor” and have more liberal views in general. They allow and seek school education for their children and they do not oppose sexual relations as long as they are performed within a legitimate marriage.

The fuller story of The New Jerusalem begins on 13 June 1973. On that day, it is said, Mary, the mother of Jesus, appeared to Gabina Sánchez, an elderly woman making her way through a very rarely used passageway, known as “El Callejón” (The Alleyway), about three kilometres from Puruarán township, in the state of Michoacán, the western central region of Mexico. Mme Sánchez went immediately to the municipality of Turicato, the nearest large conurbation, to the parish church at that time under the ministry of the local catholic priest Father Nabor Cárdenas Mejorada, to tell him that the Virgin had revealed that she wanted them to build a chapel at the top of the hill called “El Mirador” (The Lookout). She warned Father Nabor that the end of the world was imminent, and she urged him, as the Virgin had commanded her, to found and establish a holy city in that place before the end of days.

Completed only a few months after the Virgin’s appearance, the city was named by Father Nabor “The New Jerusalem” (López, 1984). Thousands of pilgrims, hearing about the miraculous visitation, flocked from the most impoverished areas of the southern states of Oaxaca, Guerrero and Chiapas. They came to visit the chapel known as “La Ermita” (The Hermitage), in the hope of seeing the Holy Virgin for themselves. Some of them decided to stay on and make the most holy and newly-founded city their home (ibid.).

According to the beliefs summarised in Papá Nabor’s writings (Nabor, n.d.), the Virgin had conveyed to Mme Sánchez the vision of a holy city freed of all sin and moral decadence and she continued to communicate with her. Natives and recently arrived outsiders started to call the clairvoyant “Mamá Salomé”, the godly name she had begun to adopt. They held her in very high regard, referring to and treating her respectfully as an oracle (Rodríguez, 1982).

Meanwhile, Father Nabor visited the Catholic bishop at the nearby city of Tacámbaro to warn him that the end of the world was nigh and to urge him to find shelter in The New Jerusalem. The bishop, understandably, was taken aback and expressed concern that nearly 9,000 residents, sharing the euphoria of the appearance, were already living in the recently-built city. Nabor explained to the bishop that his mission was to found a city most holy, unspoilt, hidden away from the world; ruled by the Holy Virgin in person through Her

clairvoyant, “Mamá Salomé” and, of course, via his own mediation. Nabor urged the bishop to join the holy assignment. The bishop accused Nabor of being an impostor and called Mamá Salomé a “lunatic old lady”. He threatened ex-communication and Nabor is yet to be reconciled with the Catholic Church (Lemús, 2014). In response, Nabor founded his own Church, “The Catholic, Orthodox, Traditional ‘New Jerusalem’ Church”. From that moment, he stopped being a Catholic priest and he started to be known simply as “Papá Nabor” (Father Nabor), the highest authority within The New Jerusalem (Varela, 2012).

To walk through the city is to enter a world that is usually brought to life by medieval paintings and works of fiction: nuns are everywhere, watching over children that run barefoot. Young monks in brownish-grey hoods and robes avoid the gaze of visitors. Women are mostly dressed in long skirts and have their heads covered, while men are cautious never to wear shorts or anything “improper”. The city walls guarantee that nobody can get out without permission and the main and only entrance is jealously guarded. The only visitors allowed are pilgrims to The Hermitage Chapel. Written or oral permission from the holy authorities of the city is required before they can leave (ibid.). The New Jerusalem’s inhabitants have minimal access to education, health services, nor do they have the right to interact with other communities. There is no civil government, no electricity (though the holy authorities—Papá Nabor’s successors and their very small group of close collaborators—do have access to electricity and a few modern devices). There are no motor vehicles, nor any other obtrusive symbols of modernity (the occasional lorry, owned by contractors engaged to do building or repair work may be seen) (ibid.). Work is conducted during the harvest in the sugar mill “Pedernales”, a few miles from the village. Otherwise, it is a closed world and eager to remain so; in the present day, in a democratic and liberal country with the 15th largest economy in the world.

The line that separates insiders from outsiders is very clear: access to the village is carefully watched over 24 hours a day by guards and a large chain secures the narrow entrance to the city each night. Next to the checkpoint, there is an advertisement addressed to “The Living” (the official name used by the holy authorities to refer to lay inhabitants). One reads: “Dating: Forbidden / Alcohol: Forbidden / Makeup: Forbidden”. Still, there are further prohibitions: neither listening to the radio nor watching TV is allowed (Lemús, 2014).

Almost 20 mass services are held every day. It is mandatory to attend at least two (Lemús 2014:398). The Living have, it is claimed, recovered the colour, the ceremonies, the rites, even the magic and apocalyptic energy that during the 16th century evangelised the indigenous peoples in Mexico and South America; an energy that according to The Holy City authorities, the modern Catholic church has lost (López Castro, 1984). Accordingly, the residents of The

New Jerusalem celebrate the holy mass in Latin, for they disapprove of all the reforms promulgated during the late sixties by Pope John XXIII during the Second Vatican Council. They also make enthusiastic use of traditional Catholic rites such as exorcism, about which the Church is nowadays extremely reticent. Around 3,000 peasants both from the surrounding areas and from the south-eastern regions of Mexico (Guerrero, Chiapas, Oaxaca and Hidalgo) have moved to The New Jerusalem in the past four decades. Since then, Father Nabor and his successors have educated, lectured and appointed monks, priests, and bishops in the religious school he personally established to guarantee the continuity of the project (Varela, 2012).

Order in the city is preserved through a very stringent discipline, following rules dictated by the Holy Virgin and other saints and transmitted by the oracles and clairvoyants (Rodríguez Lozano, 1982). Murals depicting Father Nabor, noticeboards with rules and prohibitions, religious propaganda, an extended and loud active speaker system, and continuous patrolling groups (armed and unarmed) guarantee the observance of law and order in the community (ibid.). Residents believe that only their prayers and a total rejection of modern ways of life will hold back the Apocalypse for another 40 or 50 years, but not more. “Knowledge has become satanic, is no longer sacred” (Lemús, 2014) said the seer Agapito Gómez Aguilar in February 1998. At that time, Lemús describes, he was acting as a conduit to a spirit named Oscar. “FAX, computers, television, modern devices... all that is satanic stuff. We are in the end of times when everything is satanic”. Given the coming apocalypse, residents were forbidden to have children: “What's the point of procreating, if the world is ending?”—questioned Agapito Gómez, Papá Nabor’s first successor (Ibid.). To speak of succession advances our narrative, from origins to subsequent developments within The New Jerusalem.

The Death of Mamá Salomé and the Two Mamás

The first great crisis that confronted The New Jerusalem came with Mamá Salomé’s death in 1982 because Papá Nabor, inspired by a message from the Virgin, ran two candidates for succession: “Mamá Margarita” and “Mamá Chuy”. The race between the two clairvoyants split the community. Papá Nabor himself ended up backing Mamá Chuy. He could not know that his decision would divide the people for years to come.

When certain uncomfortable details about the past of Mamá Chuy became public, such as the fact that during her youth she had been a sex worker in the northern city of Monterrey, more than two hundred nuns decided to form a convent inside the village and were followed by several of The Living to support her rival, Mamá Margarita, recognising her as the real seer

and defying Mamá Chuy's authority. Papá Nabor sought direction from the Virgin and reported that she had threatened to leave the town unless an early settlement was achieved. Matters came to a head in November of 1982: in a single night, about 4,000 of the nearly 9,000 men and women living there at the time were expelled by force from their properties, deprived of their possessions and driven out in a mass exodus (Del Val, 1986). A mob set fire to the convent of Mamá Margarita and many homes of her followers. The New Jerusalem that night witnessed a modern form of pogrom, and its population became "Fuenteovejuna"⁵. Once the succession was secured, Papá Nabor decided, again at the Virgin's command, to implement stricter measures of control within the city: he went on to prohibit recreational sex and clarified that the prohibition would last until the end of the world. The crisis ended with the withdrawal of Mamá Chuy from public life, and her internment in the cloistered convent of La Ermita, where she was confined by Papá Nabor, who argued that she had reached such a high degree of holiness that it was necessary for her to devote entirely to contemplative veneration of the Virgin and renounce to all forms of human contact.

It has been suggested that the real cause for the withdrawal of Mamá Chuy from public life lay in the fact that her messages had begun to threaten the power of Papá Nabor. For instance, at that time, employing her clairvoyant Mama Chuy, the Virgin had exempted The Living from paying mandatory taxes and required the return of fees and "voluntary" quotas requested by Papa Nabor of all migrants who had entered the community to see their relatives (Del Val, Op. cit.). The cloistering of Mamá Chuy consolidated Nabor's power. In 1999, Miguel Chávez Barrera was consecrated by him as bishop of La Ermita. Barrera then took the name of Santiago "El Mayor" (Santiago The Greater) and became second in command with the approval of the community and the newly appointed "Third Seer", Agapito Gómez Aguilar, later to be known as "The Blessed".

⁵ The Spaniard dramatist Lope de Vega in his play "Fuenteovejuna" (1619) tells the story of a small town called Fuenteovejuna. After the murder of certain despicable high officer, known as "The Commendator", guards from the King of Spain and many officers arrive to conduct investigation and prosecution. When the special prosecutor asks the crowd: "Who killed The Commendator?" He gets a unanimous answer: "Fuenteovejuna, Milord!"

The Decline of Papá Nabor and the New Balance of Power

After 2005 Papá Nabor retreated from public view, afflicted with multiple health conditions and of the effects of old age. The sedan chair he used to be transported around the city, so as not to touch the impure ground, was seen rarely. In his absence, Agapito began to impose his law in Papá Nabor's name. To enforce compliance with this new law he formed "The Celestial Guard", a security force composed of a shifting number of heavily armed individuals under his command. Since its creation, The Celestial Guard has been accused of several murders. In May 2005, for instance, Mrs Bartola Cruz was shot to death for attempting to defend her family from expulsion (Marrero 2014; *El Informador* 2012).

As a result of several previous confrontations and murder investigations, two members of The Celestial Guard, Federico Rodríguez and Leonardo Jiménez, were prosecuted and sentenced to twenty years in prison. Agapito was exonerated in the absence of proof that the said Guard was acting on his command. They claimed they had acted entirely under the direct command of the Virgin. Even so, a growing body of accusations of sexual assaults on young girls in the community, including rape, eventually made him leave The Holy City for a while. Agapito's chequered past lends credence to the accusations. He was once imprisoned for a few months on charges of homicide, being released on license after paying a bond of three million Mexican pesos (120,000GBP, approximately). In 1998, he had been to jail for rape and murder after he had expelled 150 families and 31 priests. Surprisingly, the government of Michoacán paid the bond for him and Agapito was released (Marrero, 2014). The primacy assumed by Agapito in The New Jerusalem caused friction with bishop Santiago El Mayor, who, followed by thirty priests and hundreds of families from The Living, tried to assert his pre-eminence against the rule of Agapito. This led to the further polarisation of the people, so much so that Santiago and his followers in 2007 adapted a private home as the new community's holy chapel, where they began to worship the Virgin away from the hermitage.

There was a further escalation of violence when Agapito—who had returned to the walled city after his hiatus—taking advantage of his privileged position as a seer, persuaded his followers in early March 2007 to attack bishop Santiago The Greater and his priests. The seer Mamá Catalina had forewarned that Santiago was not a bishop but "a disguised snake that should be eliminated" (Lemús 2014:359). Agapito, sensing the opportunity to dispossess his formal superior from his position when Papá Nabor was too weak to intervene, decided to strike. Santiago and his followers were driven into the open and stoned by hundreds of

Agapito's followers. Had they not taken shelter in their new chapel, they would have probably been killed.

Santiago and his men were given an ultimatum: to leave the community within 10 days or to be burnt alive inside their chapel (Lemús, 2014). The government of the state of Michoacán, being made aware of the seriousness of the conflict, appointed Antonio Prado, a senior official, to act as a conciliator. However, his mediation was rejected by Santiago's faction, who requested the intervention of the Head of Religious Affairs, a centralised office of the Federal Ministry of the Interior. Meanwhile, the print media began reporting the conflict in *The New Jerusalem*, attracting the attention of both the federal and the local government.

On Sunday 11 March 2007 the ultimatum given to Santiago by Agapito passed. Tensions mounted. The people of *The New Jerusalem* saw for the very first time military personnel and army vehicles in the environs of *The Holy City*. The official explanation attributed the deployment of patrols to a raid performed by the local and federal government agents for the detection and prevention of drug trafficking, but the official show of force was enough to persuade Agapito to pause.

Two days later, in the city of Morelia—the capital city of the state of Michoacán—the head of *The Federal Office for Religious Affairs*, Mr Servando García Pineda and Michoacán's Minister of the Interior, Ms Guadalupe Sánchez Martínez, met to discuss the case of *The New Jerusalem*. No agreement was reached. In the meantime, the protesters—led by Santiago, who had managed to slip out of the city—travelled to Mexico City for an interview with the Directorate of *The Federal Office for Religious Associations*. They had already been calling for an urgent meeting with Mr Pineda, who had postponed the meeting on several occasions. Eventually, they were received by second-level officials but, once more, a solution was neither mooted nor promised. In his absence from *The New Jerusalem*, the followers of Santiago were reallocated near the walls with others who had faced ostracism before, living in shanty houses around the city walls.

It may be wondered at this point why Santiago's followers did not simply leave the *New Jerusalem*; why, like other dissidents and expellees, they preferred to live inside the community in proximity to the city's walls as outcasts and renegades than to exit the community to join or form another. The answer is that their belief system made it impossible for them to leave. This system of belief, which they shared with the rulers of the community, was millenarian in character and its character had profound implications both for their own actions and for their interactions with wider society outside the walls of the city. It was, as it were, the defining feature of the community as a whole: it differentiated the group from the

rest of Mexican society—from the rest of humanity—and from other religious groups and associations that did not share the same character. For this reason, it is necessary to say more about what it involves and what it implies.

Millenarianism and The New Jerusalem.

The idea of millenarianism, frequently referred to as millennialism, is not a new one⁶. It is as old as religions themselves and it belongs to both monotheistic religions and polytheistic traditions. Though it is not exclusive to Christian religions, it is commonly associated with Protestantism and with conservative Catholic groups that regard the apocalyptic expectation as part of the unavoidable destiny of the world. Within the Christian tradition, millenarianism is referred to as “chiliasm” (*chilia* being the Greek word for “one thousand”). It assumes that the present order will be closed by a cataclysm and that a new supernatural order will take its place, preceding a final day of judgement (Cross 1915: 3-6). It has its origins in the Judaic notion of the Messiah as one sent by God to vanquish the enemies of Israel and build the kingdom of God anew. At his coming, the prophet Jeremiah foretells, “shall Judah be saved, and Jerusalem shall dwell safely”.⁷ In the Christian tradition, this view finds universal expression in the Book of Revelation, which recounts a series of visions of St. John the Divine, in which an angel descends from heaven and binds Satan for a thousand years as Christ reigns on earth over those who have witnessed his truth. “And when the thousand years are expired”, John continues, “Satan shall be loosed out of his prison, And shall go out to deceive the nations...to gather them together” to bring battle to the city ruled over by Christ;⁸ and fire shall come down from God out of heaven and devour them, and the devil will be cast into the lake of fire and be tormented forever. And then all the dead “small and great [will] stand before God” and be judged according to their works, and death and hell with it will be cast into the lake of fire,⁹ and there will be a new heaven and a new earth, and a new city “the Holy Jerusalem, descending out of heaven from God”.¹⁰

⁶ Though academically and historically are used almost interchangeably, there is a slight difference between the terms. While “Millenarianism” refers to the violent cataclysm that will bring to an end the current state of affairs, “Millennialism” focuses more on the period of (at least) one thousand years of peace that will replace the present circumstances after that cataclysm.

⁷ Jer. 33:16.

⁸ Rev. 20:1-10.

⁹ Rev. 20:11-15.

¹⁰ Rev. 21:10.

Within mainstream Christianity, the early expectation of Christ's imminent return to this world to liberate Christians, initially from Roman oppression, was replaced by St. Augustine of Hippo's allegorical model of an other-worldly City of God anticipated in the Christian Church on earth. On this view, the Day of Judgement will not be preceded by a future millennium. Millenarian Christian beliefs thereafter became associated with dissident groups or sects and retained their appeal most strongly among those who were dispossessed, both culturally and economically. Perhaps reflecting the precariousness and misery of their current situation, many such groups espoused what Wessinger (2011: 718) calls "catastrophic millennialism", that is, the belief in a major transformation of society that is about to come after a massive wave of destruction. The current world's state of affairs is regarded as decadent and morally corrupted beyond any possible salvation. Therefore, only through a violent annihilation of the current social order can the Kingdom of God return. A convulsive cataclysm is necessary to fulfil the divine plan of God for The Earth. Divine action requires to make way for a perfect city. In the meantime, the group must expect persecution and oppression at the hands of God's enemies, witnessing His truth until they are liberated from their oppressors.

The crucial feature of this liberation is that it is collective in character. By definition the transition anticipated is a transition to collective salvation in which the faithful, and only the faithful, will experience eternal well-being; all the unpleasant limitations of the human condition will be eliminated, but only here, only for us. The "here" and the "us" are decisive. Salvation is not something that can be achieved or experienced by individuals alone on a spiritual plane. The righteous city, on this view, is like Noah's Ark before the deluge: it is a bounded physical space and only those inside it can escape destruction. The effect is to tie together the fate of individuals with the fate of the group; or more precisely, to subsume the ultimate concern of the individual into that of the group, because the salvation of the individual cannot be separated from group belonging. As Wessinger notes, this structure of beliefs tends towards fundamentalism and fanaticism, because its cognitive components include "absolute confidence that one has the truth and that others are wrong and evil"; "no openness to considering other points of view"; "radical dualism", that is, the conviction that there is a battle between good and evil and that evil is everywhere; and a tendency to think that "the end justifies the means", such that one is willing to kill or die to protect the ultimate concern (Wessinger 2011: 719-20).

For much the same reasons, she continues, millennial groups are prone to fall into violence due to "internal factors and stresses combined with the experience [or expectation] of opposition from outside society, which collectively endanger the group's ultimate concern".

Given the marginalized position of many such groups, the violence often is directed inwards, towards group members who are felt to be endangering the group's collective fate, or ultimate concern (Wessinger 2011: 719; and at length Wessinger 2000). It will be seen that the New Jerusalem, so-named for reasons which become plainer in light of what has been said above, falls almost perfectly into this pattern.

The members of the New Jerusalem anticipate the total physical destruction of the world as we know it. Every single city and house elsewhere in the world will be destroyed with the sole and only exception of the holiest city of The New Jerusalem (Nabor, n.d.). Everyone outside the city shall perish and only the truly faithful citizens that happen to simultaneously be in the grace of God and also physically located in the grounds of The New Jerusalem will survive the cataclysm that will consume the entire world (Nabor, op cit).

In this respect, The New Jerusalem is in keeping with many other millenarian groups. They all claim that since the world and its rules are full of immorality of all kinds, the only way to be preserved from moral decadence is to ignore the surrounding rules and laws and to observe only God's, or in this case, the holy virgin's ones. The dramatic final event to come is anticipated to bring chaos and destruction but, eventually, the instauration of a renewed, purified society in which only the true believers will be rewarded with survival. The victory of the divine forces is considered as predetermined and the only way to benefit from that expected victory is the rejection of the world, that is, by voluntary isolation and withdrawal.

Many New Jerusalems have existed throughout History, with the same or similar names: The Holy City, The Tabernacle of God, The Heavenly Jerusalem, Zion, The Celestial City, The City of God and others besides. Apart from "The Catholic, Orthodox, Traditional 'New Jerusalem' Church" that Papa Nabor established in Michoacán in 1973, there are other churches that also bear the "New Jerusalem" denomination. For instance, "The General Church of The New Jerusalem" is a Swedenborgian Christian Episcopal Church that was founded in 1890. It distinguishes itself from other Swedenborgian churches by its strong beliefs and teachings on the Second Coming. In other words, by its millenarian nature. There is a rather discreet Christian church called "The New Jerusalem Ministries International Christian Church" in Cape Town, led by self-called Prophet V. Dyani and Prophetess A. Dyani. The information about their theological convictions is almost inexistent but its name and quasi clandestine character make it likely to be of a millenarian order too¹¹.

¹¹ Their online page available only allows to make donations to a bank account but fails to provide further details about the particular character of the church.

Every “New Jerusalem” looks backwards as well as forwards; forwards to the end of days, but also backwards to the Old Testament and the restoration of the Jewish Temple described by the prophets Ezekial, Zechariah, and Isaiah.¹² The Book of Zechariah (2:4-5) establishes God’s intervention in the founding of the city of Jerusalem. Zechariah describes and details a wall¹³ surrounding the city, specially designed to protect its massive population. In the Book of Isaiah (54:11-14) the city is referred to as a place free from moral decay and full of righteousness. On these grounds Papa Nabor, allegedly urged by the holy virgin herself through her clairvoyant Mamá Salomé, decided to build up a high wall to preserve the purity and the holiness of the sacred city—a mirror of the original Jerusalem and the heavenly Jerusalem to come—as a means of protection from the outside world’s impurity, keeping its evils at bay until the day of deliverance (Nabor, op cit).

To summarise: the city itself, on this view, is sacred. It is the only site of salvation on the earth, a salvation that is corporate or collective in character. For the followers of the group, to live and remain in the city is a matter of ultimate concern, because salvation involves both group membership and geographical location. It is necessary to be inside the city walls when the fateful day comes and, as that day is at once imminent but known only to God, to leave the city is never a viable option: “Heaven and earth will pass away, but my words will not pass away. But as for that day or hour, nobody knows it, neither the angels of heaven, nor the Son; no one but the Father”.¹⁴

The importance of this point for assessing the adequacy of the “right of exit” that figures centrally in much liberal and multicultural literature on minority groups will be obvious. Such an assessment will be offered in chapter 5, below. What matters for present purposes is that it explains what is otherwise so difficult to understand, namely, why the members of the community refused to leave despite the depredations, violence, and misery to which they and their children were endlessly subjected.

The history of the community, as we shall see, is a history of violence and the violation of rights: after the disaster that divided the community in 1982 during the battle for succession of Mamá Salomé; the internal dispute over the leadership of the community in 2008 in the aftermath of Papa Nabor’s decay and death, and during the crisis that confronted the community in 2012 over the burning of the school, hundreds of families were forcibly evicted from their homes. Yet their exodus led them not into the desert but no further than the vicinity

¹² See Eze. 40-48; Zech. 2; Isa. 54:11-14).

¹³ Originally described in the Hebrew Bible as a wall of fire.

¹⁴ Mark 13:28-32.

of the city, at the foot of its walls, clinging to the only geographic space that could offer them salvation in the last days. They were expelled but they did not leave because they could not leave. They stayed, stacked on the periphery, in ever more precarious living conditions, lacking all sorts of services and facing every day the embarrassment of ostracism, because such deprivations were as nothing when set against their ultimate concern. They remained because they came to stay and be saved. Salvation is collective, not individual; their ultimate concern as individuals, paradoxically, cannot be realized as individuals. It requires them to share the fate of their community, whatever direction it takes in the meantime, until the apocalypse comes.

The Death of Papá Nabor

After 32 years of charismatic rule¹⁵, Papá Nabor was in physical and mental decline. Several times between 2005 and 2008 news of his alleged death spread like wildfire. He eventually passed away, aged 97, on 19 February 2008, after a long period of illness in which Parkinson's disease and other infirmities had rendered him oblivious to the chaos that his declining health and vitality had brought to the community. Yet, perhaps confusingly, the struggle to succeed him that accelerated in his last years implied no diminution of his authority. His name retained the power to command and to impose discipline, at least among the wider population, and to do so legitimately (Lemús, Op. cit.).

Papá Nabor was regarded not only the founding father of The Holy City but also the Holy Father too. In the Spanish language, *Papa* can mean "Pope" and he was indeed addressed and often treated as such. Oral tradition maintains that this status was acknowledged by an unexpected source: in 1983 the bishop Néstor Gujjarro González, a member of "The Old Traditional Orthodox Apostolic Holy Catholic Church of Mexico¹⁶" came to The New Jerusalem to dispossess Nabor from his religious office for his heretical assertion that the Virgin had appeared in The New Jerusalem. It was said afterwards that Papá Nabor was waiting

¹⁵*Charismatic Authority* was defined by Weber (1968) as: "resting on devotion to the exceptional sanctity, heroism or exemplary character of an individual person, and of the normative patterns or order revealed or ordained by him."

¹⁶Apart from the Roman Catholic Church, there are a few non-Roman Catholic churches. In Mexico, at least five are registered. Formally, The New Jerusalem should be registered as one of them. Still, until present The New Jerusalem Church (TNJ) has no interest in registering before the Sub secretariat of Religious Affairs that belongs to the Ministry of the Interior. As a result, the Sub secretariat declares itself incompetent to hear about the business of TNJ for they are not legally a constituted church.

for the bishop as if he had been expecting him for a long while (Lemús 2014:388). The two did not pass a word until they were locked in the priest's hall. After four hours, the bishop did not dispossess Papá Nabor of any position. Instead, he got down on his knees to kiss Nabor's ring.

The memory of Papá Nabor is everywhere. More than two decades since the priest passed away, his presence remains ubiquitous inside the walls of The Holy City. He has a temple of his own, where he is remembered and given the treatment of a saint: there are pictures and portraits of him on the altar and candles burn ceaselessly. In the collective imagination, the spirit of Papá Nabor can travel from house to house. He can even stay as a visitor for a while in those homes where the behaviour of their inhabitants is pure and honest. Only those who have lived according to the strict rules he laid down on the Virgin's behalf have had the privilege to see him. Or so they say (ibid.).

After Nabor's death, the question of succession could not be avoided. The pre-eminent claimant, by virtue of present possession, was Agapito, The Blessed, originally a pilgrim from the state of Hidalgo and now self-appointed heir presumptive to Papá Nabor. Aguilar was third in a line of seers going back to Mamá Salomé. The Blessed not only talked to the Virgin, but also claimed to communicate with the spirit and voice of General Lázaro Cárdenas del Río (a former and beloved Mexican president who was also born in the state of Michoacán), who supposedly instructed him on how to govern wisely. Yet Santiago had been appointed as second in command and favourite for succession by Papá Nabor himself. Before carrying on with the narrative, it is important to understand that nowadays the distribution of power of The New Jerusalem is heavily concentrated in the hands of the bishop Saint Martín de Tours and the figure of the holy seer Mamá Catalina. Therefore, I need to devote a few words to the nature of these leaders before delving into the crisis that motivated this thesis. It is imperative to state at the very onset that the power of these two is absolute. Since they took office after the death of Papá Nabor, they have met no limits to rule the destiny of the inhabitants of The New Jerusalem. Apart from The Dissidents, who only reckon the authority of bishop Santiago El Mayor, Saint Martín de Tours has the power to sanction, impose new rules or change the existing ones, expel people from the community, order new priests, remove someone from their position and so on. The only counterbalance to his power is the voice of Mamá Catalina. Both, however, draw their powers from different sources. While the bishop derives his authority from the Holy Father Nabor, the power of the seer comes from her direct communication with the Holy Virgin of El Rosario.

Mamá Catalina is the daughter of the former seer Agapito, The Blessed, who died of natural causes in September 2008 (just seven months after Papá Nabor's death). Agapito

secured his succession: he managed to impose Martín de Tours as the new leader of The Holy City and her daughter, Catalina, as the legitimate new seer (Varela, 2012). It was claimed that her ability to be contacted by the Virgin came directly by the grace of her father who was the first man to have communicated with Her. She had started to hear the Virgin's voice as a child; as she grew older, she began to have divine apparitions. The messages she communicated were typically uncompromising. The Virgin, she recounted, wanted to kill the "evil snake" (Lemús 2014:359) incarnated in Santiago. She had ordered the expulsion of 150 families who had become "impure" by following him (Ibid.).

The New Jerusalem, not surprisingly, quickly split into two camps. On one side were "The Loyals". They accepted every prophecy coming from the current seer without question, regarding her as the voice of the Virgin herself. (Varela, 2012). The only source of authority that they recognised and respected, besides hers, is that of Saint Martín de Tours, whom they venerate as the rightful successor of Papá Nabor. The Loyals called themselves such because they had "had the courage" (Lemús 2014:387) to remain loyal to the founding ideals of the city, which they continued to control.

On the other side were those known as "The Dissidents", who constitute a minority (between a third and a quarter) of the total population. These were followers of Santiago who rejected the authority of Saint Martín de Tours and of Agapito, whom Santiago accused of usurping power during Papá Nabor's last days. The Dissidents questioned Mamá's prophecies, especially when they seemed to encourage people to violence. They constituted a more liberal group inside the community. They wanted their children to be educated in a formal school and took a more relaxed view of pastoral and religious discipline.

Yet for all their differences with the Loyalists, and scepticism about the authority of their seers, the Dissidents share the same millenarian viewpoint: there will be an end of the world and it is nigh. However, they look forward to its coming as a time when the wrongs they have suffered at the hands of The Loyals will be retributed. Not surprisingly, tensions within the community remained high, kept in check only by the imbalance of power between the Loyals, who comprised around three quarters of the population, and the Dissidents, who were pushed to the margins.

The period of relative stability that followed was upset in 2010, when the Mexican state authorities built the first elementary school in the community, provoking a second crisis that continues to this day. In the beginning, the school ran quite smoothly (Varela, 2012). However, The Loyals quickly decided that the school could continue to operate only if the teachers accepted and followed their sacred regulations: women should never wear trousers or jeans,

they ought to wear long skirts down to the ankle and they should cover their heads with a veil at all times. It was the Virgin's will that children should have their hair cut very short and that they would not be allowed to practise any kind of sport since it was against her commandments. After an official demand was handed over to the School Principal, seeking adjustments to students' uniform, the school refused to follow the sacred regulations commanded by the Virgin. Aggrieved, The Loyals invaded the school and from August 2011 inhibited its teaching activities (Marrero, 2014).

From that date, "obedient" children were allowed to attend what was now the only authorised school in the village, the religious institute San Juan Bosco founded by Papá Nabor. In this school, children were taught how to read and write, but all books apart from The Bible were forbidden with the exception of the catechism written by Papá Nabor (itself heavily indebted to Ripalda's traditional catechism)¹⁷. To join the school a recommendation letter written either by one of the priests or by three nuns was needed. After the seer Agapito warned Papá Nabor that the devil would enter the community through science and technology, electronic devices and other educational aids were banned. As he had put it, "Children do not need schools because schools are tools used by the devil to pull up the souls of the holy people of The New Jerusalem" (Lemús 2014:394). For similar reasons, there was no curriculum to speak of, because the only valid knowledge was said to come from the inspiration of the Virgin.

The messages received from the Virgin by Mamá Catalina were often inflammatory. At least on five occasions, according to Lemús (op. cit.), she urged the Loyals to set fire to the temples of The Dissidents because their services offend her. She commanded the "The Guards of Jesús María" (the current armed group of The Loyals that replaced the former "Celestial Guard" commanded by Agapito) to use their weapons against The Dissidents if they resisted.

"The Virgin wants blood!"

On 6 July 2012, it came to light that Mamá Catalina had told Bishop Saint Martín de Tours that the Virgin had commanded the destruction of the school because the devil had taken refuge in the classrooms. 24 men were dispatched with the task of burning the school to the ground.

¹⁷Jerónimo de Ripalda (1536-1618) was a Spaniard theologian who wrote *The Catechism with a short Introduction of The Christian Doctrine* in 1591. His Catechism was favourite in Southern Spain and was used vastly during the colonization of the New World. It was translated to many Mexican languages and used for centuries. His stark vision of hell and heaven and punishment for the sinners terrified children and adults for centuries and has been criticised even by modern catholic theologians that consider it infantile and Manichean.

Saint Martín de Tours had interceded on previous occasions to restrain the more belligerent messages conveyed by Mamá Catalina from the Virgin, urging that further signs of her will were needed to confirm the messages. On this occasion, such a sign was received. A newspaper reported that a prisoner in Livingston, Texas, facing the death penalty, was spared after his lawyer persuaded the judge that new evidence on the case had been found and should be taken into consideration. The bishop interpreted this event as a clear sign that the world itself was closer than ever to the end. “If criminals are being released—he thought—it means that the end of the world is coming”. Thus, he gave his consent for the school to be destroyed (Marrero, 2014).

The order to burn the school was passed on to the sheriff Carlos Cruz Cárdenas, nominally the highest civil authority within the city but actually under the aegis of the bishop. Immediately the sheriff sought the help of the Guards of Jesús and María, and the armed guard of the bishop, to execute the task. The message was conveyed, “The Virgin wants blood!” (Lemús 2014:401). Apparently, this formula was very successful, since it took the men less than four hours to reduce the school to ashes. It was said that the nuns played an enthusiastic supporting role, for they reportedly prayed, sang, and cheered the demolition on (Ibid.). They also reminded the men that by doing this work they were preserving their holy traditions and warranting their place in heaven. The Dissidents called for help from the federal authorities, but none was forthcoming.

On the contrary, the followers of Mamá Catalina now demanded that the government of Michoacán take immediate action to cleanse the Holy City of all the Dissidents, so that The Loyals’ tradition could remain untouched. The Dissidents were accused of not following the instructions of the Virgin and inducing her displeasure, as evidenced by the particularly dry season that they experienced in 2012 and other natural disasters in the surrounding areas (Lemús, 2014). However, their petition was not accepted by the authorities of the state.

To avoid further conflict and controversy, the governor’s administration (at the time Fausto Vallejo, an infirm local politician, accused of corruption and reportedly having links with organised crime, was in office) started a foot-dragging process of mediation, in parallel authorising the construction of some prefabricated classrooms in the nearby village of La Injertada for the children of the burned school. The Secretary of State, an experienced politician named Jesús Reyna (also accused of corruption and years later imprisoned), was charged with de-escalating the conflict at The New Jerusalem. This response needs to be seen against the background of local politicking.

The New Jerusalem has a total adult population of approximately 2,533 people¹⁸, which, according to Varela (2012) and Lemús (2014) is basically the same number of voters that support the Institutional Revolutionary Party (PRI) in every election. Traditionally, PRI has used “Clientelismo” (political patronage) to co-opt voters all over the country. PRI ruled Mexico for over 77 years, 71 of those uninterruptedly. Since the Virgin appeared in 1973, she has evinced clear political preferences and communicated those preferences to her followers succinctly and, it seems, unanimously. Normally, owing to vote concentration for Governor elections in the state of Michoacán, the difference between the winner and defeated in the electoral district where The New Jerusalem is located (District XIX Tacámbaro/Turicato)¹⁹ is very small, often the gap is around 3,000 to 5,000 votes. With such a tight political race, and by a quirk of demography, the candidate who has the Virgin’s favour in The New Jerusalem tends to be the one who wins Tacámbaro District and, owing to vote’s concentration and a variety of political and geographical factors, often also the state’s election. All the recent governors of Michoacán have found it prudent to visit the Virgin of El Rosario and ask for her blessing before the elections and have endeavoured to make this their only engagement with the community once they have secured office.

The result is a tacit understanding between the self-called Holy City authorities and the state’s authorities, a kind of “give and take” agreement: if the governor turns a blind eye to what happens inside the walls of The New Jerusalem, then that government secures the votes of the community with the Virgin’s favour.²⁰ (see IEM 2001, 1995, 1992). The second crisis brought this non-explicit agreement to an end, for events turned in a way that created a public outcry for action. Let us see how the Mexican authorities responded to that call.

The Mexican Government’s Response to the Crisis

Newspaper reports made the wider public aware of the events and the state authorities were compelled to act. Under the federal system in Mexico, state power is devolved or diffused down to a proliferation of intermediate bodies, political and judicial, each with its own sphere of responsibility for administration at different levels of government.

¹⁸ INEGI (National Institute of Statistics and Geography). Census 2010. The data is clearly outdated but the holy authorities of the city have refused to grant public access to the community to update demographic data since 2010.

¹⁹ IEM. Distritos Electorales Locales (Electoral Institute of Michoacán. Local Electoral Districts).

²⁰We could say that The New Jerusalem behaves, in electoral terms, in a rather similar way to a “hinge party” as it sells its political support at a very high price: the candidate favoured by TNJ will look away from the city’s internal affairs if he or she gets elected governor.

Mexico is a federal republic, in which all its 32 states are sovereign and have full autonomy to rule themselves. Each state or province has its own executive, legislative and judicial powers²¹. The executive power is headed by the governor of the state; the legislative power operates through a local congress and each state also has its own High Court of Justice. The local judiciary deals with common crimes, but not with more serious offences such as murder, kidnapping or drug trafficking, as they constitute federal crimes that fall under the jurisdiction of the National Supreme Court of Justice²². There are certain realms, such as migration, national security or religious affairs that belong exclusively under the central federation. The Mexican federal structure has been strongly influenced by the American model but the former is more of the “holding together” type, rather than the “coming together” kind that defines American federalism (see a concise differentiation between the two systems in Stepan 1999). Many of the most important decisions still depend on a heavily centralised system.

Since the situation at The New Jerusalem is a religious conflict, it was the federal government, in particular The Ministry of the Interior through The Under Secretariat of Religious Affairs that was formally responsible for addressing the crisis. However, the central government, adducing a respectful exercise of federalism, managed to pass on the issue to the local government via a technicality that turned a federal problem into a local matter.

To structure my account of the governmental response to the crisis in The New Jerusalem, I will explore the words and actions of key actors within three widening circles of government, starting from the inner circle, namely the municipality of Turicato, represented by its mayor. Geographically, the Holy City falls within its territory and therefore under its juridical administration. Then, I will analyse the local response addressing the intervention of a few high-ranking officers who were engaged with the problem, starting with Michoacán state’s minister of education, Teresa Guido; the governor of the state, Fausto Vallejo Figueroa and his spokesperson; the Secretary of the State of Michoacán, Jesús Reyna; the local congress, represented by the comments of some deputies from the main political parties, and the local High Court of Justice. Finally, I will explore the performance of the federal institutions and their officers and the national political actors that played a significant role during the crisis.

²¹ Mexican Political Constitution. Article 40: “It is the will of the Mexican people to become a representative, democratic, secular, Federal Republic, composed of free and sovereign States in everything concerning their internal regime; but united in a National Federation established according to the principles of this fundamental law”. (Translation is mine).

²² Article 41 of the “Organic Law of the Judiciary Federal Power of The Nation”.

The Mayor of the District of Turicato

Salvador Barreda, mayor of Turicato, was openly hostile to the community and its authorities from the very beginning. He expressed a desire to break up the community and to send its spiritual leaders to prison. He never acknowledged the rights or even the existence of a community that, for him, was not part of the rule of law. (*Proceso*, 2012). He construed the crisis at The New Jerusalem as a political competition between fanatic political chiefs over control of the city. When the elementary school was burned, he demanded that the executive and judicial powers of Michoacán produce necessary arrest warrants against the leaders of The New Jerusalem and those responsible for the destruction of the school: “I have always said the government cannot yield for the rule of law is not to be negotiated but imposed. We, as legally elected authorities, are here to guarantee the observance of the rule of law”²³ (Rosiles, 2012:1)²⁴. Barreda accused the spiritual leaders of The Holy City of having links with the local drug lords²⁵ and even asserted that they had built a clandestine runway inside the walls of The Holy City to facilitate drug trafficking (Álvarez, 2012).

Some political analysts have suggested that Barreda, the political rival of the ruling government at the time, was exploiting the case to score political points. He was overcritical of the state’s officers, the governor himself and particularly Jesus Reyna, the Secretary of the State, his sworn political enemy. In contrast, other authorities in the state opposed the mayor’s position as they understood that bloodshed would hardly be a desirable solution to the conflict.

As time passed and the clashes in The New Jerusalem dragged on, he moderated his speech and even asked the state’s authorities to slow down the judicial procedures against the people implicated in the crimes committed inside the community, in order to win some time to reduce the tension inside the walls and allow the two antagonistic groups to resume negotiations.

²³ The translation into the English language, as all translations from the Spanish language made in this document, is mine.

²⁴ Cited in Marrero (2014).

²⁵ Without providing any evidence for his claims.

The left-of-centre Democratic Revolutionary Party (PRD), at the time the ruling political force in the state of Michoacán, also used jurisprudential arguments to justify their position. They criticised the violations of several authoritative legal regulations by the self-styled holy authorities of The New Jerusalem. For instance, they quoted Article 26 of the *Universal Declaration of Human Rights* (1949), which states that “Everyone has the right to education”, that “Elementary education shall be compulsory”, and that “(...) parents have a prior right to choose the kind of education that shall be given to their children”²⁶. Some deputies drew attention to the abuses of women’s rights that were known to be ongoing in The New Jerusalem. Deputy Cristina Portillo, for example, argued that in The New Jerusalem the rule of law was not applied universally but inverted: women had many obligations but no rights at all. She added that when she was head of The Secretariat of Woman’s Affairs, she unsuccessfully sought to prosecute seer Agapito Gómez over the rape of two daughters of Mrs Georgina Viguera (*El Informador*, 2012).

Yet, despite many deputies criticising The New Jerusalem’s regime, the effect of the speeches from all sides was more rhetorical than practical. They expressed strong disapproval but they did not propose any solution other than demanding the local executive powers enforce the rule of law without delay.

The National Action Party (PAN) made it clear from the beginning that it was not the responsibility of the Michoacán’s congress in general, nor their party in particular (either at the federal or the local level) to solve the crisis. According to them, the responsibility of doing so lay entirely with the government of Governor Fausto Vallejo. The local deputies participated in a debate organised in the local congress only to clarify that they had no legal or moral obligation to intervene. They argued that the congress had no jurisdiction over The New Jerusalem, and so no right to intervene, even if they wished to do so. On similar grounds they excused their federal colleagues at the national congress’ assembly from getting involved. (Martínez Elorriaga 2012b:45).

Congresswoman Laura González, at the time president of the local congress’ Commission on Human Rights, accused the state’s executive of maintaining a superficial and

²⁶ The Universal Declaration of Human Rights was approved by The United Nations General Assembly in Paris on 10 December 1948. The version cited here was released in January 1949 and published by the U.S. Government Printing Office.

self-serving policy towards the conflict in The New Jerusalem. (*La Jornada Michoacán*, 2012). She criticised the slow response which, in her view, expressed indifference to the violations of fundamental rights committed in The New Jerusalem. For González, as for the vast majority of members of the local congress, what was occurring at La Ermita—the name she and others used metonymically for The New Jerusalem—contravened parents’ and children’s rights and there was not much to be added (Ibid., 2012). The state should impose its authority and guarantee the immediate return of children to classes.

Deputy Selene Vázquez, also a member of the left-wing party PRD, was particularly fierce in her condemnation of the *de facto* autonomy of the Naborist community²⁷: “It is the sovereignty of the state that has been violated. The state cannot protect its citizens because it seems they are a separate republic where they do not follow the rule of law nor the constitution, but they only follow their pseudo-prophet”. (*La Jornada*, 25 August 2012).

The congress demanded action by the governor of the state and his secretaries. However, they absolved themselves on legal grounds from involvement in the negotiations around a solution to the crisis, and did not acknowledge that the piecemeal response that they were criticising had at least one merit – it had prevented further violence and bloodshed, even if this was more by luck than judgment. They commended the use of force by the state as a matter of principle: fundamental rights were being violated, the authority of the state was being mocked, ergo the state must resort to the use of force and bring The New Jerusalem into line with the norms of the wider society in which the rights being violated were protected. This principled posture glossed over the right to freedom of belief consecrated in the *Political Constitution of The United Mexican States*²⁸, nor did it explicitly consider the human costs of a coercive intervention in a fundamentalist community, some of whose members were ready to give their lives to defend and preserve their beliefs and ways of living.

The Ministry of Education

The state’s Minister of Education, Teresa Herrera Guido, when first asked about the situation in The New Jerusalem, denied that the school had been destroyed. When a day later journalists showed her videos and pictures of the incinerated school, she accepted that she had

²⁷ “The Naborist community” is another way to refer to The New Jerusalem, standing for “Papá Nabor’s community”.

²⁸ Official name of the Mexican Constitution.

been misinformed (Marrero, 2014). She said that as they had successfully done in other communities, they were in a position to build classrooms using prefabricated material that eventually could be collapsible and portable. She was unable to confirm where the new structures would be located (García M., 2012).

When, as the public official responsible for education in Michoacán she was asked when the classrooms were to be rebuilt and classes resumed, Guido replied, “In the community what is needed first is to pacify both groups. I think we first need to secure peace and then we should worry about the school. The school is just the tip of a deeper conflict in The New Jerusalem”. (*El Informante Jalisco*, 2012). This position was more cautious than the view expressed by Jesús Reyna, who affirmed that the classes would be resumed that very month. Guido’s position was that more fundamental problems had to be dealt with first: “inside the social tissue of the community there should be an internal agreement that makes for peaceful coexistence. The problem is that I do not think it is time to impose a school inside a town where its inhabitants are suspicious of each other. The parties should come closer before we can just go and re-plant a school” (cited in Marrero 2014:173). Guido was even ready to offer the Dissidents lessons for their children directly in their homes, all meant to avoid bloodshed at all costs.

Guido showed a broader understanding of the conflict when she was interviewed on the question by a local diary: “It is a cultural question that we should try to understand. It is a war, a modern clash, a religious one, and this is quite common, more common than we think. It is all about beliefs. When beliefs become dogma, we tend to fail to listen to the other. We do not listen enough because we believe that our beliefs are the right ones”. (*El Informante Jalisco*, 2012). Unfortunately, the local press (*Mi Morelia* daily newspaper, amongst others) chose to misconstrue her words and reported that the Minister was proposing a religious war as a solution when she merely tried to draw attention to the already brewing religious confrontation that led to the destruction of the school (*Vanguardia*, 2012).

Other confrontations, administrative and bureaucratic rather than religious, were brewing between different governmental bodies too. A call was raised by the National Commission on Human Rights (CNDH), exhorting the state government and Ministry of Education to take immediate action to protect the citizenry and to guarantee fundamental rights such as education, freedom of belief, freedom of transit and the right to live in a safe environment (Cruz, 2012). Moreover, the state’s Human Rights Commissioner, Mr Jorge Cázares Torres, criticised the inaction of Guido and indicated that she might have to step down (Arias, 2012). Guido came to know about the Human Rights Commission demands only through the press and she retorted that such pressure, rather than helping, was making the situation worse. She repeated that it

was necessary to wait for the conflict to settle down (Marrero, 2014). However, she accepted the recommendation of the Human Rights body and said that classes were going to be resumed inside the Dissidents' homes.

The local executive did not approve that recommendation, because the press had meanwhile reported that children were facing the aggression of The Loyals, who were unhappy with the shift to Home school policy. They accused the Dissidents of profiteering by asking the state government to pay them rent for using their houses as classrooms. The Ministry of Education, which had earlier stated publicly that classes were to be resumed in people's houses, was forced to an inelegant *volte face*. The very next day the spokesperson for the governor denied that this had ever been contemplated. This turnabout further worsened the conflict and soon The Dissidents let it be known that they feared further violence.

The response from the local official institutions was extremely uncoordinated. The lack of inter-institutional communication was reflected in the daily news that kept reporting chaotic and contradictory information from different official bodies. While some observers tried to follow the conflict through the press, others quickly concluded that whatever was published one day would be denied the next, adding to the uncertainty and confusion of the unusual situation in The New Jerusalem.

In the following weeks, the violence the Dissidents had predicted materialised. The Loyals physically assaulted the Dissidents and pelted them with rocks. These events ended every trace of hope of the children enrolling in time for the new academic term in time. A powerless Minister of Education admitted, "we cannot resume lessons (...) we tried our best to settle down (the conflicting parties) and offer an alternative for the children but we do not meet the minimum safety requirements to make that possible" (Martínez, 2012).

These words stood in striking contrast to the confident attitude of the local executive. Through his state secretary, Governor Fausto Vallejo had been saying that the situation was under control and that the classes were going to resume normally. Reyna, Secretary of the State of Michoacán, kept saying the same thing until he was contradicted by Teresa Guido. Guido became a target for criticism from a very well-known teacher's union leader in Michoacán, Jorge Cásarez. He accused her of incompetence, of being incapable of providing even a temporary structure for children. He called her a "mythomaniac" (Ramos, 2012) and demanded her resignation. The conflict had reached a stalemate, but the main actors in Michoacán were about to change. Guido was dismissed by the governor of the state in the following weeks.

For many, Jesús Reyna, Secretary of State and former powerful leader of the local congress, was the real governor of Michoacán. He was a well-known, highly experienced politician who had been deputy many times, high officer of several administrations under PRI's (National Institutional Party) rule and, it must be added, accused of corruption and heavily linked to the local mafia. His charismatic personality and the ineffectiveness of then Governor Fausto Vallejo, ageing and unwell, made him a powerful Secretary of State and the leading candidate to be the next Governor. Eventually, he became an acting governor for six months as Vallejo became seriously ill and had to step down. In all probability Reyna would have continued in office, had he not been imprisoned in 2014 for his alleged links to some of the most heinous organised-crime gangs in Michoacán²⁹.

Reyna was a *de facto* leader of the pragmatic wing of the state. A highly contradictory man, he proved to be stubborn and insensitive, especially in the early stages of the conflict. In time, he became more aware of the complexities of the situation (Martínez, 2012). By the beginning of August 2012, Reyna was negotiating with both groups, trying to convince them to coexist peacefully. He held meetings with representatives of both factions and he urged them to live amicably “without having to share exactly the same beliefs” (*NTR Zacatecas*, 2012). He failed because the groups were becoming more and more polarised, the loyal Traditionalists rejecting the public school and the Dissidents demanding its reopening. Reyna, meanwhile, was trying to impress the people of La Ermita by adopting an unyielding position. Like most rural leaders in central and southern Mexico, he wanted to play up to his “macho” image: always demanding instead of suggesting, imposing rather than bargaining, giving ultimatums and deadlines³⁰. He announced that the academic year was to be resumed by 29 August inside the community. He assured everyone inside and outside The New Jerusalem that lessons would resume normally in a few days in La Ermita. He went on record with the same message. He even claimed that a police station was going to be opened in the community to ensure that his order was upheld.

²⁹Jesús Reyna was released from prison in 2018 (after spending five years in jail) for lack of evidence to condemn him. He claims to have been a scapegoat that was made to pay for Governor Fausto Vallejo's son. A video of Vallejo's son negotiating with several crime lords of Michoacán became viral after Reyna's imprisonment. However, the Governor's son never went to jail.

³⁰To see more about the authoritative nature of the Mexican political culture see Camin and Meyer (1993); Marvan (1997), and Casar (1995).

Notwithstanding Reyna's claims, no agreement had been reached. The Traditionalists were adamant that the school would not be relocated inside The Holy City: the Virgin had forbidden it. The Dissidents, contrariwise, were appealing to the Mexican Constitution, saying that their children had the right to access education inside their community. Violent clashes were not ruled out and the community was on high alert, especially at night when tensions came to the surface (Marrero, 2014). When questioned, Reyna denied any previous knowledge of episodes of violence in The New Jerusalem. He also confirmed the resumption of classes on 20 August (although he knew such a thing was impossible) and when asked by the press how the government would deal with potential riots and violence, he mockingly responded, "by force" (Cano, 2012). When asked about the nature and dimension of that "force", he was offhand: "we can leave up to a thousand men if we want" (Cano, Op. cit.).

It is surprising that Reyna adopted this line when he knew beforehand that the government he represented had neither the infrastructure nor the minimal conditions to offer such a commitment. Soon enough it was clear that the government of the state had been unequal to the case and that the internal communication, the coherence of the strategy to deal with the problem and the real capacity to solve it had fallen far short of expectations.

It was at this point that Reyna, with Fernando Cano (his right-hand man) and Julio Hernández, the governor's spokesperson, visited The New Jerusalem. They were accompanied by a large group of mass media workers. This visit—that took place around July 2012—was unprecedented and it is unique since, after this brief incursion, the community decided to become even more closed. They made sure the media was never allowed inside the community again. The Loyals accepted the visit, in part because they hoped that they could still negotiate legal pardons with Michoacán's highest authorities, since arrest warrants had been dispatched against some of their members as a result of their collusion to destroy the school.

After that meeting, the state authorities realised that the Naborists were too rigid to mitigate the situation and agree with the restoration of the school within the community. Reyna leaned towards defending the installation of the school *outside* the walls. The long-questioned option of the prefabricated classrooms, about which he had earlier expressed grave doubts, became his new best bet (Marrero, 2014). Later this month, on 14 July 2012, during a press conference Reyna announced that peace had been reached between the two groups; that they had agreed to accept a police station inside the community and that children would be attending classes the next day. They did not.

The violence exploded during late July and early August through street quarrels and standoffs between the two groups. The Loyals made sure that the children of The Dissidents

could not get out of the community to take lessons elsewhere. They built two gates in the only entrance to replace the old chain and exercised 24-hour control over pedestrian traffic in and out of La Ermita. On 29 October, the police were expelled from The Holy City by 500 fanatical women acting at the Virgin's command (Martínez, 2012). It became clear that the children would not be resuming classes any time soon. At this point, Reyna began to moderate his position. He said that it was necessary to move towards a peaceful coexistence between the groups, that the conflict was so deep and culturally entrenched that it could not be solved by force and that the community could not live harmoniously except by consent. His speeches started to sound uncannily like Guido's speeches (the departed Secretary of Education) and it became clear that his position was moving away from that of the Governor.

For Governor Vallejo, the expulsion of minorities remained a standard move to deal with extremist groups in ethnic or religious conflicts. A charitable interpretation of his position is that in raising this possibility he was playing "bad cop" to Reyna's "good cop" in order to move the parties to compromise. Reyna had come to see that the Dissidents could not just be expelled out of the community and the school cast out with them: that would represent an egregious violation of the rule of law. A growing body of notes, memos, speeches and newspaper articles provided more detail and nuance about the position of Reyna. The compromise he proposed was the installation of classrooms outside the community, despite the reluctance of the Dissidents and the fierce criticism of both the local and federal press. He recognised that the alternatives were worse. When asked about a possible armed intervention inside the walls, Reyna was succinct in his response, "This group, The Loyals, are ready to do anything to safeguard their beliefs and what they consider sacred. Their Virgin is calling for 'martyrs' and they will consider it a privilege to become part of this martyrdom" (*NTR Zacatecas*, 2012).

The Governor

When questioned about why his government had not stopped The Loyals from preventing the resumption of classes inside The Dissidents' private homes, Governor Vallejo declared, "We have been largely prudent by deciding not to disturb the life in this particular community; we have been tolerant but do not confuse tolerance with weakness" (*Informador*, 2012).

Vallejo's opening gambit had been that there was no religious problem in The New Jerusalem: this was an internal dispute between two rival bishops fighting for the full control

of their flock. During an interview with López Dóriga in the National Radio System, transcribed in the daily newspaper *La Jornada Michoacán* (22 August 2012) he stated:

There is not a single day without something new appearing in the scene, sometimes incomprehension, sometimes there are people or mass media ready to take this (The New Jerusalem crisis) as a scandal. Hidden behind a desk these people want us to enforce the law brutally... but ... I am neither irresponsible nor naïve. Of course, I am in favour of guaranteeing the rule of law but first there are problems and situations that must be solved. We have to see under which conditions and when it is timely to enforce the rule of law. The problem in The New Jerusalem is related to fundamentalism. There is not a problem of laymen versus fanatics: there are two fundamentalist groups disputing for power in La Ermita after the death of Papá Nabor. That is it³¹.

He talked tough: “I am asking the people who actually guide this community to take immediate actions to pacify the conflict. If they do not choose to do so, with all respect, we will have to take action against them” (*La Jornada Michoacán*, 20 August 2012). Yet despite his frequent public dismissals of the significance of The New Jerusalem, many locals and commentators were aware that the governor had visited La Ermita during his political campaign and that he had knelt as a pilgrim in front of the Virgin of El Rosario to ask for her blessing. He spoke in private for two hours or more with Papá Nabor before the elections that made him Governor (Marrero, *ibid.*).

Vallejo made noises about meeting in person with both bishops. He said he would confront them and make them subscribe to arrangements of coexistence. The meeting never took place. On the other hand, external pressure began to mount from the left-wing parties, the Unions, political rivals, and the press, all calling for a decisive, strong intervention. All this pressure, his defenders would claim, was bravely resisted by Vallejo’s administration. The Governor did not give up on his steadfast determination to be prudent, for “too many lives are at risk” (*La Jornada Michoacán*, 20 August 2012), he used to say. He repeatedly argued that classes were a secondary priority compared to the security of the population. “(...) it is better to lose one day of classes than one life” (Fisher, 2012b) and he was consistent with this understanding. This line of defence was echoed by his Secretary of State and his Undersecretary Mr Cano, the main negotiator between The New Jerusalem authorities and the government.

³¹ The translation is mine.

Vallejo insisted that those found responsible for the destruction of the school would be prosecuted and punished with the full force of the law. Yet, deliberately, his government made the judicial process very slow, perhaps because he wanted to keep the threat of judicial proceedings in hand and use it as a bargaining chip while negotiating with the Naborists. It was Fernando Cano, Reyna's fixer, who finally concluded the negotiations, getting permission from and paying compensation to the people of La Injertada for allowing the installation of prefabricated classrooms in their territory; he persuaded The Dissidents to send their children away from the community; he obtained an undertaking from The Loyals not to interfere with the children attending a public school outside the community. On 10 March 2013, he unveiled the solution to the press (*Cambio de Michoacán*, 2013). "The solution is temporary, it does not mean by any means a halting of the state's government (and so of the rule of law). What interests this government is that there can be harmony in the community and security for the families" (Ferreya, 2012). It is to the role of the law I turn next.

The High Court of Justice

Alejandro González, President of the High Court of Justice of Michoacán, during a conference in Morelia, the capital of the state, asserted that customary law, such as the common law system observed in the "uses and practices" scheme, should respect human rights. The "uses and practices" law scheme consists of a body of federal legislation that recognises the right of indigenous communities to observe their own traditional uses and practices according to local law³² (for those states that explicitly recognise such rights in their own legislation and subject to the restrictions and boundaries set by the federal constitution). The "uses and practices" extend limited self-determination to certain communities within the southern states

³² This body of federal legislation is constituted by a set of amendments and additions to: The General Law of Ecological Balance and Protection of the Environment; the Organic Law of The General Congress of The United Mexican States; the Federal Public Defensory Law; the Social Security Law; the Law for Dialogue, Conciliation and Peace in Chiapas; the General Education Law; the Agrarian Law; the General Law of Human Settlements; the Forest Law; the Organic Law of the Federal Public Administration and the Law of the National Indigenous Institute. However, all these reforms (most of them implemented over the last 25 years) derive from the Political Constitution of The United Mexican States, which in its First Chapter "On Individual Guarantees", Article 4, states: "The Mexican nation has a pluricultural composition sustained originally in its indigenous peoples. The law protects and promotes the development of its languages, cultures, uses, practices, resources and specific formations of the organization they may have to access the state jurisdiction. In all agricultural judgments and those judicial procedures they take part in, their own traditional uses and practices will be taken into account in the terms established by law."

of Mexico with significant indigenous populations, such as Oaxaca, Chiapas, Michoacán and Guerrero. The magistrate warned that the Federal Ministry of Education should not seek to evade its responsibility in the conflict in The New Jerusalem. This federal office, along with those in charge of prosecution, should act immediately after the violation of fundamental rights at La Ermita. Community autonomy, he declared, did not justify acting against fundamental rights. “Even communities such as The New Jerusalem should observe the rule of law and comply with the current legal framework, especially in terms of human rights” (*NTR Zacatecas*, 2012). During the conference, he also expressed surprise that after the events at La Ermita, the local judge of Tacámbaro (which had jurisdiction over the territory of The New Jerusalem) had received no claims or petitions seeking redress.

“I have come to know [he said] that this very peculiar community has been there for decades but, in a constitutional state where human rights are taken seriously, there is no room for such [a] community” (*Ibid.*). Expanding the argument to both the acknowledged and self-styled autonomous communities, the attorney affirmed that “it is not possible, even within a ‘uses and practices’ system to ignore the fundamental rights and constitutional guarantees” (*Ibid.*). He compared the situation to that of African-Muslim communities that declare female genital mutilation as a communitarian law (see Dunn 2016:147). Such laws are not compatible with the human rights system and therefore are illegal. Yet this opinion was never translated into action. The state High Court of Justice played no significant role in either the diagnosis or in the solution to the problems at The New Jerusalem. It would fall to other bodies to work through the implications of the opinion expressed by González about the relationship between customary law, constitutional law, and fundamental rights.

The Commissions on Human Rights

In Mexico, there are two entities in charge of defending human rights: the federal and the state commissions. Neither has legal powers. They cannot produce resolutions to be executed, only recommendations to be considered. Nonetheless, the interventions of the Human Rights Commissions had an important bearing on the resolution of the problem at The New Jerusalem. They pressured the government into finding a peaceful solution which at the same time guaranteed the right of children to attend the school (Cruz, 2012).

After the events on 20 July 2012, the National Commission on Human Rights issued a legal recommendation to the executive power of Michoacán and to the Federal Ministry of

Education concerning their duty to secure children's access to education. The National (Federal) Commission suggested that the state authorities allocate an adequate police force to enable both students and teachers to resume their lessons. Likewise, the government was urged to carry forward the negotiation with the main actors involved, prioritising the principles of legality, necessity, rationality and proportionality. (*Radiofórmula*, 2012).

The Commission on Human Rights of the State of Michoacán likewise claimed to have received many reports of violations of human rights within the community. They proposed the construction of a parallel infrastructure outside the city where children could attend lessons peacefully. On 1 August 2012, the local commission conducted an inspection within the city, concluding that "there was no security available and that their classrooms had been totally destroyed" (Marrero 2014:217). They emphasised that such conditions were clearly violating the Mexican Constitution and other international laws concerning children's rights agreements signed by Mexico.

The Federal Ministry of Education

A few days after the crisis of 20 July, Córdova Villalobos, at the time Federal Minister of Education, announced that he had been in touch with the government of Michoacán. He was worried about the likely loss of school time for the children in the community. Villalobos supported the negotiations carried out by the state government and pledged that there would be buses and transport available to bring the children out of the community, either to Puruarán, one of the nearest villages, or to La Injertada. He admitted that there was a high risk of violence, which could be sparked even by accident, and that the authorities were trying hard to avoid it. He added that "it is a local problem of fanaticism, of radicalism" and that it should be solved through dialogue with the parties involved (*El Universal*, 2012).

Yet, Villalobos's position was ambiguous. On the one hand, he was ready to imply that it was not legally valid to try to impose secular education on communities that rejected it, while asserting, in other statements, that it was unacceptable that internal religious conflicts were interfering with children's education. In an interview, he said that the community problem was basically religious in nature, "It has nothing to do with education (...) it is not about having classes at all costs, we don't want people to be physically assaulted. We are looking for a peaceful solution without risks for anyone. We cannot solve only the problem of the need for 200 days of classes, we have to seek a quiet coexistence in the community so that classes can

take place” (*Quadratin*, 2012c). The conflict had to be solved by negotiating with the community before the right of children to education could be enforced (*Notimex*, 2012).

Villalobos was always measured and cautious in his public announcements. His statements invariably called upon the involved parties to engage in dialogue and conciliate their differences. However, he did make it clear to reporters that he had absolutely no jurisdictional responsibility over the problem: “I remind you that education in Mexico is decentralised” (Rivera, 2012). For him, the conflict was a religious issue, rather than an educational one. Indeed, he argued that the situation had to be solved entirely by the local authorities (Bañuelos, 2012), including, where necessary, local law enforcement.

The Federal Police

The lack of any obtrusive police response to the violence in The New Jerusalem was a target of persistent criticism from the opponents of the Naborists, left-wing parties, the mayor of Turicato and The Dissidents. The criticism did not do justice to a response which, while low-keyed, had some effect. The sheriff of the community, Cruz Cardenas, who had led the attack on the school, was arrested and sent to prison and the police made their presence felt in the community. Answering a petition for support made by governor Vallejo on 26 August 2012, 20 federal police cars arrived at the entrance of the community together with a “rhino” tank. A reporter got a street interview with one of the police commanders, Miguel Guerrero, who gave little away. They had no orders to go inside the community, only to stay for a time in front of the main entrance as a deterrent to violence (*AFP*, 2012).

The police squad remained in front of the “Puerta María” (Holy Mary’s Gate) all day while, behind the gate, the celestial guard kept watch and hundreds of devotees sang anthems and eulogies to the Virgin. When the police finally left, they began to cheer and praise euphorically. From their perspective, the Virgin had triumphed (*AP*, 2012).

On 27 August, there was a peaceful demonstration by The Dissidents demanding the restitution of the school. Using a loudspeaker system, the voice of Bishop St. Martín de Tours urged his followers to stop the demonstration. An anonymous call (presumably made by one of The Dissidents’ leaders) alerted the police. A police squad of 200 well-armed men now arrived at the entrance of the community, again with an armoured tank and ten semi-armoured vehicles (*Agencia Esquema*, 2012). The display of force was intimidating and some of the policemen went to talk to the community’s acting sheriff to warn him against the use of

weapons inside the community. They also had interviews with representatives of the two groups. What was said is not entirely clear, but the religious leaders were reported to have been given an ultimatum (Reyes, 2012). In any event, The Loyals were convinced that this time the armed force was going to enter The Holy City, so they formed a human barricade with hundreds of people, mostly women, children and elderly men. The convoy of police vehicles remained standing in front of the entrance to the community from about midday until 4pm. These displays of force did enough to stop further outbreaks of violence within the community but the underlying tensions remained. The Naborist faction began to raise the height of the city walls. The New Jerusalem started to look more like a concentration camp (as it does even in the present) than a holy city.

The Federal Ministry of the Interior and The Undersecretary of Religious Affairs

By this time most extra-mural interested parties and commentators agreed that this was a religious conflict that needed to be addressed in those terms by the relevant organs of government. From August 2012 onwards, Vallejo repeatedly urged the Federal Undersecretary on Religious Affairs to intervene in the conflict at La Ermita. Alejandro Poiré, Federal Minister of the Interior, at first denied responsibility for dealing with the conflict, arguing that he had no jurisdiction in the case because The New Jerusalem was not a religious association, legally constituted and registered before the Under secretariat on Religious Affairs. Obdulio Ávila, Deputy Minister of the Interior, argued on Poiré's behalf: "I have to point out that this is a problem that has to be solved in the local realm, there is no religious association registered according to the Law on Religious Associations, therefore this religious community does not have any link nor approval from The Ministry of the Interior to exist (sic)" (Quadratín, 2012a). This was special pleading on an impressive scale. The secretariat's remit lay with intra-religious conflict. The argument was that the conflict in the New Jerusalem did not fall under its remit because the Naborist movement did not exist *qua* a religious community (because it had not registered as such), therefore its internal affairs could not be a religious problem but only a congeries of "private issues between individuals" (Quadratín 2012b; Marrero 2014). In effect, what was being suggested was that for the legal-bureaucratic purposes of the Mexican federation, The New Jerusalem community did not exist. As media pressure mounted, this line became impossible to hold. Poiré had no other choice but to acknowledge that The New Jerusalem conflict *was* of an ethno-religious nature and that it was a problem in terms of collective ethno-religious identity. Still, he maintained that the lack of legal approval in

constituting the Naborist community kept his hands tied. The Ministry maintained its posture of non-intervention.

The General Direction of Religious Associations

Perhaps in reaction to this buck-passing, some of those affected by the violence inside the community tried to obtain help from other federal institutions. I reproduce below two memorandums obtained by a formal freedom of information request on my part that demonstrate how The General Directorate on Religious Associations dealt with the petitioners from The New Jerusalem. First, they refused to provide any immediate assistance and repeated the legal justification for their lack of action. Second, they proposed to write a memorandum to Michoacán's Director of Religious Affairs urging him to take immediate action on the matter.

The first document was addressed directly to the petitioner, whose name is redacted on the original document.³³ I give it here in full (The translation is my own):

Regarding your petition, I inform you that this federal office is currently enquiring about the official information available from Michoacán state's authorities to determine the legal actions to be taken in order to preserve and secure the civil rights and freedoms consecrated in our constitution. However, no less important are other principles such as the separation between the church and the state (Article 130, Mexican Political Constitution; Article 1 General Law of Religious Associations and Public Faiths). Such articles establish two fundamental aspects: first a positive and consistent aspect referring to the competence and duty of the state to safeguard and guarantee the rightful exercise of religious freedom, and a negative aspect that implies non-intervention with the religious phenomenon itself, nor in the internal affairs of the religious associations.

On the other hand, the 2nd article of The General Law of Religious Associations and Public Faiths states and guarantees the liberties of individuals: not to be subjects of discrimination, coercion or hostility as a result of the religious beliefs of the individual; similarly, article 37 of the Regulation of this Law defines religious intolerance as every distinction, exclusion, restriction or preference based on religious considerations, sanctioned by the applicable law, so that it should be very clear that for any purposes of this law, that discrimination or religious intolerance only occurs when there are attitudes and consequences derived from such attitudes that show distinction, exclusion, restriction or preference exclusively based on religious considerations.

Meanwhile, regarding the events that you describe in your letter addressed to this federal office, most of them refer to the commission of several crimes and illicit offences which, according to article 21 of the Political Constitution of Mexico belongs to the jurisdiction and competence of the Public Ministry (prosecution authorities), who are

³³ The petitioner's name, though included in the original document, was removed from the certified copy provided for this research, as per the privacy laws applicable. Arguing the protection of personal data, this authority refused to provide me with a copy of the request letter of the petitioner.

responsible for the investigation and prosecution of these activities. Consequently, those claims should be addressed to such authority.

In the other document—for reasons of space and clarity not reproduced here in its entirety—it is possible to read how the federal authority, possessing a panoply of legal, economic and coercive resources, delegated all responsibilities to the much smaller and relatively under-resourced provincial Directorate of Religious Affairs of Michoacán, an office that comprises a small group of young lawyers and two assistant typists.

The General Directorate instructed the provincial Directorate by letter to solve the matter, warning them that they would be monitoring developments in the case. They adduced Article 25 of The General Law of Religious Associations and Public Faiths, which refers to the need for “mutual interagency cooperation between the two realms of government involved.” Both legal documents show the ability of higher levels of government administration to use the current regulation and the law to avoid taking any action on the matter themselves.

The role of toleration in The General Direction of Normativity

Before ending the second letter, the “Director of Normativity” of the Federal Undersecretariat on Religious Affairs took the opportunity to lay out the philosophical position that underwrote the stance being adopted:

Regarding this letter, acknowledging your valuable collaboration to address the matters of our realm, in order to promote respectful coexistence in an atmosphere of tolerance between individuals and groups of different beliefs, I kindly instruct you to implement the necessary measures to seek a quick and long-lasting solution to this conflict.

Notice that the person in charge of signing the letter was “The Director of Normativity”. The title conveys the character of the role, which involved no executive functions but was concerned instead with normative solutions. The letter was intended to provide higher instructions from the federal office to their state counterparts about the range of appropriate options available to solve the situation. Here the limits of what *was* appropriate were set by what *ought to be*, rather than what was politically expedient. The demand was for a principled solution, that is to say, one that upheld the principle of tolerance enshrined in the federal law.

The letter understands toleration³⁴ as an “atmosphere” that contributes to “peaceful coexistence between individuals and groups”. Interestingly, such an understanding comes close to that expounded by Walzer: a political practice that amounts to the “peaceful coexistence of groups of people with different histories, cultures, and identities” (Walzer 1997:2-3).

There is an ongoing debate over whether the Mexican state (or any other liberal state) has legally the power to coercively oblige parents to send their children to either public or private schools³⁵. Apparently, despite the constitutional guarantee expressed in Article 3 of the Mexican Constitution, the Mexican state does not and cannot force parents to send their children to school if it is against their will, their values and their beliefs. Still, the problem in The New Jerusalem is slightly different: it is not whether the Mexican state should force parents to send their children to school but that there are hundreds of dissident families who wish to send their children to attend classes (a constitutional right) and are being prevented from doing so by a majority—according to *NTR Zacatecas* (2012), after “resolving” the schools’ destruction crisis in The New Jerusalem, only 20 children out of 270 Dissident’s children were able to receive lessons—.The irony is that non-intervention in this situation by the state was being justified by appeals to the idea of toleration. At this point, the orientation of my thesis shifts as I follow the bearings set by this letter and explore how, if at all, the idea of toleration could reasonably be adduced to justify the state’s refusal to intervene in The New Jerusalem.

³⁴ Tolerance and Toleration are here used interchangeably. In Spanish language there is only one word to refer to the act of tolerating, “Tolerancia”.

³⁵ For a landmark case of the rights of parents versus children’s rights for education see *Wisconsin v. Yoder* 1972, and Peters 2003; for a perspective on group rights v. individual rights compare Hardin 1996 and Festenstein 2005; for how ought liberal democracies treat theocratic communities see Macedo 1995, and Swain 2001.

—Chapter 2—
THE IDEA OF TOLERATION: A CONCEPTUAL ANALYSIS

*O Thou God of all beings, of all worlds and of all times
We pray that the little differences in our clothes
in our inadequate languages
in our ridiculous customs
in our imperfect laws
in our illogical opinions
in our ranks and conditions,
which are so disproportionately important to us
and so meaningless to you,
that these small variations
that distinguish those atoms that we call human beings
one from another,
may not be signals of hatred and persecution.*

—A. Voltaire (“*A Prayer to God*” in *Treatise of Tolerance*).

Defining Toleration

This chapter provides a conceptual analysis of the ambiguous concept of toleration. It aims to draw out some of the polysemy of the concept, emphasizing its understanding as a political practice. It makes evident the theoretical differences between toleration and tolerance, repressive tolerance, false tolerance, and toleration as indifference, in order to elucidate some of the contradictions in the idea the Mexican government is evoking in its stance towards The New Jerusalem. It seeks, by this means, to explain the “elusive” quality of the term that some writers have identified (Heyd, 1996) and articulates a critique of toleration made by authors such as Arteta and Marcuse alongside my own criticisms of certain understandings of toleration that verge on indifference or modern forms of relativism. This chapter puts in place a central conceptual building block of the thesis, as subsequent chapters link the idea of toleration to the contemporary issue of group or minority rights.

Many scholars have put forward definitions of toleration; some have offered straightforward explanations, while others have gone on to problematise the concept. Susan Mendus, as quoted by John Horton in *Toleration as a Virtue* (1996), defines toleration as, “The refusal, when one has the power to do so, to prohibit or seriously interfere with conduct that one finds objectionable”. T.M. Scanlon offers a more expansive account: “The tolerant person’s attitude is this: Even though we disagree, they are as fully members of society, as I am. They are as entitled as I am to live as they choose to live. In addition, (and this is the hard part) neither their way of living nor mine is uniquely ‘the way of our society’” (Scanlon in

Heyd 1996:231). On this account, tolerance or toleration—I will use the terms interchangeably for now, though I will refine this basic position as the chapter proceeds—is something that requires us (and by extension our political representatives) to permit attitudes and practices of people even when we strongly disapprove of them.

At first glance, toleration might seem to be a topic that involves only a few simple elements: a contentious belief, action, or way of life, the individual's conscience, a set of political and social sanctions for holding that belief or acting in that way, and an authority that enforces those sanctions. Perhaps for this reason, discussions of toleration in the contemporary Anglophone literature often seem to follow a generic pattern. (Sometimes one has the feeling of seeing the same group of people saying the same things about toleration over and over again). Yet as soon as we ask, how should conscience be regarded? or, what political and social sanctions are legitimate, and why? or, what are the origins and character of the authority from which they proceed? simplicity gives way to complexity. Debates about the conceptual scope, theoretical justification and political function of toleration are bound up with the deep questions about the proper relations between individuals and groups, and disagreements over the core commitments, principles, or values that structure those relations.

Depending on the core commitment or commitments upon which one insists—whether personal autonomy (Raz, 1987), political autonomy and political respect (Nussbaum, 2011), the harm principle (Cohen, 2018), negative liberty (Balint, 2017), or moral autonomy and a right to justification (Forst, 2013; 2014)—different regimes of toleration and corresponding normative limits of toleration can be justified. Likewise, the specific conception of toleration one adopts will reflect not only one's understanding of liberty (since toleration, whatever its limits, implies within those limits an entitlement of some sort to act freely— as one pleases, in accordance with one's own beliefs, principles or preferences, or what have you) and its relation to other principles and values (such as equality, solidarity, and authority), but also one's wider conceptions of political value and ideological inclinations (liberal perfectionist, political liberal, political realist, socialist, and so on).

Notwithstanding this diversity of approaches, there is a general acknowledgement that liberal conceptions of toleration assume that toleration is required by liberty (however we define it) and that it is interference with liberty, not non-interference, that stands in need of justification (Balint, 2017). At the same time, there is increasing scepticism about the received notion that the justification of toleration depends exclusively on distinctively liberal principles and values. As Balint points out, “even if tolerance is understood as distinctively liberal, its successful practice among citizens neither empirically nor normatively must rely on liberal

reasoning” (Balint 2014:273). In modern pluralistic societies we find a multiplicity of different, sometimes overlapping, sometimes conflicting theoretical conceptions and justifications of toleration, its value and its practice. Indeed, this “very pluralism seems to require pluralism of the ways to toleration” (Khomyakov 2013:237; see also Walzer 1997:94-97).

Yet any justification of toleration based on a wider conception of moral pluralism which assumes that subjective values exist, is open to the objection that such values may not be shared by everyone (Forst, 2013). As such it may reasonably be rejected as a ground for toleration by some individuals or groups, including those who, like the inhabitants of The New Jerusalem, believe in a single order of value established by divine fiat according to which human life ought to be patterned.

At the bottom what all this implies is that the concept of toleration needs to be analysed from multiple perspectives. Theories of toleration necessarily come in different shapes and sizes, and it is not merely difficult, but impossible, to reduce all interpretations of what it means to tolerate to different species of a single genus. Perhaps one should speak rather of *tolerations* than of toleration. What matters more, however, is to be clear about one’s conception and the way one is using it. In what follows I understand toleration in the first place not as an “attitude” or as a “moral virtue” (Horton 1996:34) but as an act—a form of political practice that implies peaceful coexistence between individuals and groups on terms that respect the fundamental rights belonging to each (Walzer 1997:12-13).³⁶

According to Scanlon (2003) what toleration implies, in practice, is that those whose values and practices are objectionable to us, should not be denied legal and political rights, such as the right to vote and to be elected, to receive education, public safety, the protection of the legal system, healthcare, and access to “public accommodation”. These rights, all things being equal, extend to all citizens and cannot be withheld or interfered with either by the state or by individuals or groups who find their assertion by others aggravating or repugnant. Toleration requires the state not to give preference to one group over another in the process of allocating and giving access to privileges and benefits and it requires individuals to respect the rights of others who differ from them in the ways in which they choose to exercise those

³⁶ This qualification underlines a point made long ago by Tacitus: experience shows it is possible to bring about peaceful coexistence of a kind by exterminating those who dissent and cowing those that remain into compliance, but few would call it peace when they see a desert made. What these fundamental rights are remains, of course, a matter of dispute; but my argument assumes that there *are* such rights. See Tacitus (1914: 81 [30:5]): “Robbers of the world, now that earth fails their all-devastating hands, they probe even the sea: if their enemy have wealth, they have greed; if he be poor, they are ambitious; East nor West has glutted them; alone of mankind they covet with the same passion want as much as wealth. To plunder, butcher, steal, these things they misname empire: they make a desolation and they call it peace.”

privileges and benefits. These requirements generate one of the so-called paradoxes of toleration, which poses a problem for appraising toleration as a virtue. Horton (1996:28-43) identifies two ways in which this problem manifests itself,

(N)ormally, we count toleration as a virtue in individuals and as a duty in societies. However, where toleration is based on moral disapproval, it implies that the thing tolerated is wrong and ought not to exist. The question which then arises is: why shall we tolerate it then?

And again,

There are...two directions from which toleration can cease to be a virtue: On the one hand, some things should not be tolerated, on the other, some things should not be objected to, hence are not the appropriate objects of toleration.

There is no getting away from these problems, as the history of liberalism shows: they lie behind recurrent patterns of argument which purport to show that liberalism *au fond* inclines either to unacknowledged forms of intolerance, affecting neutrality while being, in John Rawls's admonitory words, just "another sectarian doctrine" (Rawls 1985:246), or else towards a sceptical indifference to all moral claims and value judgements which renders its posture of neutrality vacuous.

Indeed, it is difficult to separate the idea of toleration from the liberal tradition with which it has come to be associated so closely³⁷. David Heyd, in his book *Toleration: An Elusive Virtue*, observes that the idea of toleration has undergone a gradual process of attrition, as the meaning of liberalism and its central values have shifted and been contested over time. Heyd describes that process as a kind of tug-of-war between the demand not to tolerate the immoral on the one side (moral absolutism), and the requirement to accept the legitimacy of the morally different on the other (pluralism) (Heyd 1996:4). The thought here is that toleration is pulled between two opposing forces which in combination have pared it away almost to vanishing. This thought relies for its form, and perhaps for its plausibility, on accepting a certain reading of the history of liberalism.

In this reading, "classical" liberalism, such as Locke's or Mill's, rested more heavily on the principle of toleration than today's forms of epistemic liberalism, which are closer to a generalised sceptical pluralism. Locke's argument for tolerance, on Heyd's account, was based

³⁷ See Mendus 1989; and for the development of liberalism, compare Manning 1976, Kelly 2005, Fawcett 2014; for liberalism as a tradition invented in the twentieth century, see Bell 2014.

on the counter-productiveness of attempting to coerce religious belief (and so believers); Mill's on the trumping value of personal autonomy. "The shift from these views to the modern conception, which rests on the easy acceptance of the heterogeneity of values and ways of life, pushes the concept of tolerance dangerously close to that of indifference." (Ibid.). Heyd warns us that even if this shift is welcomed by the moral pluralist, it must be clear that much of the original value of tolerance is put under threat: it is, one might think, meaningless to speak of tolerance in the context of scenarios of which we approve or to which we are indifferent.³⁸

The distinction between tolerance and indifference is or should be, Heyd argues, an important constituent of any theoretical attempt to delineate the contours of toleration. Yet, the borders between tolerance and indifference have been constantly shifting in the history of our moral and political values. According to Bernard Williams, it is a serious mistake to believe that the virtue of tolerance is the only—or even a possible—basis on which to ground practices of toleration. As he sees it, toleration as a virtue can only avoid moral paradox if it is rooted in some conception of the value of autonomy; for only a belief that it is good for individuals to be autonomous gives sense to the postulate that one ought to allow the misguided beliefs or practices of others to flourish. But if the practice of toleration is made to rest on the value of individual autonomy, then it is indeed vulnerable to the other side of that paradox: "the values of autonomy themselves (...) may be rejected, and to the extent that toleration rests on those values, then toleration will also be rejected". The practice of toleration cannot (Williams concludes) be based on values such as individual autonomy and hope to escape from substantive disagreements about the good. This really is a "contradiction", because it is only a substantive view of goods such as autonomy that could yield the value that is expressed by the practices of toleration (Williams in Heyd 1996:25). To avoid the contradiction, Williams argues, liberals could appeal to the contested value of autonomy, but if they do so they will not have given anyone who does not share that value a reason to accept the practice of toleration, and hence the moral basis being claimed for the practice is negated. What prevents the paradox of toleration from being fatal to the justification of toleration as a practice is the fact that the practice does not and need not rest on the value of autonomy, but on a wider range of resources, including power, especially the power of the state "to provide Hobbesian reminders to the more extreme groups that they will have to settle for coexistence" rather than heaven on earth. (Williams in Heyd 1996:26-27). Some of the ways in which Williams' analysis has been

³⁸ As it happens, a similar criticism was raised against Mill's arguments shortly after their appearance by James Fitzjames Stephen, who dismissed Mill as a sceptic. See at length Stephen 1993.

echoed, construed, and challenged, will be explored in chapter 3. But by way of preface, it is necessary to say more about the idea of toleration, its purported grounds, its limits, and its antithesis: not only intolerance but also false tolerance.

Tolerance and Toleration

I stated at the beginning of this chapter that I would use the words “toleration” and “tolerance” interchangeably. But there are compelling reasons to think that they should not be treated as synonyms at all. Some authors happily deploy them as equivalents without comment or concern, while others call attention to what they take to be rather significant differences between the sense and reference of the two words. Some reckon a difference of degree, while others maintain that they do not refer to the same thing at all. I take it that the truth lies somewhere in the middle. These words are not exactly synonyms, but they are certainly very closely related. The two terms are close enough to be used as alternatives in everyday speech. In scholarly literature on the topic, tolerance is more often used to refer to the virtue and the attitude; toleration is mainly used to describe the practice, in particular the public policy of pursuing peaceful coexistence in a society consisting of heterogeneous groups and individuals, and the same policy enacted between different political societies.

Horton, for instance, (Horton 1996:34 *et passim*) has proposed that talk about tolerance and toleration happens at least at three different levels: tolerance as an attitude, tolerance as a moral virtue and toleration as a political practice that amounts—again paraphrasing Walzer 1997—to peaceful coexistence between individuals and groups; especially between groups. Tolerance is more the theoretical aspect of this concept that is not only a “thing” or an “ethos”, but an act, a concrete practice *per se*. Tolerance has necessarily a moral perspective: the virtue of being tolerant involves exhibiting self-restraint by enduring that which we would prefer to be otherwise. A tolerant person demonstrates that they are willing to put up with this action or number of actions of which they explicitly disapprove. We tolerate, in other words, when we refrain from impeding or hindering a belief, practice or conduct that is objectionable to us.

Many factors combine to make tolerance something of a necessity in modern societies, and many situations that demand it and test it. The presence of different religious convictions and political ideas within the same country as well as diverse minorities can give rise to circumstances that demand tolerance. Our age is characterised by the loss of shared normative frameworks and the questioning of universal values, the globalisation of habits of life and consumption, mass migration and rapid economic and cultural changes. The question then is

how to organise this plural coexistence without religious pluralism ending up in factionalism or fundamentalism. The plurality of cultural ethnicities evolves into a furious confrontation of identities and the different ideologies develop into doctrinal fanaticism. It is here that tolerance retains a special relevance.

This continuing relevance should not be taken to imply that tolerance itself has remained unchanged in its meaning in political discourse. Like all ideas, tolerance has a history, and it bears the marks of its development through a body of substantive thought, from the more traditional sense, in which there was a component of condescension to the tolerated subject, to today's approach, that grants a more assertive sense of recognition and respect for the other in its freedom and difference. From the grudging acknowledgement of plurality (feared as a source of conflict and lamented as a fracturing of unity and truth), it is turning more into the appreciation of the value of others' choices, an appreciation that requires at least some curiosity and open spirit from the tolerating party, a willingness to consider the possibility that one's own preferences may not exhaust all that is valuable or right. Tolerance is typical to countries where, after the old wars of religion and other fruits of religious intolerance, the principle of secularism has been instituted and freedom of conscience of individuals has replaced the monopoly of a majoritarian belief (Cerezo 2005:192; Rawls 1993). This reading of history helps explain why the virtue of tolerance has so often been seen as underwriting political practice: tolerance is the attitude that informs and at the same time requires a regime that consecrates political rights such as freedom of thought, expression and association. As a citizen practice, it presupposes a legal right: "The nerve of the idea of tolerance is the recognition of the equal right to coexist which recognises opposite doctrines" (Bobbio 1991:152).

There is a great distance between the idea of tolerance as grudging acceptance of differences that are lamentable, and the positive recognition of an equal right to form and espouse opposite doctrines. The difference is so great that it could be questioned whether still using the same term to describe the associated attitudes and practices is desirable. The answer is positive: in its semantic complexity, tolerance must continue to retain, despite everything, elements of discrepancy and censorship without which it would no longer merit the name. They capture the important truth that we *do* find some doctrines and attitudes objectionable which we nevertheless, as citizens, are obliged to recognise as legitimate. It might be objected that the constitutionalising of pluralism makes it unnecessary to appeal to tolerance. In other words, some believe that we should not call a virtue what is only the fulfilment of a citizen's obligation to respect a right. Yet, the fact is that legal or institutional tolerance, although being a necessary condition, is not a sufficient condition for a working democratic pluralism: pluralist societies

also require tolerant attitudes to oil the wheels of common citizenship.

The state cannot and should not legislate everything. Neither is the rule of law or legislation in modern societies without gaps and inconsistencies. Tolerance is needed practically to carry a society beyond the limits of legality and the mutual acknowledgement of constitutional rights (whether or not these are enforced in practice is a separate issue). Neither authorities, officials nor our fellow citizens can relieve us of the need to exercise the thoughtful caution, prudence, and tolerance that complicated situations may require in our daily life. The virtue of tolerance, like oxygen, is something that we notice as vital only when it is absent. Across time and space, human beings seem to exhibit a shared tendency to suppose their own beliefs and convictions to be true, to associate only with those who share them, and to be suspicious and often fearful of others' ideas or ways of life. It is only by opening ourselves up to others that we can avoid self-righteousness, partisanship, and solipsism (see Paz 2001). As a virtue, tolerance must be relearned and reinvented on a regular basis, both in our interactions with our friends and neighbours and in our lives as citizens.

It is possible, therefore, to distinguish between public and private tolerance, depending on the framework in which public or private relations are manifested. It may also be helpful to differentiate between vertical tolerance, which presupposes a hierarchical relationship between the tolerant and the tolerated and horizontal tolerance, which does not. And, of course, we may distinguish between negative or passive tolerance, by which we refrain from rejecting or repressing doctrines or actions only when we do not feel directly annoyed or affected by them; and positive tolerance (also called active tolerance), which implies a willingness to understand the reasons of the "other" and, if necessary, to modify our actions and convictions in light of theirs (Thiebaut, 1999). Each kind of tolerance has its own place in a democratic society. The one that matters for the purposes of this thesis, will be of a more public character, but is nourished by private tolerance and cannot thrive in its absence (or vice versa). Since I am to explore the tolerance of the state towards religious minority groups, in particular The New Jerusalem community, I will be focusing more on the vertical kind of tolerance; but I shall also explore the horizontal version of tolerance, for I am interested in understanding reciprocal relations between citizens (as the inhabitants of The New Jerusalem are Mexican citizens *de jure* if not *de facto*). Concerning the last distinction, I regard passive tolerance as the starting point wherein a minimum amount of tolerance is required. Yet, the more complex a situation becomes, the level of tolerance also increases. In the end, as Peter Balint (2017) points out, toleration is usually a matter of degrees.

Degrees of Toleration

Our confidence in the value of tolerance is often not accompanied by sufficient theoretical certainty. The polysemy of the concept itself, which in ordinary use can vary from a mere prudential commitment to the most hypocritical form of indifference, makes its delimitation problematic. Even while referring to tolerance based on moral reasons, it is important to bear in mind that this same ambivalence in drawing the line between the duty to tolerate and that of not tolerating, or its paradoxical character (why is it good to tolerate the bad?) causes frequent discrepancies when we want to put it into practice, defend it as a condition for pluralism, or draw attention to its pitfalls and risks. However, there is sufficient agreement to establish its constitutive elements: we can only talk of tolerance when these three elements concur:

1. Our own convictions are confronted and affronted by the actions of others,
2. we have the power to do something about it, but
3. we recognise there are valid reasons to tolerate instead of interfering, blocking or entirely suppressing such actions.

We cannot speak of tolerance if we do not begin with the condemnation or disapproval that we experience as a result of the beliefs or actions that we ultimately tolerate. In principle, there should be a tendency to prevent the dissemination of the idea or practice that provokes a reproaching judgement; this is what distinguishes tolerance from indifference or scepticism. Tolerance demands that a subject feels concerned or affected by that which they tolerate; there is no such a thing as tolerance when you have nothing to lose in the case (Arteta, 1998). What characterises the tolerant is not a lack of convictions, but the unwillingness to impose those convictions as compulsory guidelines for all. The rejection of what dislikes us or shocks us will be greater the more intense our convictions are, but there will be tolerance as long as our convictions do not overpower our reasoned decision to refrain from imposing, or seeking to impose, our will on others. These reasons for rejection are part of what has been called our basic normative system (Garzón 2000:187).

If we consider tolerance as a moral virtue, then it is not to be confused with the simple discomfort or moral indignation of the subject. The fact that someone feels offended in their intimate convictions but decides not to persecute the source of this offence does not automatically make a person tolerant. On its own, moral indignation is not enough to constitute a basis for tolerance. This indignation should be the result of moral reasons and not only the

result of prejudices or whimsicality. Racial bias, for instance, might push me to reject groups of people who, however much I dislike, I just accept: such conduct is certainly better than threats and violence, but it cannot be described as virtuously tolerant. There will be tolerance only if the objection—the intolerant inclination—is itself valuable or desirable. Whilst we should not tolerate certain things because it would be harmful to allow them, it is inappropriate to say that we “tolerate” when our reasons to object are entirely unfounded (Horton in Heyd 1996:31-33).

The tolerant person must also have a significant degree of power to interfere with the belief or conduct of others of whom they disapprove, a power which they choose not to exercise. Let us not only understand this power as a direct and observable ability to prohibit or allow, but also the capability to constrain the object of rejection. It is only that sufficient amount of competence or capacity to interfere that allows us to distinguish between tolerating and suffering: to be tolerant is at the same time to be able to choose not to be tolerant, for there is no tolerance when there is no choice except to bear others’ behaviour, when there is no alternative but to endure. Tolerance has to be in this sense voluntary, a matter of will. When the behaviour of others is protected by a right, it is constrained by the legal obligation to respect it but, going beyond the juridical perspective, it is undeniable that such capacity persists in the internal jurisdiction, so to speak, of each individual, and this may be what gives tolerance its moral value. I suppose we can say tolerance becomes a virtue when we exercise it for good reasons, whether we are obliged by law or not. On the other hand, the ability to (not) tolerate should not be presented as an arbitrary and discretionary power, because then the tolerance would be arbitrary and end as soon as the whim or the particular mood of the “tolerant” person shifts. If tolerance is not to reduce to an offensive sense of superiority (such as the white supremacist feels towards the black man), it has to be grounded on good reasons.

As described above, the third condition of tolerance is that we find reasons to tolerate that trump the reasons to inhibit the object of toleration. That is to say, reasons that are normatively stronger than those that initially inclined us not to tolerate, some reasons that now justify at least restraining that inclination. Here is the answer to the paradox of judging it good to consent to the bad. The truth is that “the tolerant person is not lacking reasons, but in some way having more (...) He has reasons to condemn or reject something, but for some other reason he refrains from doing so” (Toscano 2000:180).

Tolerance presupposes and at the same time resolves an internal conflict of the subject between two normative systems. In the face of the judgement based on our basic normative system, there are other norms derived from the normative system that induce us to revise that

first assessment of reproach. If those immediate reasons were of the first order, these other justifiable reasons of tolerance are of a second order that supply logically superior rationales to justify our actions. Tolerance would then be a permission to say or do something, despite having reasons to prevent it. In this way, as Norberto Bobbio (1991) notes, the conflict between the respect for my conviction and the respect for the other is resolved; the conflict between what I must believe and what I should do is settled through tolerance.

These last foundations justifying tolerance, which confer its peculiar value upon it, can be reduced to a few arguments. I shall not distinguish between the arguments arising from theoretical reasons versus practical applications. I shall also leave aside purely prudential reasons that advise tolerance only in terms of the immediate interest or strategic calculation of the adversary, in view of the situation and in search of a simple *modus operandi*. If that was its justification or its value, the principle of tolerance would lose its meaning as soon as one of the warring parties stood to benefit more from intolerance (Rawls 2002:255). It is not that they are negligible reasons in the event of a risk of civil conflict, but they are of a different order to what I would call “sustainable” reasons, whether they are epistemic, moral, or political (Ibid.).

There is no tolerance without limits

Establishing tolerance or practising it, both in private and public realms, presupposes acknowledging and accepting that tolerance has limits. Those limits, in a way, define the meaning of tolerance. Because essentially one only tolerates when one knows *what, when* and *how much* they should tolerate, that is, one knows where to draw the boundary of tolerance. This certainty implies another certainty: to know what not to tolerate. If it were always good to accept what one judges morally reprehensible, it would follow that the more evil I tolerate, the greater virtue it would be to tolerate it. This is the counterpart to the so-called paradox of the tolerant racist, who becomes more tolerant as he adds more races to the list of those he thinks contemptible. An unbounded tolerance, which would encompass the atrocious, would be an aberrant contradiction. That motto, shared by thousands: “Forbidden to forbid!” that was trumpeted in the streets of Paris in May 1968 embodied an attractive but dangerous absurdity. George Fletcher (1996) has written that there is a ceiling of toleration, what he calls “The Ceiling of Harm”, with calls for intervention and, on the other hand, the floor of toleration, “The Floor of Disregard”, where we have the extreme opposite: “it is not of my business, so do as you feel pleased to do”. The challenge for toleration, practically speaking, is to locate

and sustain the median between the Ceiling of Harm and the Floor of Disregard. Finding this equilibrium and applying it to the case of the New Jerusalem will be my commitment in the upcoming chapters of this thesis, so too what lies the bounds of what is tolerable.

The intolerable

What is the intolerable? For practical purposes, anything that directly harms others, or makes civil coexistence too difficult or even impossible is intolerable. What this means is that the limits of the intolerable are set with reference to “the right” or “the just”, not “the good”: it is only when actions, values or doctrines threaten the basic structure of our shared life, when they disregard the rights and protections that we mutually acknowledge as citizens, that they become intolerable. According to the Rawlsian lexicon, unreasonable doctrines would be the conceptions of the good incompatible with the “political” conception of justice that citizens have to share in a democratic society. “Many doctrines are simply incompatible with the values of Democracy” (Rawls 2002:64). They would be unreasonable for denying the very principles of political justice, the basic assumption of equal and free citizens who are committed to public reason-giving when deliberating over the moral or political rules that regulate our common life. Unfortunately, there is no doubt about the practical power of such doctrines, since it is recognised that their diffusion can put at risk the essential justice of the basic institutions of society (Ibid, 249); so much so that they may need to be contained, like war or disease.

Whether we speak about tolerating doctrines or about tolerating opinions that inspire norms or practices, it is generally accepted that the last limits to toleration are set by some kind of harm to others. This idea was stated canonically in the classic principle of protection by which John Stuart Mill restricted the freedom of the individual: “(...) that the only purpose by which power can, with full right, be exerted on a member of a civilised community against his will, is to prevent harm to others” (Mill 1996:65). What constitutes harm is a complex question: Mill himself distinguished harm from mere offence, which does not damage important interests in which we have rights; he suggested that the risk of harm was sufficient to trigger the application of the principle; that the scope of harm was broad and applied to all sorts of social relationships, not only the relationship between states and citizens; that harm in the relevant sense could not be incurred voluntarily (it is not harm to have your shoulder dislocated in a wrestling match you agreed to take part in, but it is harm to have your shoulder dislocated by a random stranger); and that it was not always sufficient to justify restriction: causing harm was

always a *pro tanto* reason to regulate an action. Yet, there may well be other reasons that trump the impulse to restrict. Subsequent writers have modified Mill's criterion to draw out the underlying commitment to equal respect and concern they take it to embody (e.g. Forst 2004; 2012; Raz 1986) but the point remains: we still need to establish just how and when a norm of equal concern and respect is being violated. In other words, the implementation of Mill's very simple principle was a complex matter of judgment according to an assessment of the actual or probable damage caused, in accordance with the circumstances, on a case-by-case basis.

It is common enough to argue that the ultimate limit of tolerance is given by manifest injustice, as when one individual or group tries to make its own rejectable conception of the good the rule of right for all, or by an attack on fundamental human rights (compare Forst 2004; and UNESCO 1995). At first glance, these seem like unambiguous criteria; but it is important to bear in mind that the frontiers of the intolerable can be rather blurry and that they may be crossed without the slightest consciousness if all circumstances are not properly taken into consideration. In deciding whether we tolerate an action that we morally condemn, we will have to calibrate the seriousness of the damage or injustice by taking into account the nature and consequences of the harm; whether the damage is prospective or tangible; whether it will be short-term and transient or long-term and lasting. To escape the limbo of abstraction, we must attend to the foreseeable or measurable effects of consenting to actions we might otherwise prohibit or of prohibiting what we might otherwise allow. This was noted by Mill himself when he wrote: "even opinions lose their immunity when the circumstances in which they are expressed make this expression a positive incitement to some harmful action" (Mill 1996:125-126). It is a very different thing—as he explains—to circulate in a local newspaper the opinion that certain merchants starve the poor than to trumpet this opinion before a crowd excited at the doors of the house of one of those merchants (Ibid.:127 et passim).

If there are reasons not to tolerate the intolerable, there are likewise reasons not to tolerate the performer of intolerance, that is the intolerant himself or herself. "If a group maintains that I or people like me simply have no place in our society, that we must either leave or be eliminated, how can I regard that as if it were just a point of view among others who have the same right to be heard and considered?" (Scanlon in Heyd 1996). *Mutatis mutandis*, to maintain such a point of view is to arrogate to oneself privileges or rights that one does not accord to others: to place oneself outside the relations of reciprocity that constitute a political community by assigning greater rights to members of one's own group than to the rest (Rawls 2002:64, 253-54, 258-60).

Pathologies of Tolerance

Who are the real enemies of tolerance? Obviously, the fanatical intolerant, by which I mean those who adopt the posture I have just identified and demand that their own conceptions of good and bad, right and wrong, become the measures by which everyone and everything should be judged; but it is important to note that, unthinking, indiscriminate tolerance is no less a danger to tolerance and maybe more subversive, although less intrusive. Whereas fanatical intolerance seeks to limit the scope of what is permissible to coincide with private or personal preferences (albeit preferences which are often represented as the demands of a higher being or higher law), the indiscriminate tolerance I have in mind uses its own “bad” reasons to expand and extend the scope of the permissible to include actions which may not immediately threaten harm to everyone, but which may harm some and, in the longer run, may dissolve the bases on which we can prudently judge when harm is being done and muster the collective will to prevent that harm from being done. There can be no greater enemy to true tolerance than the inability to distinguish between what is tolerance and what is tolerance only in appearance; between what must be tolerated and what should not.

According to Toscano (2000), the moral value of tolerance rests on two grounds: the validity of the reasons why a person is inclined to condemn what he tolerates, and the quality of those other reasons for which he finally tolerates (Toscano 2000:187). Tolerance is perverted from its proper sense when it comes from invalid reasons on the part of the tolerant for finding something or someone objectionable but also when there are faulty reasons for tolerating that person or thing. Tolerance will be affected either if it derives from an inadequate normative system or a flawed structure of justification.

For theorists who valorise a moralised conception of tolerance of the objection-type (see e.g. Toscano 2000; McKinnon 2006; Horton 2020) one cannot really tolerate something that one finds unimportant or acceptable. It makes no sense to say we tolerate behaviour or opinions from others if we do not dislike them in the first place or fight an urge to condemn them. As I have explained above, we cannot talk of toleration if no challenge is posed to our beliefs (reasons of the first order). In theory, there would also be no tolerance if the reasons underlying our rejection of the thing to be tolerated come from simple prejudices without reasonable validity. Strictly speaking, there would be nothing to tolerate either, because the voluntary requirement of toleration would be violated; we would be unable to do or think anything other than what we do or think. And again, where we do not understand the basis of the contrary opinions or the consequences for our common life of the behaviour we repudiate, the same

requirement is lacking. An unconscious tolerance of the meaning and scope of toleration is also false tolerance.

Let us devote a few words to false tolerance. Toleration plays a major but ambivalent role in modern political discourse (see Forst 2004). In our society, it enjoys a special status in contradistinction to its opposite, intolerance, which is found everywhere by those who are inclined to look for it and, wherever it is found, loudly deplored. Still, this distinction approaches paradox in two directions. Either we are required to tolerate everything in order to avoid the vice of being intolerant, in which case the distinction between the tolerable and the intolerable dissolves, or we draw limits to toleration, in which case we seem to be guilty of the vice of intolerance in arbitrarily drawing a boundary between what we will tolerate and an intolerable or intolerant other (see Scanlon 2003; Fish 1997). The first tendency in modern society was observed some decades ago by the philosopher Herbert Marcuse (1969), who wrote of “Pure Tolerance” or “Repressive Tolerance”; more recently Aurelio Arteta (1998) has spoken of “False Tolerance” making a similar point (see Arteta 1998; compare with the notion of Repressive Tolerance, Marcuse 1965).

The second tendency manifests in worries about moral and epistemic relativism and, more crudely, the growing sense that almost everything is merely a matter of opinion: that outside a few incontrovertible scientific truths (an idea which is itself now under attack from many quarters: see e.g. Otto 2016; Sismondo 2017)³⁹ there is no possible truth and that, therefore, everything should be tolerable. The democratic political ideal, for example, is often reduced to its formal aspect (that of organising transparent elections and counting the votes rightly), which could be extended to include people and ideas who plan to use the democratic system to subvert it from within.

In the absence of solid moral, epistemic or political reasons, tolerance is replaced by prudential calculations or tricks to maximise self-benefit with tolerance providing a kind of flag of convenience that covers what would otherwise be recognised as naked self-interest. Without the carapace of respectability that the invocation of the idea of tolerance provides, such kinds of “prudence” will be in fact no different from sheer cowardice or convenience. Behind the language of tolerance, it is possible to detect a contract of mutual convenience: “I tolerate what you do or say and you will tolerate everything I do in return”. When this happens, tolerance has been replaced by a greater or lesser degree of indifference or scepticism, both to

³⁹ Attacks which are often funded by powerful political and business interests: see e.g. Kalichman (2009); Oreskes & Conway (2010).

the value of others' beliefs and actions and to our own convictions. If true tolerance implies the capability of the tolerant to judge, here the subject of tolerance is willingly giving away such power. Therefore, they will be also giving away the power to interfere. This subject will be also missing a valid or defensible justification to do so. They may still call what they exhibit tolerance, though it will be anything but a virtue. Yet, the issue is not only that we may slide, or have slid, into a tolerance lacking reasons, but also the possibility of tolerance based on invalid reasons. It is not valid, for example, to argue that since there are so many reasons to tolerate, we should therefore tolerate everything. That would not only be simplistic but illogical: given that, almost as a matter of definition, we tolerate for the sake of something else, some higher reason or value, it makes little sense to tolerate for the sake of toleration itself, since this is, in effect, to pull the rug from under our own feet and to deprive tolerance of the grounds which bear its moral weight.

More than three centuries ago, discussing toleration, John Locke wrote that: "every church is orthodox to itself and erroneous or heretical to others" (Locke 1968:81-83). His particular point was that no single church monopolised truth because what made every church the church that it was and not something else was that it judged the doctrines around which it was constituted to be the sole truth. His more general point was that none could determine what was true for its rivals and that its judgements could not stand as criteria by which the claims of its rivals ought to be evaluated: what mattered was what the members of each church had in common. In this respect all churches were alike. How they stood with reference to some transcendent conception of truth was beside the point, since what each required from the others was the freedom to act on its own judgment in constituting its worship as it thought best. To deny that freedom to others, he opined, was manifestly contradictory. For a group to constitute itself as a church was to commit to mutual toleration of other churches at the same time, because it means excluding the claims of other churches and confining the claims of one's own church to its members, whose agreement that those claims were right and true and the only safe route to salvation was a necessary precondition of their being a church at all. There was a right, and indeed a duty, for each church to try to win new members for itself by argument and by the example of its peace and holiness, but it could not impose itself or its doctrines on others by force. Any church that retained the wish or willingness to do so was not really a church by Locke's definition and was likewise intolerable. Toleration required intolerance (see Harris 2013).

The improbable fantasy of being only tolerant and never tolerated was no more an option for him than tolerating the intolerable (though it is important to note that Locke was speaking

about toleration between churches and Christians, not, or not principally, the toleration of churches by the civil ruler, who, he thought, had no business being tolerant or intolerant of churches *qua* churches at all (see Locke 1968:69, in light of Harris 2013). A pluralistic society, of which we find a rough analogue in Locke's account of the plurality of churches, will be organised from a tolerance of tolerances.

In this society, the ideal of a rational progressive agreement, which is still present in Locke's account, is substituted by the ideal of tolerance towards all points of view or, what is pretty much the same, by the slogan of "respecting and allowing everything that is different just because it is different"—a position that goes some way beyond the one that Locke set out in relation to churches. This will result in exempting the "different" from critical discussion and accepting any opinion that is different without questioning its inherent negatives. With Locke, we are dealing with one single tradition of moral and religious practice in the protracted process of fracturing. What distinguishes modern pluralistic societies is the fact that different traditions of practice are often at odds with one another and so it becomes difficult to vindicate one's own practice by appealing to the idea that the good should be wished for and justice be done, because *everyone* supports justice. Any objection on moral grounds is liable to be countered by matching grounds from a rival tradition as there are many conceptions of the good. One way of coming to terms with the implications of this fact, which has won adherents among philosophers and has seeped into the general culture, is to adopt a kind of relativistic stance, which strives to avoid making any pronouncements about good or bad, just or unjust. Concomitantly, neutrality takes the place of morality and the neutrality expected of the political state is extended to the individual citizen, who is likewise expected to exhibit neutrality when engaging with fellow citizens on matters of public concern or, more pointedly, to accept that one person's meat is another person's poison and one should simply live and let live (for a critical discussion of this line of argument, which attempts to derive toleration from scepticism, see McKinnon 2006:35-51).

Arteta (1998) maintains that under the influence of indiscriminate tolerance, objectionable ideas are not confronted for it is not worth the effort: all ideas are equally valuable (and so equally without value). This soft tolerance also arrogates the right not to give reasons or explanations to anybody and to accuse of bigotry anyone asking for reasons, consecrating its right not to defend its own preferred opinions with reasons and invoking a duty on the part of others to refrain from inquiring about those reasons by way of reciprocation. At the limit, we are encouraged to begin from the assumption that every opinion advanced in the social or political arena has some value, and perhaps equal value in virtue of having been advanced by

morally and politically equal subjects. It makes no sense to call for debate, if one position is no more or less reasonable than any other, and there is no basis on which to discriminate between positions beyond everyone's own preferences. Toleration is required, on this line of argument, because my position, and my opposition to your opinion, is based on subjective reasons that have no higher standing than the reasons you could give for holding your position and so cannot legitimise intolerant action against you.

This argument may be logically invalid—if subjectivism is true then there is no reason to think that toleration is required more imperatively than intolerance or any other moral judgment—but the conclusion it fails to support is nurtured by (and expressed in) many of the platitudes that now proliferate in our public life, (notwithstanding the more recent irruption of the politics of insult and belligerence associated with former president Trump in the USA). How often do we still hear politicians proclaim, “I have the greatest respect for your opinion...” “I respect that view, but I do not share it...” “It would be wrong to judge ...” “We will have to agree to disagree” and so on. Nowadays, tolerance comes with the express command not to judge in public—and if possible, not even in our private ruminations—the ostensible object of our toleration. This is a mysterious thing, for true tolerance does not take a step without judging. This other unsound tolerance, however, argues that its work consists precisely in refraining from judging: it neither approves nor condemns but simply allows (see Williams 1991, for a concise demolition of this position).

The empire of opinion

In short, this corrupted or vacuous form of tolerance consists in the willingness to tolerate almost everything. The situation, as depicted by Arteta, is something like the following: *Laissez-faire* principles now pervade our moral and social life. Any attempt to vindicate one's position by appealing to the authority of morality immediately risks accusations of intransigence and prejudice. From the fanaticism of the faith of a few we have moved to the fanaticism of the relativism of the many; for fear of intolerant dogmatism, we have moved to the dogmatism of tolerance: anyone who discriminates (that is, passes judgment) is perceived as intolerant. Tolerance, which rose to prominence in the seventeenth century as a means of settling fractious and feverish religious disputes, has become for many nowadays a kind of pseudo-religion aiming less at salvation than universal pacification via the satiation of everyone's preferences. In the end, as Mill once wrote, “The price paid for this kind of

intellectual pacification is the complete sacrifice of all human moral impetus” (1996:96). This sacrifice can be observed in the wide range of phenomena emanating from the false tolerance against which Arteta sets his stall; just as the relativism and nihilism that nurtures it seep more and more into the wider public culture.

The renunciation of practical truth, which occurs when only the right to express the opinion is accountable and not the opinion itself, diminishes our collective life.⁴⁰ It does so not least because, in effect, it gives up on the idea of coming to understand, let alone trying to conciliate, opposed positions. At the limit, it affects a “right” to escape the scrutiny of reason and, in the end, to give up on reason altogether (Arteta, 1998).

It is in the political arena where the deleterious effects of this pseudo-tolerance are most visible. Here the abandonment of reasoned argument as a way to achieve consensus contributes to the devaluation of public debate, which no longer evinces the same degree of commitment to progress through arguments or the desire to achieve rational consensus. The citizen body is not conceived as a public capable of offering, receiving or responding to reasons, but as a heap of singular interests that, since they are valued by those who take themselves to have those interests, are also valuable. The bearers of those interests take themselves to have the permission, and perhaps the duty, to express themselves about them. The democratic process of decision is replaced by the crude mechanics of the aggregation of preferences which all stand on the same footing.

The irony is that this kind of tolerance, which begins with the idea that every opinion should be accorded some (maybe the same) weight, embodies a threat to pluralism itself. It becomes so from the moment it endorses the equivalence between the sociologically normal phenomenon and the normatively right phenomenon (Arteta, 1998). Moreover, it encourages intolerance. First, because as soon as the effort to justify our theses or proposals is abandoned, only the more or less arbitrary preferences remain: the readiness to speak becomes everything. Also, the avowed commitment to avoid judging only makes the judgments we inevitably do make more self-conscious. We second-guess ourselves and become fearful of appearing critical. Hesitant to limit our tolerance or to attract the accusation of intolerance even in response to intolerant views that would suppress other views, we give such views enough room to prevail. Tolerating intolerance produces further intolerance.

⁴⁰ This insight was important to the ancient Greeks, who understood dialectic, the pursuit of truth through the exchange of opinion for justified true belief, as one of the more important characteristics of a virtuous public life. A healthy and prosperous Polis should always be arguing, reasoning, discussing, confronting opinions until the best and nearest to the truth could prevail.

The demoralising effects of this indiscriminate tolerance take a long time to become manifest. They rot a society from its foundations, and the consequences become apparent only when it is, in a sense, too late; at those junctures at which its basic political institutions are openly challenged. It is then that many citizens experience the powerlessness of being morally unarmed against absolute tolerance. They are the same citizens who may become the best carriers of any future totalitarianism: As Hannah Arendt observed, “The ideal object of authoritarian domination is not the Nazi convinced or the convinced communist, but the people for whom there is no longer the distinction between the fact and the fiction (the reality of experience) and the distinction between the true and the false (i.e., the norms of thought). At the end of the day, if nothing is true, what can be opposed to falsehood?” (Arendt 1987:700). One reason why the language of toleration matters as much as the practice, and why that language retains its power, is that it retains this connection to true and false, to principle, to reasoned objection, without which the practice of toleration all too readily slides into a relativism of opinion that cedes political power to those who manipulate and diffuse opinion most ruthlessly and most effectively.

Beyond this reflection, which is intended to underscore the potential and actual use and abuse of (what is considered to be) a tolerant attitude, the argument of the thesis now moves on to address the issue that is key to understanding the dilemma that modern states face when dealing with extreme minority groups: what, precisely, should be tolerated and to what extent? Should individual rights trump group rights, or should it be the other way around? It is with these complexities, very well encapsulated in the ongoing debate between liberalism and multiculturalism, that the next chapter deals with.

—Chapter 3—
THE RIGHTS OF MINORITIES AND THE RIGHTS OF THEIR MEMBERS

Unlimited tolerance must lead to the disappearance of tolerance. If we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them.

Karl Popper, *The Open Society and its Enemies*, 1962

*“Nothing to immigrants as a group.
Everything to them as individuals.”*

—Jean Paul Sartre

This chapter discusses the place of toleration in wider liberal and multicultural theories of diversity and difference. It focuses, in particular, on the relationship between individuals and groups and explores the competing terms in which that relationship is construed by authors such as Kukathas, Barry, Kymlicka, Walzer and Taylor by means of raising and answering the following questions: Are there any group rights? Can the rights of religious minorities (as communities) trump the rights of their members (as individuals)? Which claim, the individual’s or the group’s should prevail? These debates provide normative resources which will help us to better understand the problem of The New Jerusalem and the ways in which wider questions of the rights of religious minorities are discussed in the existing literature. This chapter also provides the platform for a subsequent analysis of the particular form this debate has taken in Mexico, often under the influence of the anglophone debate on multiculturalism and liberal individual rights. The Mexican dispute will be addressed in detail in the fourth chapter.

To be a citizen of a modern democracy entails living with people whose behaviour and beliefs differ from ours. Sometimes, perhaps often, those differences induce our disapproval. To be tolerant, as I discussed in the previous chapter, requires individuals to refrain from acting upon this disapproval and to accept behaviours and mores that may be at odds with or at the limit antithetical to their own. One displays tolerance when one eschews the use of any kind of coercive means to suppress or restrict contrary beliefs or actions. We are called upon to display tolerance frequently, because modern societies are increasingly pluralistic in multiple aspects: ideological, religious, cultural, and moral. As Rawls puts it, such plurality ought to be regarded as “a permanent feature of the public culture of democracies” (Rawls 2002:60)⁴¹. But what are

⁴¹ The translation of all quotes from the Spanish version of Rawls (2002) into English is mine.

the limits, if any, of this plurality?

As Rawls went on to emphasise, the plurality that has eventuated among us is not to be lamented, because it is the consequence of the free exercise of human reason under free institutions. Nevertheless, it has effects; and those effects need to be acknowledged and accommodated in liberal societies. This can be challenging, especially when our political or moral sensibilities are affronted. If we are to meet this challenge, we are required to incorporate diversity and difference into liberalism, an ideological tradition which, notwithstanding its stated commitment to pluralism, embodies a decided set of preferences when it comes to how society has to be organised.

Liberalism⁴² is a congeries of attitudes, ideals, values, and principles which form a more or less coherent set: autonomy, freedom of association, freedom of speech, property rights, tolerance and a state strong enough to defend or enforce the rights and values with which this set of ideals are associated but limited to the defence or enforcement of those ideals. In this sense, freedom is the master value, because the fundamental liberal assumption is that it is placing limits on the free action of moral agents that requires justification, not such action itself. On the other hand, plurality, as can be inferred by its name, implies the existence of alternative principles with similar claims to priority, at least *prima facie*. So, how can we conciliate plurality with liberalism or, in other words, how can we make diversity work in a liberal society?

Here the relationship between groups and individuals becomes especially pertinent, because society is composed of groups and groups in turn composed of individuals (something that remains true even if it is argued that group membership imbues the individual with identity, as opposed to giving expression to that identity). The rights of individuals and the manner in which and agencies through which these rights are enforced are crucial to this relationship, as I intend to show in this chapter and the ones to come. So also is toleration. Why is this so?

One obvious answer is that when pluralism meets liberalism, toleration becomes almost inevitable, because the plurality of beliefs, values and different ways of life that jostle together side by side in diverse societies do not fall naturally into a harmonious pattern. Peaceful cohabitation, mutual compossibility, would not be possible without a practical and daily exercise of mutual toleration between groups and individuals (see Waldron 2003). A further

⁴² By Liberalism, I am addressing here to the mainstream of this line of thought, which accepts of course a wide variety of degrees. In particular, I am alluding to the majority of western democratic nations who will be pleased to be recognised as politically and economically liberal, and therefore engaged with the core liberal values.

question arises here: how much variety should be tolerated? The empirically observed plurality appears to make room for normative pluralism, which is nothing but the civil regulation of the differences we see and feel every day. Tolerance, pluralism and democracy are intimately related conceptions. As Adam Przeworski (1988) has pointed out, democracy is, among many other things, an institutionalisation of pluralism, and a necessary means to that end. Toleration is therefore, in at least one sense, essential to pluralism and, by extension, to democracy. But what does it mean when we say that toleration is essential to pluralism? How should that claim be construed?

In his canonical book *On Toleration*, Michael Walzer (1997:84) identifies two forms of toleration that, by his account, developed into the two grand projects of modern democratic politics, “individual assimilation” and “group recognition”. In Walzer’s view, democratic inclusiveness is the first modernist project; it is the project of Locke and of Mill, a project with many modern continuators whose work shall be discussed below. It is a project which understands human destiny as being in the hands of individuals themselves, and moves in thought to a consideration of the kinds of groups they might choose to make or to leave, the laws they may decide to put themselves under, and the beliefs they might reasonably come to form or discard through the use of their own intellectual and moral faculties. It is a project that is rooted in the assumption that the individual is not properly subject to the norms, sovereignty or authority of any other person or group by nature, custom or divine dispensation, except through their own will and agreement. Groups are associations of individuals, made by individuals for their own specific purposes, and they are free to leave them when they find that those purposes are no longer served by group membership. In short, the individual trumps the group.

The second modernist project, in contradistinction, seeks to provide the group as a whole with a voice, a place, and a politics of its own. The crucial slogan of this struggle is “self-determination”, but that slogan, as Walzer emphasises, is ambiguous between the claims of groups and of individuals (Walzer 1997:91). The coexistence of strong groups and free individuals, with all its complexities and ambivalences, is an enduring and perhaps a defining feature of modernity. This is why the political struggle of modernity, for Walzer, is a struggle for boundaries, an ongoing quest to delimit the proper claims of the individual vis-a-vis the group and groups vis-a-vis each other and the state (Walzer 1997:93-112).

The aim of this chapter is to explore this struggle through the debate between liberalism and multiculturalism, to better understand the rights of religious minorities and the rights of its members when the relevant groups and individuals are spatially collocated within the

geographic and legal boundaries of a modern liberal state. To do this, I begin by reviewing some of the most relevant literature on the theory of groups and the theory of group rights before setting some of these ideas against the context of The New Jerusalem. The New Jerusalem arguably is an exceptional case, but the exception can be useful in bringing out certain features of the normal that might otherwise be overlooked.⁴³ Setting various theories of group rights and toleration against the reality of The New Jerusalem brings to light the complications arising from trying to make accommodations for religious minority groups that claim special treatment by the state, particularly when it comes to defining and enforcing limits: how far is it feasible and desirable to tolerate practices that directly infringe the principles of a liberal state? The mere existence of a community where the normal rule of law does not apply—or is applied irregularly or at the will of its leaders—yet which is geographically located within the borders of a constitutionally liberal state, operating as a millenarian theocracy where decisions are taken discretionally by self-identifying holy authorities, allegedly in the name of the mother of God herself, but *de facto* encroaching on civil rights of its members and preventing them from interacting with the outside world and obstructing elementary education for children, presents a double dilemma.

The first dilemma relates to the complex challenge that the survival of such a community poses for the Mexican state in terms of governance and jurisdiction: how far can a liberal state tolerate difference and diversity and adapt a legal/political system to accommodate beliefs and ways of life that threaten some the values and rights enshrined in that system? The second dilemma concerns potentially contentious relationship between a minority group and its own members: if a group enjoys exemptions from the normal operation of the rule of law that applies to the rest of the population at large—for whatever philosophical or practical reasons— what happens to those minorities that dissent inside such a group? Who will defend them if their individual rights or even their rights as a minority group within a minority group are imperilled by the larger group to which they belong? My aim in what follows is to identify the features that pose special problems to the theory of minority rights and the theory of religious identity exemptions.

Rights are claimed, enforced, adjudicated and supplemented in multiple jurisdictions (see e.g. Barzilai 2005; Shachar 2001). These jurisdictions often overlap, meaning that questions about the scope of rights and who or what has ultimate jurisdiction over them cannot be avoided. So, for instance, what should the Mexican government do when there is an overlap of

⁴³ For some origins and implications of this insight, see (Cercel, Fusco, and Lavis, 2020).

jurisdictions? Which should prevail, the customs and norms attached to groups and group membership or the rule of law over all citizens in the state? The New Jerusalem throws up many questions and challenges of this order, which in the last generation have been treated in the scholarly literature under the rubric of multiculturalism versus liberalism. To address these questions effectively, it will be helpful to discuss how this debate has developed. I begin with the classic discussion between multiculturalists and liberals, and focus, more precisely, on a significant intervention into the debate between representatives of the two camps, made in 2003 by the Malaysian-born Australian political theorist Chandran Kukathas, in defence of the first modernist project identified by Walzer (individual assimilation) and against a version of the second (group recognition) advanced by the Canadian philosopher Will Kymlicka, since it very well encapsulates the ongoing dispute between the champions of individual rights and the defenders of group rights.

Multiculturalism and Liberalism

Multiculturalism is the name given to a broad-based politico-philosophical project that supposes that cultural membership is valuable and that cultures are many and diverse, religiously, ethnically, and nationally, within and across the states of the world. It holds this diversity and difference in high esteem, rather than regretting it, and takes a very particular understanding of political inclusivity to follow from it. Deriving originally from lines of thought that flowed out of communitarianism, the multiculturalists have developed the ideas they inherited about what constitutes community, what it means to be a member of a community, and what rights are associated with such membership in ways that move them beyond their communitarian predecessors. What they have retained is a greater or lesser degree of dissatisfaction with the “liberal” perspective with reference to which they define their own position. A closer look at the grounds of that dissatisfaction may help to illuminate some of the difficulties and implications involved when a modern state has to deal with minority groups, particularly when they explicitly or indirectly claim special rights or even demand the suspension of some aspects of the rule of law in the name of their identity as a community or for the sake of the beliefs they uphold. The question, in short, is, what is it about groups, if anything, that gives them claims to special consideration?

One answer to this question is, nothing. There is nothing special about groups as such. They perform a function for individuals insofar as they provide the context for the expression of their identities, but the ideal context would be one which blended and transcended the

particularities of groups in providing fair background conditions for every individual to explore their identity as they see fit. According to this view, a modern nation is like “a melting pot” where different beliefs, traditions, ideologies, and cultures come together, mix, but transcend the differences and discrepancies between them in creating one big culture that includes them all (see Bell 2000). The ideal is appealing, *prima facie*, not only in virtue of its simplicity and its underlying message of harmonious coexistence but also in its implicit appeal to the values of equality and fairness. However, its critics wonder what preconditions are necessary to make such a society work, and whether and how far the resultant monoculture could be beneficial or hospitable to every individual.

Multiculturalists argue that a precondition for such a society is the existence of a political majority with the power to compel minorities to incorporate into and become part of the mainstream culture. In reality, the “melting pot” implies the enforcement and coercive inclusion of political, religious and ethnic minorities into the preponderant majority, to standardise and homogenise culture in the image of one single type: the dominant type (Taylor, 1992). However, for Multiculturalists, fusion is not an acceptable outcome, because individual cultures are to be appreciated and even encouraged for their own sake. Diversity is valuable because cultures in the plural are valuable, either because, in the stronger version, every culture has value in itself or because, in a weaker version, cultures are important ingredients of our identities as individuals. Either way, they lay at least some claims on the terms of citizenship.

In his classic book *The Rights of Minority Cultures* (1995b), Will Kymlicka claims that the toleration of group differences, taken by itself, fails to guarantee that group members will be treated as equal members of the wider society, essentially because this provision is too weak to avoid the risk of marginalisation, and cannot even guarantee the survival of the group itself. What is required is recognition and positive accommodation of minority practices. How to achieve that? By subscribing to what he calls “group-differentiated rights” (Ibid.). Only through positive affirmation and by acknowledging such special rights can minority groups be compensated for the historical inequalities and the atrocities committed against them in the name of, or to the advantage of, the dominant culture and protected against the perpetuation of the marginalisation suffered at its hands.

Group-differentiated rights are claimed by the Canadian indigenous peoples and Australian aborigines, who are granted exemptions from typically-applicable laws in virtue of their religious beliefs, their educational needs and their practices of political participation. They may be extended, under the rubric of multiculturalism, to embrace the political claims of other widely marginalized groups, like women, who have systematically been denied full political or

social participation, African-Americans, members of the LGBT community, indigenous peoples, minority nations like the Quebecois, the Catalans or the Basque. All of them should be subjects of political affirmation to restore the power that has been unfairly removed from them simply for being outnumbered by oppressing majorities. However, immigrants mistreated and outcast for being “illegal” are perhaps the best example of the concerns of multiculturalists: Muslims stigmatised and discriminated in Western Europe or Latinos in the United States, arbitrarily dispossessed and deported, often separated from their families or prosecuted as outsiders within the political community in which they make their home (see Eisenberg and Spinner-Halev 2005; Kymlicka 1995, 1995b; Spinner-Halev 1994).

Kymlicka accepts that for many people “the idea of group rights is both mysterious and disturbing. For how can groups have rights that are not ultimately reducible to the rights of their individual members?” (Kymlicka 1995b:13). It is mysterious because it is difficult to determine just what it is that has such rights: how is it possible to fix an enduring identity for any group over time, given that it is always gaining new members and losing old ones. It is disturbing because it seems to give the group precedence over the individual and raises the worry of the illiberal treatment of individuals who dissent from the terms of membership. On most accounts, the relevant groups are natural or involuntary ones, into which people are born (Johnston in Kymlicka 1995b:183) and so the worry is amplified: people haven’t chosen to belong to these groups and now face being told they have no choice but to accept their rules and mores as binding on them. These groups are bound together by multi-dimensional relationships of mutual interdependence, recognition and even obligation. But, for Kymlicka the answer is succinct: groups have rights. To fail to admit that would be equivalent to accepting the claim that it is impossible to recognise difference and treat the different as equals without being unfair and inequitable (Villoro, 1998).

The liberal view, captured in the worries to which Kymlicka gives voice, is that it is not communities but the individual that is of prime importance. Individual decisions can be made without any hindrance or interference by another agent or agency, other things being equal: they can be explained and justified simply in terms of the properties of individuals and individual goods. Multiculturalist views come closest to their communitarian ancestors when they reject the idea that the individual, logically or morally, trumps the community, and deny that society is composed by individualistic selves each concerned with pursuing their own conception of the “good life”. This “individualistic” attitude was long ago identified by Tocqueville as one of the defining and more deplorable aspects of modern societies: “Primacy of the individual over the collectiveness (...) The links that tie the individual with his past and

his present get loosened and relaxed: it is only him (the individual ego) and his desires that matter; it is only him and his extremely small sphere that counts.” (Tocqueville in Paz 1994:400). For individualist liberals, the value of social goods can be measured in quantum of individual welfare and as expressions of individual choice. For critics like Charles Taylor, this leaves out of account the many collective human goods that are “irreducibly social” and inherently valuable (Taylor, 1989).

Taylor opposes to individualistic liberalism an ontological holist account of collective identities and cultures. His argument for a “politics of recognition” rests on the ground that identities are not fixed but rather shaped in and through association with others. “We define our identity always in dialogue with, sometimes in struggle against, the things our significant others want to see in us” (Taylor 1994:33). This argument reflects Taylor’s belief that human life is “fundamentally *dialogical*” (Ibid.:32) in character, and his matching belief that it is in the nature of human beings to seek recognition from and by others. Indeed, our need for recognition “continues indefinitely” (Ibid.:33).

Taylor began his academic life as a scholar of Hegel and turns to Hegel to explain the different kinds of recognition we seek: our most intimate, or personal identities are initially formed by “contact with significant others”, both our social identities are “formed in open dialogue” in the political arena, a dialogue which, in the modern world, has come to take two forms. The first emphasises “the equal dignity of all citizens” in the effort to avoid a return to hierarchical ordering of life which marked the pre-modern world. The watchwords here are *equality* and *similarity*: equal treatment means treating everyone the same (Ibid.:37-38). Similarity means that everyone is owed “recognition of the unique identity” of each individual or group (Ibid.:38). This politics has a universal, egalitarian basis—equal recognition for all—but “it asks we give acknowledgement and status to something that is not universally shared” (Ibid.:39). This second form of politics is what Taylor calls the “politics of difference”. It requires, in its fullest form, that “one accord equal respect to actually evolved cultures”, whatever it is that those cultures happen to value or valorise. As a matter of principle, they ought to be accorded equal value. The alternative view, what Taylor calls the “politics of dignity” stands accused, by contrast, of “imposing a false homogeneity” (Ibid.:44) by seeking to do away with particular differences in the name of equal rights and equal freedoms.

Taylor uses the example of his homeland, Canada, to explore the strengths and weaknesses of these two forms of politics. He associates the first model with liberalism and finds that, if there are more or less persuasive versions of liberalism on offer, there is at least one reason to worry that the accusation that it is committed to a surreptitiously imposed

homogeneity may be difficult to rebut. The reason is that, notwithstanding liberalism's claim to offer "a neutral ground on which people of all cultures can meet and coexist", liberalism in fact "is not a possible meeting ground for all cultures". Rather, it is "the political expression of one range of cultures" (Ibid.:62)—certain Western ones, assimilating non-Western cultures which do not challenge their fundamental values— but it is "incompatible with other ranges"— certain Muslim societies or aboriginal cultures, for instance. If liberals "can't and shouldn't claim complete cultural neutrality" (Ibid.), then what is the next step?

In Taylor's mind, what follows is what he calls the "presumption" of equal worth owed to every other culture, including those which liberalism finds difficult to accommodate. He is not by any means saying that all cultures are *in fact* of equal value. Any demand for recognition on that basis would be false and readily rejectable. But there is *prima facie* reason to take seriously the demands for recognition made by different cultures and, with this, one line of justification for a politics of multiculturalism.

A second justification of multiculturalism is provided by Kymlicka, who seeks to combine the liberal values of autonomy and equality with the value of "cultural membership" (Kymlicka, 1995). He regards cultural membership as a primary good and describes cultures as contexts of "choice", arguing, on the "weaker" line identified above, that cultural membership plays an important role in people's identity (see also Festenstein 2005). There is a deep connection between a person's self-respect, Kymlicka claims, and the respect accorded to the cultural group they belong to.

Kymlicka also distinguishes between different types of groups and proposes a typology of different rights accordingly. He offers a full array of group-differentiated rights⁴⁴ for indigenous peoples and national minorities for what his critics call the luck egalitarian reason that justice requires assisting cultural minorities to bear the burdens of the (un)chosen disadvantages under which they labour. According to luck egalitarians, individuals should be held responsible for inequalities resulting from their own choices, but not for inequalities deriving from inevitable circumstances (Dworkin, 1978).

Kymlicka, then, believes that identities are key: they define groups as much as they define individuals. Therefore, groups may need to be defended and protected as well as individuals. "The idea of according special rights of self-government to minority communities need not to be illiberal, if this communal self-government respects the civil rights of its members" (Kymlicka in Heyd 1996:67). He suggests that this point has been obscured by a prior claim

⁴⁴ For a more detailed list of cultural rights see Levy, 1997.

upon our attention. The claim is laid by history or, to be more exact, by the unreflective tendency to think about minority cultures on the model of religious communities, and to perceive religious communities in terms of a Western model of toleration that separates the state from the church. But there is, Kymlicka notes, a contrasting historical model that lasted for about 500 years, in which toleration unified the state and the church, and which worked surprisingly well: The Millet system of the Ottoman Empire.

Kymlicka argues that the Millet system offers a viable alternative form of religious tolerance to Rawlsian liberalism. “Even if we endorse Rawls’s liberal conception of tolerance, the Millet system is a useful reminder that individual rights are not the only way to accommodate religious pluralism (...)” (Kymlicka in Heyd 1996:70). Kymlicka observes that in his later writings, Rawls eschewed the autonomy argument associated with Kant and Mill, which he came to regard as “sectarian” and “insensitive” to the pluralistic reality of modern democratic societies, relying instead on a “political” conception of the person as a free and equal member of the political community. Kymlicka, however, does not think that his strategy really works “(...) for it simply leaves it unclear why a liberal state should assign priority to civil rights, without in fact being more sympathetic to the demands of non-liberal minorities. A more appropriate response, I believe, is to continue to defend comprehensive liberalism, but to recognize that there are limits to our ability to implement and impose liberal principles on groups that have not endorsed those principles” (Kymlicka in Heyd 1996:80).

What this means, for Kymlicka, is that the state has no business forcing citizens to renounce their differences in identity as religious or ethnic minorities and embrace a common political identity. The truly tolerant state, instead of remaining neutral between different conceptions of the good, should intervene to guarantee and create equal opportunities for all. Inequality reduces opportunity, especially for the members of the disadvantaged groups, and damages self-esteem. An active multicultural tolerance takes due account of the long-term damage caused by sustained inequality to people’s self-respect and life chances. It proposes measures of affirmative action and even over-representative quotas in certain public institutions to compensate for the effects of historic injustice. Sometimes this extends to calls to protect minority groups from conduct or speech that, for such historic reasons, is particularly detrimental to members of such minorities (Águila 2003:372).

Of course, the intensity of protective measures to compensate for those marginalised cultures or identities can vary over a wide range, and there are some differences of degree as well as differences of kind. Kymlicka, for instance, strives to find a balance between the autonomy of the group and that of the individual, which leans more towards the latter than

some multiculturalists would countenance. A “harder” approach insists more strenuously on the non-interference of the state in a group’s organisation or in its communitarian life. If the group’s identity is treated on strict analogy with the identity of a person, the group can arrogate to itself rights that are above the individual themselves: they are collective rights of the group as a collective entity, with the caveat of exit. The individual is important insofar they are a member of the larger body: the group itself. They would thus claim toleration from the state, toleration understood as special treatment; more particularly they claim exemptions from general obligations that apply to citizens outside the group. They demand that certain areas of their collective life, such as their cultural, religious, or educational affairs, should be regarded and treated differently from those of the external majority, governed by the group’s own rules, without any interference from the national authorities. The result is a kind of sovereignty over cultural self, demanding that public power should allow whatever occurs inside the group short of physical coercion. What is recommended, in other words, is a principle of social enclosure, that makes cultural communities self-governing entities, lords within their own jurisdictions⁴⁵.

The Critique of Kymlicka and Multiculturalism

When *Multicultural Citizenship* was published in 1995 it attracted much critical comment, pro and contra. Even the cover—depicting Quakers and pilgrims, harmoniously interacting with the Native American tribes and what seems to be a happy lion peacefully enjoying a sunny day with the sheep and the cattle—induced sardonic comments about the naïve nature of the contents of Kymlicka’s theory. In this instance, a book *was* literally judged by its cover.

Critiques of multiculturalism have taken many forms. It is beyond the scope of this thesis to discuss them all. This being said, I would like to lay out in general terms some of the critiques deployed against multiculturalism that bear most saliently on the case of the New Jerusalem. One early critique, offered by Jeremy Waldron (1995), accused Kymlicka and his followers of being engaged in a “cosmopolitan” view of culture that ignored the changing nature of cultures. Cultures, he argued, do not need to be defended or protected because they evolve, adapt, and sometimes even disappear in time as a part of wider cultural phenomenon that has been evident

⁴⁵ For a breakdown of non-vertical accommodation policies in multicultural societies, compare Bachvarova 2014; for a detailed exploration of multicultural arrangements and the responsibilities of the State, see Banting in Kymlicka 2006.

since the earliest civilisations developed in China. Another critique was offered by Fraser (1997) who worried that multiculturalism was a form of a “politics of recognition” that diverted attention away from a “politics of redistribution”, which —according to the critique—is what minority groups really require, for they need to be provided with economic inclusivity and opportunities by the state rather than to be granted a legal status that in practical terms would make little impact in the life of their members.

Brian Barry (2001) noisily promoted a universalist idea of equality in contrast to the group-differentiated idea defended by multiculturalists. From a very different angle, a few postcolonial authors were sceptical of Kymlicka and his arguments because they regard the politics of recognition as a mechanism that actually reinforces, rather than transforms, the old colonial structures of domination. Latterly, the feminist critique (see Song 2007; Shachar 2001, 2000; Okin 1999) has been particularly successful in pointing to the fact that extending privileges and protections to minority groups may have the unwanted side effect of supporting oppression of the most vulnerable members of those groups, in particular women, who tend to be excluded from the significant decisions of such communities. A dispiritingly wide variety of examples could be adduced to empirically support feminist concerns on this score.

However, the critiques that is most relevant to my argument came from the pen of a liberal, Chandran Kukathas, who maintained, contra Kymlicka, that there were no group rights, only individual rights, and that by granting special legal protection to minority groups, the state overstepped its proper role at the price of undermining individual rights: in particular, what he considers to be a singularly valuable right, the right of association.

In his work *The Liberal Archipelago* (2003), Kukathas gave sustained attention to the way claims of cultural minorities should be addressed in the modern world. He wonders whether a liberal society should tolerate illiberal communities or accommodate illiberal immigrants. He asks his own version of Rawls’s famous question: What is the principled basis of a free society, marked by cultural diversity and different and perhaps competing group loyalties? (Kukathas, 2003). The answer, he suggests, depends on how authority is allocated, and so he goes on to pose a subsequent question: what is the place of authority in a free society? According to him, the fundamental principle that defines a free society is the principle of freedom of association. Then he states what he takes to be the corollary of the principle of freedom of association: the principle of freedom of dissociation (it is not wholly clear if he is referring here to the right of exit, or to something more extensive); and he takes this to imply, further, the principle of mutual toleration of associations. In other words, he presumes a right on the part of individuals to associate or disassociate at their will and a duty arising from it on

the part of others to permit everyone to exercise this right.

Again, it is not entirely clear whether he is talking only about mutual toleration between associations within the state or if he is treating the state itself as one such association among several others: speaking of society rather than the state suggests the second construction, whereas his formal position seems to be the first (as we shall discuss later). But either way, what is presumed is that it is the duty on the part of the state to permit forms of association of which it strongly disapproves. As he writes, “A society is free to the extent that is prepared to tolerate in its midst associations which differ or dissent from its standards or practices”. Or again, “A liberal society is marked by respect for the independence of other authorities, and a reluctance to intervene in their affairs” (Kukathas 2003:4).

Kukathas’s thesis could be summarised as follows: “The principle of a free society describes not a hierarchy of superior and subordinate authorities but an archipelago of competing and overlapping jurisdictions” (Ibid.:4-5). So summarised, his position stands in contrast with those of Rawls, who deals with the problem of a free society by providing principles of justice that could eventually be accepted by everyone, Kymlicka, who claims group-differentiated rights for certain communities, and Iris Marion Young (1989), who assures that less advantaged minorities would benefit more from economic inclusion and political empowerment, rather than from legally special recognition.

Kukathas identifies the core of his position as follows: “In a free society only the freedom to associate is fundamental and the need to tolerate the different forms that associations might take.” Kukathas believes in an idea, a liberal formula, if you like, that can be reduced to the following elements: a free society equals freedom of association plus mutual toleration. Nothing else is needed for a free society, according to him. Dismissing Rawls, Kukathas says that the primary question of politics is not about justice (and has never been), but about power: who should wield it and what may be done with it (Ibid.: 120).

How does this question play out in relation to toleration? Kukathas writes: “(When) confronted with the question of whether or not the practices of some cultural communities are acceptable, we establish the limits of tolerance by referring to our basic moral principles and then determining whether or not particular practices are consistent with them. We can subsequently decide if we should intervene in traditional societies or minority groups by providing state subsidies, disincentives or penalties for particular practices” So, when to intervene? Rarely if ever. In his words, “liberal societies should tolerate illiberal groups in their midst for toleration lies at the heart of a good society in a world of diversity” (Ibid.). According to him, the problem with many liberal views—and he is clearly referring to Rawls and even

Kymlicka, among others —is that they all underestimate the importance of toleration or fail to apply its logic consistently. He also thinks that a further problem with some liberal approaches is that they overestimate the value of self-determination, by which they really mean the capacity or perhaps even the duty of individuals to adopt liberal mores and to pursue ends they have chosen for themselves in self-conscious contradistinction to traditional or inherited plans of life.

Deborah Fitzmaurice (1993)⁴⁶ argues, “We should interfere with traditional societies only in order to prevent powerful members directly coercing or harming co-members in order to sustain traditional ways of life” (Ibid.:21). Kukathas replies that, on this view of things, minority practice is to be tolerated only as long as it abides by the fundamental moral principles of the wider liberal society; coercive minority communities will be restructured (so far as it is practicable) to be brought into accord with majority practice (Ibid.:125). The problem is that this approach propagates insufficient toleration to minority communities. What ultimately emerges—he says—is a trumping concern with the perpetuation or reproduction of a liberal social order, but at the risk of intolerance and moral dogmatism. Then he offers what he calls “an alternative view” which makes toleration the very foundation of liberalism. Toleration is most important—he argues—not because it promotes reason but because “it upholds reason since it forswears the use of force in favour of persuasion” (Ibid.) and in doing so rejects the implicit assumption of superiority and concomitant right of the liberal state to impose its preferences on others that he associates with rival positions that are, to his mind, incompatible with the liberal formula.

Kukathas’s stated view is not that groups have or should have rights against the state, but that liberal states, being liberal, ought to permit them to pursue their beliefs and enact their norms as they deem fit within limits that are so broad as to constitute no effective limitation at all on their customary practices and to render the explicit or statutory ascription of group rights to them nugatory or superfluous.

Kukathas, then, defends a tolerationist view of society. Yet, other voices challenge what they regard as his excessive permissiveness. Barry, for example, was a long-standing critic of this position: Kukathas’s view, in his view, *does* give groups rights and too much power over their members, if not by commission then certainly by omission, with the result that groups may harm their members with impunity. The role of the state, for Kukathas, is to police and enforce the duty of mutual toleration among groups but not to intervene directly in their internal

⁴⁶ As cited in Kukathas (2003).

workings to protect their members from a group exercising its power over them (in sometimes extreme ways), be that by reproducing inherited norms through education or indoctrination or requiring forced marriage or female genital mutilation. It looks as if, Barry observes, “Public tolerance is a formula for creating a lot of private hells” (Barry 2001:143).

This observation can be applied in respect of the situation in The New Jerusalem. In this community, the holy authorities maintain that children should not receive formal education because it is evil. Grudgingly, they allowed parents to decide about the future of their children. Some of them (the Naborists) send their children only to the religious school, ruled by the edicts of the Virgin and the holy bishops. Others, the Dissidents, chose to take the risk of sending their children away from the community to receive a formal state education, the consequences of which choice were discussed in chapter 1. The question that then arises here is: Should parents be allowed by the state to stop children from going to school? Barry answers: “If the state should turn a blind eye on private coercion, this will bring about coercive results (...) if it grants immunity to parents to do things to their own children that would be illegal if they did them to any other children, the state is handing power over parents in a particularly brutal and uncontrolled way” (Barry 2001:43).

Kukathas would immediately riposte that there is little to gain in allowing the historically abusive state to get involved in the suppression of parents’ rights. On the contrary, there is a manifest loss of liberty. He then would explain, perhaps, that it is difficult for anyone living within any community to do entirely as they please to another because there always are constraints imposed by society, by the law, and by an array of different authorities besides the state and the leaders of the community. But it is emphatically not the role of the liberal state to tell parents how to raise their children, any more than it should extend special protections to certain groups. The liberal formula rightly permits all groups to do as they will, as long they allow others to do likewise.

According to Kukathas, the proponents of the “Politics of Difference”, such as Young, are therefore wrong and mistaken to imagine that groups need to be empowered against the inundations of liberal individualism. Young says: “The politics of difference promotes a notion of group solidarity against the individualism of liberal humanism”. She goes on: “Liberal individualism treats each person as an individual, ignoring differences of race, sex, religion and ethnicity, maintaining that ‘each person’ should be evaluated only according to her or his individual efforts and achievements” (Young 1990:75). But Kukathas strikes back: Liberalism does not argue for assimilation as she assumes, so her critique is, in the end, unsound: it treats as designed something which is not designed but is, rather, simply a universal and ineradicable

feature of all human interactions under all types of political regime. He goes on to assert that Young's theory, in treating groups on the model of natural kinds, rests on less plausible ontological foundations than those supporting liberalism (which treat them as associations of individuals combining and recombining at will) (Kukathas 2003:155).

Critics—liberals or otherwise—of multicultural claims for group rights regard toleration as a kind of “fall back option”. It is my hypothesis that the particular conception of toleration deployed towards The New Jerusalem also stems from such understandings and provides legitimating cover to both local and federal authorities. They have come to invoke this vague notion of toleration to justify their political ineffectiveness and their refusal to intervene in the city, where the self calling holy authorities claim special rights for themselves whilst attempting to establish a parallel form of government within the walls of their enclosure despite belonging to a liberal state. Yet, as Michael Walzer (2006:50) has asked,

Shall we liberals and democrats recognize the rights of totalizing communities like fundamentalist or ultraorthodox religious groups (The “Haredim” in Israel, Pentecostal sects in the USA)⁴⁷ or like traditionalist ethnic groups (The aboriginal tribes of Canada and New Zealand) to reproduce themselves—that is to do whatever they think necessary to do to pass on their way of life to their children, who are also citizens of a democratic state? And, should the state in any way support the exercise of this right?

Walzer finds such a right to be problematic for three reasons: first, because these groups do not typically recognise the individual rights attributed equally to all their members; second, because these groups tend not to equip their children with the economic skills they need to succeed in life; and third, because these groups are unlikely to teach their children the values of democratic politics (Ib.:87-89).

Walzer, like other liberals as different as Rawls, Moshe Halbertal, Peter Balint and Bernard Williams, believes that the Millian argument of autonomy is problematic. We cannot expect all groups to regard this value as fundamental or even as desirable, as liberals do. “In working out state policy, we do not have to refer to individual autonomy but only to the mutual dependency of democratic citizens (...) liberals have always insisted that autonomous individuals need to be protected against the power of state officials, they are less solicitous of autonomous groups that do not value individualism” (Ibid.:87). For him, these are the central propositions of a social democratic theory of civil society:

⁴⁷ I would add the example of The New Jerusalem community and its walled city in Mexico.

- I. Civil society in the real world is not a collection of voluntary associations; its overall character is not determined by individual comings and goings;
- II. Civil society cannot work as liberals want it to, without the help of the state;
- III. The state must act to regulate (I would add: it must be strong enough to regulate)⁴⁸ the conflicts that arise within civil society, but also to remedy inequalities and;
- IV. When the state intervenes in civil society, it cannot aim to reproduce its liberalism in all associations; it acts sometimes for political freedom, sometimes for associational pluralism, and only sometimes for both together.⁴⁹

The issue that I have been discussing in the preceding paragraphs might suggest that I do not think it is viable to argue for special rights for minorities within a liberal state. That is not what I am trying to argue here. Indeed, I believe it is possible to have non-liberal communities with a certain degree of autonomy within a liberal state. What I contend is that the coexistence of such communities is possible only as long as they do not marginalise nor mistreat their own members. In the context of The New Jerusalem, I would say that the situation is complex enough to require special attention not only to the conceptual content of the terms we use to describe and evaluate that situation, but also to the practical implications of theoretical positions that are advanced with relative ease in academic monographs but experienced very differently when theory meets practice. More pointedly, I would say that there is a staging post between high theory and low politics, where philosophical concepts, ideas, theories, become objects of public contestation and an attempt is made at the level of public or popular opinion to elucidate the ideals, hopes, and aspirations that are being invoked to legitimise different forms of political action and inaction.

In recent years the contemporary discussion between liberals and communitarians has jumped from the pages of academic journals into the Mexican political arena and the popular press, especially (but not exclusively) on the subject of the group rights of indigenous peoples. This ongoing debate in Mexico mirrors, to some extent, the anglophone dispute sketched above and is well encapsulated by the liberal professors José Antonio Aguilar Rivera and Jesús Silva-Herzog Márquez on the one side, and the communitarian philosopher Luis Villoro, on the other. In the next chapter I explore this debate in greater depth, because the challenge posed by The

⁴⁸ What is between brackets is mine.

⁴⁹ Walzer differs from multiculturalists like Kymlicka in focusing on states and the different ways in which they can accommodate internal diversity rather than on groups *per se*, their different types, and the rights they can legitimately claim irrespective of the kind of state in which they are found. See Walzer (1983) and, for discussion of their differences, Kymlicka (2009).

New Jerusalem at once illuminates and help to fertilize the debate over the liberality of the modern Mexican state to which these writes were contributing.

—Chapter 4—
THE DEBATE ON GROUP RIGHTS IN MEXICO

*No one could claim to be civil society's speaker, for society
is naturally plural, and various and diverse.*

— Octavio Paz (*An Open Letter to Sub-Commander
Marcos*)

*“The problem with Nostalgia
is that it tends to conspire against History.”*

—Jean Meyer

This chapter analyses the direction the debate over group rights and individual rights has taken in Mexico, where it has come to focus ever more sharply on the group rights of indigenous peoples. Is it right or not to grant minority groups special rights? The dispute is well-encapsulated in the intense debate between Mexican liberals such as Aguilar Rivera and Silva Herzog, and the philosopher Luis Villoro on the side of the multiculturalists. The chapter is complemented by hastening through some of the more outstanding and recent authors that have continued that debate to unveil the state of affairs the discussion holds in Mexico. How it relates (or not) to the problem posed by The New Jerusalem community and how it belongs to the critique I make to contemporary models of toleration will become more evident in the fifth chapter.

On 1 January 1994, the Zapatista rebellion broke out in the high mountain rainforests of southern Mexico. What has been called by the press “the indigenous revolution” was meant to put an end to centuries of economic and political oppression, under the leadership of Sub-Commander Marcos, the nom-de-guerre used by Rafael Sebastián Guillén, a middle-class lecturer of graphic arts (Obregón, 1997). The rebellion, in time, became more of a moral challenge to the neoliberal values that successive technocratic Mexican governments had espoused, rather than a violent, weaponised movement. In the years that followed the rebellion, an intellectual and political debate on the issue of indigenous rights took place in Mexico. It was, perhaps, the last great Latin American ideological debate of the 20th century. The participants were the new school of liberals, mostly educated in American universities, and some older, august philosophers who sympathised both with the indigenous movement and with the claims of multiculturalism. The paroxysm of that dispute took place in 2001, when the congress discussed a constitutional reform to accommodate some of the demands of the proponents of indigenous rights.

Three years previously, in July 1998, the well-known Mexican-Spaniard philosopher Luis Villoro, a sympathiser for the Zapatista cause, published two essays in the left-wing newspaper *La Jornada* on the indigenous question. The texts were the subject of a controversy in the magazine *Este País* between Villoro and a liberal junior professor, José Antonio Aguilar Rivera. Three years later, whilst the debate in the Federal Congress on the indigenous law was still ongoing, a second controversy broke out between Villoro and Jesús Silva-Herzog Márquez, another liberal academic and scion of a venerable liberal family. The quarrel moved beyond personal disagreement into the public consciousness because it was played out on the pages of the newspaper *Reforma*.

Since the debates with which I am concerned are so neatly encapsulated in this public dispute, it provides the point of entry through which I shall review and criticise some of the arguments deployed in the Mexican iteration of the liberal versus multicultural contest. The dispute provides background context to the discussion of special rights in the national milieu and enables me to explore the relationship between the Mexican debate on indigenous rights and the broader discussion on toleration. Among the questions which the dispute brought into focus before the public were: is it wise, fair and effective to accommodate group-differentiated rights within a liberal state to obtain a more egalitarian, peaceful and just society? What are the associated costs and benefits? According to the contemporary national debate, what is the role that group rights play versus individual rights in Mexico?

The Future of Indigenous Peoples According to Luis Villoro

Villoro (1998b) contended that recent decades had witnessed a new presence, a revival of indigenous peoples' discourses in the wider public consciousness. Mexican society was thinking about the future, and this future, he argued, was bound up with the fate of all the communities that composed that society, or, to put it in politico-legal terms, the nation state. It is important to put matters in these terms, Villoro suggests, because the history of Mexico as an independent nation can be regarded best in the light of a contrast between two rival conceptions of the nation state.

The first conception, he says, is the one that has triumphed. Following the ideas of *Jus naturalism*, this first conception holds that the new nation that emerged out of the Mexican Revolution of 1910-20 was born of a social contract between equal individuals. The assembly of representatives constituted the new nation, but it was—and it is—only a projected nation, a legal fiction, because the real nation is made of a diversity of peoples, cultures, regions and

groups (Villoro, 1988b). Confronted by the heterogeneity of the real nation, a group of creoles and mestizos⁵⁰, most of them lawyers, imposed their own idea of the nation, which they represented as a contract among all. But the indigenous peoples were never consulted and had never actually entered into this “Social Contract”. They were forced to accept its terms because, poor and disempowered, they lacked the means to resist and had no alternative but to submit.

Its proponents sought to legitimise the new Mexican nation by presenting it as a unity between the state (a system of political power) and the nation (a unity of culture and peoples). The newly-formed Mexican state corresponded, in this picture, to a homogenous nation: there was a single legal order, a single language, a common education, a common national culture: in sum, a single collective project. Only diversities that do not break this unit were admitted and, Villoro argues, this vision has gripped the imagination and driven the practice of Mexican governments ever since. This is the state as Bluntschli depicted it at the end of the 19th century: a state in which unity of language is thought to be in the interest of the nation, is taught in school to the children of “still uninformed” peoples, whose customs may be allowed to continue only so long as they do not “offend against the rights of the State”, who are owed no special recognition or protection from the state, which must include the whole population in its laws and “transform or abolish” the rights claimed by particular peoples (Bluntschli 2000:85-86). The subjects of this nation-state are to be seen as equal citizens, regardless of the cultural and social characteristics that differentiate them from one another. “There are no longer Indians, nor Spaniards nor castes, they are all American citizens: so proclaimed the first Mexican deputies” (Villoro, 1998b).

This idea of a homogeneous nation-state made up of equal citizens continues to exert a powerful influence on the political imagination of modern Mexico. It idealises a liberal state in which all identities besides that of citizens are deemed to be irrelevant. Those who actually belong to heterogeneous communities—Villoro implied—are not part of the liberal state at all. After the Mexican Revolution, he repeated, this notion came to dominate elite thinking, with increasingly negative effects for the indigenous peoples. These effects were explained at length by the “founding father” of *Indigenismo*, Manuel M. Gamio (see Gamio 1942, 1916; León-Portilla 1962).

⁵⁰ In colonial times, a new social mosaic emerged in Mexico, known as the Colonial Caste System: At the top of the social status there were the Spaniards, the most privileged social group, followed by the Creoles, who were the sons of Spaniards but born in Mexico; below them there were the Mestizos (the sons of a Spaniard and a Mexican native) and, at the basis of this imaginary social pyramid, the indigenous peoples, with no influence at all in any important decision concerning the public realm. For a detailed explanation and a thorough analysis of the Colonial Caste System in Mexico see Florescano (2014).

Writing in the turbulent years of revolution and its aftermath, Gamio described a divided Mexico. According to him, the elite that founded Mexico as a modern republic wished to enforce unity in the creation of a single homeland. This one homeland for all has to be “forged” (*Forging a Nation* is the title of his most important work)⁵¹, a metaphor that carries a great deal of weight: inherited identities need to be melted down and mixed together to create a new alloy strong enough to sustain the new nation in existence. *Indigenismo*⁵² was a social and political movement that tried to redeem the indigenous populations by elevating their ways of life. However, indigenists interpreted that “redemption” as the aboriginal people’s integration into the dominant national culture (a culture that regarded creole and mestizo as equals), with the consequence that the various differences between them, differences that made them who they were, were gradually abandoned (Gamio 1916:22-30). Gamio wrote: “The challenge of the revolutionaries of Mexico is to take up the hammer and tie on the apron of the forger” (Gamio 1916:24), to perform “the task of forging ‘the steel of the Latin race’ with the crude ‘indigenous bronze’” (Kieron 2014:3).⁵³

This conception of a homogeneous nation-state was never uncontested. It was challenged, Villoro says, by the rival idea of a nation (and by extension of the nation-state) that always had its exponents. Villoro speaks of a vision that is to be felt and incarnated, rather than thought: a populist, holistic vision, typical to communities linked to the land, especially among those inhabiting marginalised villages in the countryside. While the Creole lawyers projected assemblies to constitute the nation, very much on the model of the American framers and the French revolutionary deputies, the people that followed the Liberty Fathers, Hidalgo and Morelos⁵⁴, for instance, fought for concrete objectives: the reduction of the oppression of the state, the right to the usufruct of the land, the freedom of the communities to which they belonged. They gave very little thought to the establishment of a republic and they were not concerned with the congresses where lawyers were debating the conditions of a homogeneous nation-state. They defended their communities because those communities nourished and defined the lives of the people who lived there. The principal concern of the promulgators and

⁵¹ Also translated as *Forging a Fatherland* or *Forging a Homeland*. “Forjando Patria” (Spanish original title) was first published in 1916.

⁵² In *Manuel Gamio y el Indigenismo Oficial en México* Brading and Uriquidi (1989) explored how Gamio successfully vindicated the art, the architecture and even social and political practices that the Aztecs and other ancient natives of Mexico had before the European conquer.

⁵³ H. Kieron (2014) points out the similarities and differences between two of the main Mexican post-revolutionary thinkers. For a detailed interpretation and confrontation of their writings see *The Indigenismo of Manuel Gamio and José Vasconcelos in Revolutionary Mexico 1916-1948*, and Brading and Uriquidi (1989).

⁵⁴ Founding fathers of the Mexican Republic.

partisans of this popular vision was the land and, accordingly, their demands were for local autonomy, not directly for a particular model of the state or national government. Nevertheless, such a model was present implicitly in “the local demands”, as have been called by Arnaldo Córdova (1973), that characterised the movement.

This model saw the state as composed of parts of different peoples, each with their own spirit, language, character and customs, which ought not to be suppressed or abolished by the state. In place of centralised power, it envisaged the harmonious interplay of different community structures: for the indigenous and Mestizo peoples in the south and for the military agrarian colonies in the north. The fundamental values which the institutions of the state were intended to institutionalise were not individual freedom or formal equality before the law, but justice and fraternal collaboration. This was a different idea of the state to match a different idea of the nation: imagined rather than legal-rationally constructed but poles apart from the homogeneously unified state of the liberal tradition⁵⁵.

The concept of the nation-state, Villoro concludes, is currently in crisis, the strains between these two rival conceptions no longer capable of being contained by threat or coercion. It is only now that we glimpse the possibility of uniting the two ideas of nation that have shadowed our history. Villoro is ambitious: “The revival of indigenous peoples and their demands invites us to think of a new nation project” (Villoro, 1998b).

The recognition of the multiplicity of peoples and cultures that constitute the country, if genuine, implies a new design of the national state: a shift from the homogenous state to a plural state. A plural state would recognise, along with the right to equality, the right to be different because equality—a matter of justice—does not consist in uniformity but rather in equity, that is, in respect and equal treatment for all differences. The plural state is not the result of an agreement between individuals that are considered, from the standpoint of the legal fiction in view, to be interchangeable, but between situated people, with their own identities, belonging to different cultures. In a plural state, no attempt is made, explicitly or implicitly, to standardise minorities: individuals and groups that support different values and have different ideas of the nation cooperate with each other, accepting their diversities. According to Villoro, the plural state does not identify with, or seek to produce, a single culture. “Forging the homeland” does not mean integrating all the peoples in the same way of life and in the same conception of the world. Forging the homeland means building a space for dialogue and collaboration between

⁵⁵ These two conceptions of the state complement, but are not logically implied by, the two great modern political projects—individual assimilation and group recognition—identified by Walzer, discussed in chapter 3, above.

peoples with different cultural identities. Only then, the "social contract" that constitutes the nation ceases to be the result of the imposition of only one part of the society to become an ongoing negotiated agreement between all parts involved. The plural state does not eliminate unity, but grounds it in the cooperation and solidarity between collectives that uphold their differences. To adopt a phrase of the Zapatista Army of National Liberation (EZLN), collected by the *National Indigenous Congress*, we could summarise his view thusly: The Nation is "a world where many worlds fit"⁵⁶ (I Congreso Nacional Indígena, 1996).

In the plural state, Villoro (1998c) insists, "autonomy" is a fundamental value. By autonomy is meant the faculty of a subject—whether an individual or a collective—to choose and pursue freely, without external hindrance, its own goals in life. The recognition of the autonomy of a social group implies a right to develop its own identity and to explore its differences. It does not necessarily involve separation from others. Rather, it invites the cooperation of each autonomous subject with other subjects to constitute a superior whole, always in equal respect for the freedom of each one. When the indigenous communities demand autonomy, they propose that the collaboration among all the peoples that constitute the nation be carried out with respect to the freedom of each to follow their own values in accordance with their culture. Yet, autonomy is not only a claim of the indigenous peoples but the sign of democratic participation of all the groups that constitute the nation's society, for in a plural state, all have the right to sustain their differences. (Villoro, 1988c).

This vision was endorsed by the EZLN when it proclaimed that its claim of autonomy for the indigenous communities "can equally apply to the peoples, to the unions, to the social groups, to the peasant groups, to the governments of the states, which are nominally free and sovereign within the Federation" (I Congreso Nacional Indígena, 1996). In other words, the struggle for autonomy is part of the struggle for freedom of decision in the matters and issues that concern all social groups. Villoro's demand is that everyone should have the same right to self-govern within a framework of mutual cooperation. The fight of the indigenous peoples for recognition can be seen as a part of that broader struggle: the fight for political autonomy. The struggle is, so to speak, chain-connected all down the line: the autonomy claimed by the indigenous peoples is linked to local areas where they actually live: communities, municipalities. The communities want to govern themselves in matters that concern them. The movement of the autonomous municipalities is linked to the popular and localised idea of Nation that supporters of the indigenous movement embrace. It is also an expression of the

⁵⁶ As cited in Villoro (1998b).

traditional democracy of many indigenous communities that provides a template for a reconceived, modern democratic Mexico.

Villoro argues that despite the external influences that pervert it, despite the caciques and the chiefdoms that often distort it, “most indigenous communities keep an ideal of direct participation of their members in common decisions”. Such decisions are usually taken in assemblies, moderated by a “council of elders” (in effect a Senate) where the appointed officials respond directly to the community (Villoro, 1998c). They must follow the community’s guidelines and their mandate can be revoked at any time by the community. The way indigenous communities rule themselves, according to Villoro, is an estimable form of direct democracy that lights a path towards a more participative and fairer society.

The new nation he sees in prospect, which will supersede the homogenous Mexican state, thus involves the establishment of a participatory democracy that corrects for the limitations of representative democracy. It is not a matter of abolishing the existing institutions of Mexican democracy, such as parties and electoral procedures, but about supplementing them with forms of direct democracy that may be analogous to those embodied, albeit sometimes imperfectly, in the decision procedures of indigenous peoples. The idea, he continues, is to establish ways of direct participation of citizens in those decisions that directly concern them, so that every citizen experiences the possibility of exercising control over their own lives and over their rulers. Here as well, Villoro (1998c) urges, the traditional rule of indigenous governments can serve as a motto: “those in power must command by obeying”. A third strand in the transformation of our national project, he goes on to say, “is also linked to the growing presence of indigenous peoples”, but this strand concerns not institutional but rather moral change.

What is needed, Villoro argues, is moral renewal. “The selfishness of particular interests, the lack of human solidarity, the generalized violence and the oblivion of a common good are tendencies that corrupt everything” (Ibid.). The main problem, he asserts, is that our society is based on individualism: each individual and each group is encouraged to pursue its own interest, governed by a cost-benefit calculation: each seeks to obtain the maximum benefits for themselves at the lowest possible cost. The indigenous communities, after five centuries, have lost many of their old institutions and collective norms, but retain an appreciation for certain communitarian virtues which are alien to the possessive individualism of modern western societies. The indigenous ideal of community contrasts with the isolation of the modern citizen who is almost entirely absorbed in his or her own interests alone. The indigenous alternative may contribute to a restoration of virtues that were lost as individualism gained ground. Inside a community, for instance, each one has the superior value of service to others, the dedication

to the whole to which each of us belong, without always seeking personal reward or benefit. The values prized are those we have almost forgotten: the gift of oneself, fraternity, solidarity, selflessness. It is clear that such virtues are neither ubiquitous nor fully developed in every indigenous community, “but they are present in the civilizing pattern of indigenous cultures”. (Villoro, *Ibid.*).

Villoro was not alone in pushing this line of thought. Lenkersdorf (1996) examined the ideas of community that prevailed in the *Tojolabal* ethnic group in southeast Mexico. Some of the poorest peoples of Mexico, he urged, “those who still have an ancient wisdom of life can contribute in our country to its moral renewal.” (Lenkersdorf 1996:87). Villoro made the same point: “it is not, of course, about returning to pre-modern forms of life but, once again, about achieving a synthesis for a new form of collective ethics”. (Villoro, 1998c). He proposed a conjunction between the modern conception of individual rights, based on the dignity of the person, and the ancient values of the community, based on the full realisation of each individual through his or her dedication to the whole community to whom her or she owes her formation and identity. Once again, he says, a maxim of the EZLN captures in a few words the moral renewal our nation requires: “For all, everything; for us, nothing.”⁵⁷

Three lines of action summarise the rallying cry to which Villoro gave voice: first, a transition from the homogenous current state to a plural state, respectful of all differences; second, a transition from the centralised government to a participative democracy, based on the autonomies of all social groups. Third, a shift from an individualist association to a true community. His suggestions provoked a furious reaction from the younger generations of Mexican liberals.

The Re-Founding of Mexico According to Aguilar Rivera

The liberal response came first of all in the form of an article signed by Aguilar Rivera, part of a new generation of liberals.⁵⁸ The response was not overwhelmingly positive.

Aguilar began with the observation that the ideological bases on which the country had rested for decades had been eroded. What once were certainties, were now everywhere in question. With the coming of the 21st century, the social imaginary that had once dominated

⁵⁷ As cited in Villoro (1998c).

⁵⁸ This generation of young liberals is also known in Mexico as “The Chicago Boys”, for many economists and social scientists who acquired great influence in the country since the eighties obtained their PhDs in the University of Chicago.

the minds of Mexicans was all but extinguished: that of the uniform Mestizo nation. Today, there was widespread agreement that the political system of modern Mexico must be plural. But what exactly did it mean to be plural? The re-founding of the country was an ongoing process, capable of resolution in countless ways. Villoro, Rivera wrote, pointed out with singular acuity the axes of a dispute that involves, simultaneously, a reinterpretation of the past, a political proposal for the present and the construction of a new imaginary for the future. His ideas articulate coherently an important line of thought in *fin-de-siècle* Mexico. For Rivera, they also demonstrate that Mexico is in the throes of a deep ideological crisis. Villoro had identified three pending transformations: of the homogenous nation-state into a plural state; of representative democracy into participatory democracy; of an individualistic moral culture into a more solidary and communitarian ethos. Rivera acknowledged that these proposals represented the feeling and thinking of an important intellectual stratum in Mexico and proceeded to analyse and discuss them at length.

Aguilar considers that the first argumentative line of Villoro is revisionist. Villoro's assertion that the indigenous peoples have not been consulted, that they have not entered into the "social contract" (Villoro, 1998b) that nominally binds the nation together is dangerous. It implies that there are not legitimate bonds of obedience tying indigenous minorities to the norms and government of the country to which they belong.

Aguilar Rivera pauses to notice the ideological character of the argument. "[Villoro's] is not a line of reasoning that is either progressive or enlightened" (Aguilar 1998:16). It echoes the conservative reaction against the school of natural rights in the 17th and 18th centuries, the supporters of the absolute monarchy and the divine right who argued against the theories of Hobbes, Locke, and Rousseau that the supposed agreement between men to leave the state of nature was pure invention: it never existed" (Aguilar 1998:17)⁵⁹. According to these reactionaries (from Filmer to Charles Leslie to Hume, who attacked the Lockean version, to De Maistre at the extreme who eviscerated Rousseau) with whom Villoro was silently aligning himself, the social contract was nothing an absurdity that could not justify nor be the foundation of any argument: it was ahistorical and unreal. Aguilar identifies an identical argument being deployed by Villoro to delegitimise the authority of the Mexican state. The natural law theorists and their successors held that legitimate authority could only derive from a voluntary contract between equal individuals. Villoro, by using the old trick of denying the existence of this

⁵⁹ All the arguments here summarised and presented come from an article by Antonio Aguilar Rivera published in the Journal *Este País* in October 1998 under the title, "La Refundación de México" ("The Re-Founding of Mexico"). The translation of the quotes into English is mine.

agreement, is playing the same role as the monarchists who wished to fight back against liberal arguments demanding more freedom and equality in the name of traditional hierarchies.

Aguilar sides with those who, like Kant, read the social contract as an idea of reason, not a historical event (see Williams 2007 for a comparison between Rousseau and Kant on this point). The idea of the social contract served for them as a critical standard for judging existing political arrangements. It was by using the idea of the social contract that they dared question the despotic power of kings, to challenge their acting “by the grace of God”. So, Aguilar states: “It is true, the indigenous peoples were not asked if they wanted to be part of the social contract, but who *was* asked for it?” (Ibid.). Villoro was committing the fallacy of *ignoratio elenchi*, basing his argument on an irrelevant consideration.

This point leads on to a second. According to the theories of the founding fathers of Mexico (those who Villoro refers to as “the Creole and Mestizo lawyers”), the nation was founded on popular sovereignty, that is to say, on the consent of all its members. This idea attributed rights to the members of the political community as a whole and used them to limit the power of the state. Theoretically, this applied to all equally: Indians and Europeans, although the original settlers had not signed any paper which explicitly guaranteed those rights and limits. Does Villoro want to question these postulates? On what legitimate foundations, other than popular sovereignty and respect for the natural rights of individuals, could the nation and political authority have been founded? Aguilar wonders if Villoro and the other communitarians want to find legitimacy in the customs and practices of the peoples and groups that made up the pre-Hispanic world, including slavery and inequality between peoples. As Aguilar observes: “The theories ‘imposed’ by the Europeans provided—and still continue to provide—an arsenal of ideological resources to claim rights and denounce injustices”. For instance, he argues, in 1849 the indigenous authorities of Juchitán, Oaxaca, demanded before the national government their right to take advantage of the salt reservoirs of Tehuantepec, appealing precisely to those rights.⁶⁰ On numerous occasions the indigenous communities have invoked the civil pact and their rightful access to sovereignty to insist that their rights be respected. It is historically inaccurate, as well as dangerous, to argue that the natives reject the ideological vocabulary of the “Creole” nation entirely. This vocabulary, and the theory on which it was founded, supplied them with political weapons to defend themselves against their oppressors. In other words, the theories and ideals of the Enlightenment had—and still have—an emancipatory component that did not go unexploited in Mexico or elsewhere.

⁶⁰ Example quoted by Aguilar Rivera (Op. cit.).

Aguilar goes on to argue that in Villoro's interpretation of Mexican history, and in his idealisation of the indigenous community in particular, there is a high degree of romanticism. Aguilar suggests that Villoro typifies a certain kind of intellectual, found across the political spectrum, whose animus to neo-liberalism leads them to praise with exaggeration whatever is different and unique and to deplore the universal as an attack on the particular; they vituperate metaphysics and cosmopolitan theories that transcend the immediate discourse of circumstances. Aguilar quotes Russell Jacoby, "both the left and the right relive dubious notions of localism and nativism" (Jacoby 1995:180)⁶¹. Those who celebrate difference and discredit universal values are incapable of thinking beyond the limited possibilities that history offers. In the best case, they appreciate only the unique or the non-western and, at worst, they idealise highly questionable practices. Villoro's narrative is Manichean: solidarity only exists in rural communities, while Mestizo and urban Mexico is uniformly selfish. For communitarians like Villoro, the only real communities are found among the indigenous peoples; the fraternal bonds are the exclusive patrimony of that deep, nostalgic, forgotten Mexico. Villoro yearns for a lost simplicity that is probably illusory. He idealises a bucolic past, that of the pre-Hispanic indigenous world, and longs for its restoration.

Villoro, Aguilar continues, takes the strong multiculturalist line that community is intrinsically good. He hopes that once people have overcome their individual (*sc.* selfish) interest, they will behave admirably and civilly. However, the solidarity exhibited by a community can either be good or bad, depending on the substantive character of the ties that bind the members of a group together. Aguilar states that cruelty is not only the daughter of selfishness: it often manifests as an effect of exactly the kind of group solidarity Villoro is commending. For example, he reflects that we may find solidarity among the members of racist sects, groups dedicated to ethnic cleansing and especially between fundamentalist fanatics. It suits Villoro's purposes to represent individualism as necessarily antisocial, but the truth is that individualism can involve an authentic concern for others, not so much as members of a group, but as persons. Contrariwise, as Aguilar states, "sometimes the greatest threat to social cohesion does not come from individualism but from collective passions, ideological conflicts and inherited rivalries" (Aguilar 1998:21).

In his scepticism about the universal values, and his effort to imbue historical particularity with a special significance, Villoro—Aguilar complains—has, along with other intellectuals of the left, wittingly or not, joined a great current of conservative thought that

⁶¹ As quoted in Aguilar Rivera (Op. cit.).

harks back to the traditionalism of Burke, German romanticism and their epigones. All of them repudiate the uniform and abstract thought systems they associate with the Enlightenment and advocate particularism in history. The “authentic democracy” that Villoro proposes, although it is rarely said explicitly, is to re-found the nation in such a way that the state becomes the product of a pact between peoples or groups and not between individuals. This is not a minor proposal, since it involves a retrogression to the medieval vision of the nation as the product of an association between kingdoms, such as Castile, Aragon, and so on, that the modern state came into existence to replace; and did so to the advantage of justice and progress.

The modern notion of democracy made possible by the creation of the modern state presupposes a series of theoretical concepts linked to the evolution of western political thought. The idea of “rights” itself is a product of the legal culture of liberalism, claims Aguilar. Rights imply not only immunities or liberties, but the idea that those immunities and liberties are not merely concessions from power. They constitute someone’s property and are imprescriptible. This idea of “subjective right”, that is, the idea that rights are inherent in every subject by reason of their very humanity, Aguilar explains, played a powerful role in medieval European societies and it was the basis for the reworking of natural law during the 17th century.

For natural-law theorists, from Pufendorf to Rousseau, the origins of human society could and should be explained without immediate reference to God. The fundamental law would no longer be the natural law of scholasticism, but rather the natural rights that individuals enjoyed in a pre-political state. Hence, at the origin of society there is a “contract” by which individuals consent to leave the state of nature and constitute the civil state. This idea has been the backbone of democratic theory for at least 300 years.⁶² The notion of subjective right defines, on the one hand, certain legal powers while on the other it offers a “master image” of a philosophy of human nature, of individuals and their societies, where rights operate as legally enforceable powers and as an underlying justification for political rules.⁶³

Henceforth, the modern discourse of rights involves, on the one hand, a set of legal claims by means of which certain immunities and liberties are registered as rights, with provisions for their possible alienation and for their assurance and, on the other, a philosophy of the person and the society that attaches special importance to the individual. The legitimacy of the government depends on individual consent because it is only *via* consent that the authority

⁶² For the same reason, it has attracted critics, who suggest that western culture has been selfish and atomistic from the first and that its individualism is an acid that dissolves other, more traditional forms of life (compare Taylor 1996; Paz 1990; Tocqueville 1840).

⁶³ For accounts of this line of thought, see Brett 1997; Tuck 1979.

individuals enjoy over their own persons by nature, in virtue of their subjective rights, can be passed or lent to the government. According to liberals, the origin of democratic political authority is, therefore, individual and not collective. Here we can already observe sources of tension between the process of the full establishment of democracy in Mexico and the reconstitution of the historical relationship between the state and the indigenous peoples. One aspect of this tension has to do with the definition of the indigenous community as a legal subject. This is plain enough: in the liberal democratic tradition, it is individuals and not collectives that have rights. To invoke the rights of a collective is a *façon de parler* that obscures the fact that only individuals essentially have rights. There is, and necessarily, a gap between the origin of subjective rights in the individual human personality and their possible extension to collective subjects. Is it desirable, Aguilar asks, to give up a vision that puts the human person at the centre of our concerns?

Villoro, he continues, tries to have his cake and eat it too. He casually extrapolates moral characteristics of the individual to human collectives. For example, he states, as we have seen, that “in the plural state a fundamental concept is that of ‘autonomy’. Autonomy is the faculty of a subject—individual or collective—to choose and perform freely, without impositions, its own plan of life” (Villoro, 1998b). Villoro deduces, invalidly, that autonomy is not only a claim of the indigenous peoples but a sign of the democratic participation of all the groups that constitute a free society. Even more problematical is the conclusion that Villoro arrives at by the end of his reasoning: “for in a plural state, everyone has the right to sustain their differences [...] the struggle for autonomy is part of the struggle for freedom of decision in the issues that concern them, the issues of all social groups. Everyone has the same right to self-govern”. But Villoro’s conclusion is false. It cannot be inferred or deduced legitimately from his conception of autonomy. Aguilar sets out to explain why this is so.

“Autonomy, it is true— Aguilar writes—is one of the most important characteristics of individuals. By conferring on the groups (people’s associations) a moral attribute that only belongs to men and women, a series of sophisms takes place. The collectives do not have social purposes different from those of their members; they do not have a dignity independent of that of the individuals that compose them” (Aguilar Op. cit.:23). This is not an idle theoretical disquisition. By considering the person as a “categorical imperative” (according to Kant) we can set limits to the power of the group over it. Human groups can be self-governed, but not in any way they happen to find appealing. Groups that self-determine “autonomously” must respect certain fundamental individual rights. The ontological priority of the individual over the group indicates, in the same way, how we should act in cases of conflict between collective

demands and the rights of the person. The “dignity” of the group cannot supply a pretext for denying or threatening the dignity of individuals. People are neither means nor ways to achieve any collective purpose, but ends in themselves.

Aguilar and other liberals, like Silva-Herzog (2001), argues that the theoretical construction of Villoro confuses and relativises the categorical imperative and opens the door to possible abuses. Not all forms of self-determination are equally valid. A permanently binding agreement, however autonomously it has been conceived, is never legitimate: we cannot sell ourselves into slavery, so to speak. In the same way, groups that as part of their “values” and “their culture” oppress others or deny individual rights (for example, women’s rights) are not morally permissible.

According to Villoro, as I have explained above, “most indigenous communities keep an ideal of the community, they must follow its guidelines and their mandate can be revoked at any time. It is a form of ‘direct democracy’” (Villoro, 1998b). Aguilar reminds Villoro that, according to Aristotle, the most democratic form of selection of magistrates in Athens was sortition; the random lottery. Yet in many indigenous communities, when federal elections are held, the use of sortition to select the polling stations and the poll officials causes conflicts. Some communities are opposed to this mechanism, democratic by nature, because the people selected to be officials were not appointed by the council of elders or by the assembly. According to Villoro, the direct democracy practised by indigenous peoples indicates a possible way forward, reforming “the homogenous state” and improving the quality of its democracy. Aguilar was sceptical, and he suggested that Villoro’s commitment to “democracy” was not all it seemed.

Villoro had written elsewhere that representative democracy did not advance the power of the people; it was, on the contrary, an evil, if perhaps a necessary one. For him, representative democracy is always on the verge of falling into a distortion: the rule of the people is replaced by rule by a small group that makes decisions “in its name”: political bureaucracy, technocrats and legislators. Although direct democracy is not entirely realisable, Villoro admits, there is likewise “a limit to which representative democracy can approach to be authentic and not supplant the power of the people” (Villoro, 1998b). The question, for Aguilar, was: what are the limits in question? On this question, he suggested, Villoro’s position displayed obvious affinities with many conservative political traditions. But, more worryingly, the reformulation of democracy proposed by Villoro also verged on positions outlined in the thought of the Nazi jurist, Carl Schmitt.

In recent decades, some sections of the left have claimed Schmitt as a critic of representative democracy (e.g. Mouffe 1993). In *The Crisis of Parliamentary Democracy 1923-1926*, Schmitt (1923) argued that the emergence of mass parties, the rise of organised interest groups, and the presence of manipulative plutocrats had rendered the liberal conception of representation inoperative⁶⁴. All the important political decisions were taken by powerful interest groups, behind the backs of the people, “the organization of democracy, as it has been established today in the bourgeois liberal states, is precisely aimed at ignoring the people assembled as such” (Schmitt, 1985).⁶⁵ Villoro affirms that real democracy consists in the exercise of power from below. He argues that decisions should be taken by the people most directly affected by them. People belong to multiple associations, “To the extent that these associations work with autonomy—Villoro reasons—we will approach a real democracy”. These conclusions are not the same as Schmitt’s, but in the antipathy to representative democracy to which they give expression, Aguilar senses Schmitt’s dark influence.

Villoro’s positive claim, that the associations that give meaning to and govern people’s lives are to be identified with the traditional communities to which they belong, is decisive in lending plausibility to his further claim that the recognition of the autonomy of indigenous peoples is a step towards democracy. Aguilar objects that the positive claims rely for their plausibility on the polemical simplifications of the negative view of representative democracy that colours them. But modern democracy involves many elements besides majority government, which cannot be replaced and would not be rendered superfluous by the decentralisation of decision-making to autonomous self-governing peoples. Liberal democracy also includes the right of citizens to criticise government policies and the possibility that defeated minorities may protest freely. A democracy is not worthy of the name if it does not satisfy these requirements. In the same way, the idealisation of direct or plebiscitary democracy obscures the rationality and normative desirability of representative democracy: “Only indirect democracy ensures deliberation, necessary for rational decision-making. The ideal of representative government is that parliament is a forum for reasoned and free debate among deputies aimed to achieve a better understanding of what they want collectively. A vigorous parliamentary debate encourages public learning and can eventually lead to measured and rational consensus on public policy”.⁶⁶ It is deliberation that allows deputies and their

⁶⁴ Schmitt (1923) in light of Aguilar (1998).

⁶⁵ Quoted in Aguilar (1998:23).

⁶⁶ (Aguilar, *Ibid*). These were points that defenders of parliamentary democracy made against Schmitt in the 1920s and 1930s. (See Stanton 2016, for discussion).

representatives—through the press—to review their beliefs and adjust them for the sake of the general interest. In addition, it provides insurance for citizens against hasty and imprudent decisions. Representative democracy allows citizens not only to feel emotions but to meditate reasons. When Villoro says that “It is not a question of abolishing the existing institutions of democracy, parties and electoral procedures, but of complementing them”,⁶⁷ Aguilar is suspicious. Isn’t that what every enemy of parliamentary institutions starts out saying?

The slogan of the EZLN, which according to Villoro epitomises the very soul of communitarianism, for Aguilar is enticing precisely because it is empty: “For all everything, for us nothing.” We can fill in the content as we choose. In an ideal world, as in the world of our imagination, we can win everything without losing anything. In the real world, however, we really must lose some things to win others. The synthesis proposed by Villoro is rhetorically attractive, but what does it mean in practice? Liberals like Aguilar worry that nothing is said about the political institutions that will structure and enforce the multiple decisions of the “plural state” Villoro is advancing. All political arrangements involve the use of coercive force. What arrangements characterise this plural state? At a minimum, Aguilar (1998:24) writes,

Villoro should be much more specific about those conditions under which, in his ideal order, sanctions would be applied. What, exactly, would imply a commitment to the maintenance of collective solidarities? What would be the authority of majorities over dissident minorities? Should Protestant Indians leave their communities, now expelled by the secular arm of the state? What happens if those who “command by obeying” persecute those who think differently? And if the answer to these questions is negative then, what is the difference between the order that is proposed and the current one? The inconsistency is not only apparent. Nowhere is it written that the Mexican nation is mestizo, or Creole or Indian. The Constitution says, yes, that it has ‘a multicultural composition originally sustained in its indigenous peoples.’ The issue is already quite baroque and confusing the way it is.

Aguilar suggests that the simplest and safest way of resolving the confusion would be to affirm that Mexico is a culturally plural country. The “homogenous state” against which Villoro is railing has no real existence. Villoro’s proposal suffers from several of the recurrent pathologies exhibited by the cultural critics of liberalism: “it enthrones an idealised and ahistorical model of the indigenous community, it uses a biased and generic category of “the social”, it dubiously uses the distinction between selfishness and indifference, and ... is

⁶⁷Villoro (1998c).

ambivalent and unforthcoming about what the alternative option actually is, about the form of the plural state” (Aguilar, Ibid.).

Aguilar agrees with Villoro that the re-foundation of Mexico is a symbolic, ideological and institutional task. While it is tempting to likewise agree with him that reforms should target different races, creeds and languages, the truth is, Aguilar concludes, that any institutional reforms should aim to guarantee to all people those rights that until now have only been declarative. The poverty of the indigenous peoples and their political marginalisation do indeed affront the principles of equality and justice, as Villoro correctly deplores. Yet, the objective should be to guarantee equal opportunities for everyone, so that individuals do not suffer persistent social disadvantages by being born in a certain group, are guaranteed effective access to justice, which is what gives substance to legal equality; and enjoy the freedom to associate as they choose, to conduct their community affairs, define their cultural identities and undertake the tasks that they deem valuable, all of these as long as they respect the rights of others.

The Communitarian Response

Villoro’s response was not slow in coming (Villoro, 1998d). The ideological debate that ensued still rages on,⁶⁸ not only in Mexico but also in the rest of Latin America,⁶⁹ where the tension between multiculturalism and liberalism is explored as much on the pages of newspapers and in parliaments as in academic books and journals.

Villoro’s first move was concessive. He agreed that “The Social Contract” was a theoretical construction and not a historical event. Therefore, it would not make sense to reject it because some sector of the society (the indigenous peoples, in this case) had not actively been consulted. Yet even if it is a legitimising fiction, a metaphor, it is not an idea that can be applied plausibly to every political association, only to associations that bears some resemblance to the fiction by embodying at some level an idea of equality between the “contracting parties”. The question is, whether this resemblance is present or not (Villoro 1998d:16):

⁶⁸ When asserting social and collective rights in Mexico, it is worth mentioning authors like Gilly (1997), Montemayor (1997), Stavenhagen (2012) and catholic priest Mauricio Beuchot (2005), vindicating collective rights for the indigenous communities. For a rational refutation of multicultural and communitarian thesis see *Popular Movements in Autocracies: Religion, Repression and Indigenous Collective Action in Mexico* (Trejo, 2012).

⁶⁹ The Latin American debate on social rights versus individual rights takes place in contemporary authors like Agudelo (2003), Trejo (2012) and Recondo (2001), among others.

When I write that “the indigenous peoples were not consulted” I only use the same metaphorical language. I mean that the state constitution responded to the project of a westernized creole-mestizo group, which excluded the indigenous peoples, who actually never had representatives in the new nation. I move on to answer another question: the new nation could not have been founded “on other foundations than [...] popular sovereignty and respect for the natural rights of individuals”. —Yes; but “popular sovereignty” was understood as the faculty of a sum of undifferentiated and interchangeable individuals, not similar at all to the creoles who legislated and imposed the bases of the new nation, abstracted from all real diversity. The new nation could have been founded on a contract between individuals located in different communities and cultures; a genuine federalism could have been established that recognized the belonging of individuals to a plurality of peoples and the right of all of them to participate in the constitution of the state.

but it was not; and the fiction has been substituted for a reality that is very different.

Aguilar had argued that Villoro’s article claimed that “the only real communities are the indigenous”. Villoro replied: “I have never held such a thing. The ‘community’ is a form of association that constitutes an ideal, not fully realised, but that can serve as a guide to our political action. Certain pre-modern communities—among which the Mexican indigenous ones could be named—are still guided by that ideal, even if they do not fully realise it. But in our time we would have to find a new form of community that could go beyond the individualism of modern society, to recover forgotten virtues, but, at the same time, preserve the conquest of modernity: respect for individual human rights” (Villoro 1998d:16-17).

Again in his response, Aguilar had maintained the liberal thesis that the proper subjects of rights and “autonomy” were individuals. Villoro conceded that “the rights of collectives and groups would not have a basis like that of individual rights”, but he regards the two as mutually compatible. The doctrine of “human rights” refers to the rights of every person, in any time and culture, but its formulation in positive law, in terms of exclusively individual rights, corresponds to one culture, western culture, and it also belongs to a particular time in history, the time of its development: the 18th century. Therefore, Villoro argues, one can think of a more universal formulation, based on analogous concepts drawn from other cultures, which recognise that the rights of any person are linked to their belonging to a community. He adds that individuals can only exercise their autonomy through a choice of plan of life from the range of values and purposes offered by the culture to which they belong, and this is a collective product. The autonomy of the subjects of culture (peoples) is therefore a condition for the exercise of the autonomy of the people considered singly and as a collective entity. The rights

of the peoples are not, therefore, opposed to individual rights: they are conditions that make individual rights possible. (Villoro 1998d:17-19).

Concerning democracy, Villoro affirms that there is no hidden design to replace representative democracy with a direct democracy. The intention, rather, is to address the shortcomings of democracy as currently constituted through its own procedures and by enriching it from other sources. In the criticism of the current forms of representative democracy, at least two different lines are pursued. Villoro (1998d.:22-23) writes:

Aguilar reminds us of Schmitt's criticisms, but they are not the most important ones. There is another criticism to representative democracy that goes back to Rousseau and that, in our days, authors who are not "conservatives" at all continue: In Europe, Norberto Bobbio ("expanded democracy"); in the United States, C. Lumnis ("radical democracy") or D. Held ("participatory democracy"). The two critical lines have points in common but greater differences. The first leads to a rejection of democracy in general and a demand for authoritarian governments; it is "regressive". The second, on the contrary, claims control of the government by the people and repudiates the impersonation of democracy by the domination of a technical bureaucratic stratum: it is "progressive".

Villoro explains that his reticence over institutional forms is explained by the fact he was not rejecting existing institutions and procedures, but merely pressing for their reform to allow the properly effective participation of the people, as the classical theory of democracy proposed. These reformed institutions would be inspired by the example of direct democracy, but they would not be the same as the direct democracy found in ancient Greece or in pre-modern indigenous communities.

Reform is needed, Villoro now argues, because for centuries, there have been huge disparities between different segments of the population. The only way to achieve the kinds of equality (of status, of opportunity, of right) that would make the idea of the social contract relevant is to admit those disparities without hypocrisy and to open favour the more disadvantaged at the expense of the privileged. A just policy, in a situation of injustice, cannot treat the unequal equally (as he takes liberals like Aguilar to be suggesting). If one really wants equality, one has to first recognise inequality and correct for it, even when this involves making restitution for historic injustice. Villoro repeats his claim that "equality" is not the same as "homogeneity" or "identical treatment". The true equality between autonomous subjects consists in respect for their differences (1998d:24):

I believe that our discrepancies come from two different conceptions of what the state should be. Aguilar adheres rigorously to the classical liberal conception, whilst I believe the liberal conception (human rights, popular sovereignty, for example) should recover and even embrace a sense of community now lost. It is a major issue that requires further and meticulous discussion. Such discussion, now, in our country, is urgent. That is why I welcome the contribution of José Antonio Aguilar to this necessary intellectual dialogue.

Marching towards a New Nation

Twenty years have passed since “The Caravan of the Colour of the Earth”—the Zapatista journey through 12 states that deeply moved Mexico: between 24 February and 28 March 2001, 24 rebels and 1,111 Zapatists travelled more than 3,000 kilometres of roads and mountains. On 11 March 2001, thousands of indigenous and non-indigenous peoples marching from Chiapas following the caravan arrived in Mexico City. In their journey they visited schools, squares, parks, universities, squares. They took to the streets to communicate their message that the indigenous peoples were there and were demanding attention and a fairer treatment from the government and the rest of the country. They placed a radical dilemma at the centre of the political debate: to build a country for everyone or a nation for a few (Hernández, 2021). Villoro took this as his cue to re-enter the fray, publishing an article in the daily newspaper *La Jornada* (Villoro, 2001a) that summarised the indigenous peoples’ demands and expressed sympathy with the movement. Liberals did not like it much, and the debate his original article ignited was enflamed. The article is brief and succinct, but also powerful and eloquent, and since it has not to my knowledge been translated into English before, and since I have drawn on some of its language in presenting Villoro’s positions, it may be worth giving it in full:

The Zapatista project goes far beyond the communities of Chiapas. It covers all indigenous peoples, but it is not limited to them. It is a project that concerns us all, for it is the vision of a new nation. In three general principles, enunciated by the Zapatistas themselves, that vision is condensed: 1. Plural state. Since its independence in 1821, Mexico was constituted as a nation-state following a conception traced from the European countries, mostly by an influential Creole and Mestizo group of lawyers. It was a homogenous state, which admitted a single culture, a single legal order, a single political power. The homogenous nation-state is an artifice. It does not correspond to the social and cultural reality of the country, which is extraordinarily diversified and complex. Protected by a *de jure* layer of equality before the law, the homogenous state rejects, in fact, all those who have another culture, follow distinct ways of life and embrace different ends and values than those of the dominant group. The Zapatista project leads to a state that respects and promotes the multiple forms of culture and

life choices that conform to the nation: recognition of differences. In addition to the right to equal legal treatment, they fight for the right to be different. The right to be different means that no one can be excluded either by the people or by the rules he or she chooses to follow or by his or her personal preferences. The equal treatment of the 'different' is a sign of justice. A slogan of the Zapatistas expresses, with force, this principle: we want, they say, "a world where many worlds fit".

2. Radical democracy. The recognition of the plurality of life forms implies ensuring that collective decisions emanate from the participation of all different groups and individuals. In representative liberal democracies, the people participate, once every three years, by depositing a ballot in a ballot box. Then the citizen becomes absent. Others take their place. State bureaucracies and delegates of political parties are in charge of governing the citizens. They supplant the real people. But the root of democracy is the permanent power of the people. And the real people are not the people as represented but concrete men and women in the places where they live and work. Radical democracy does not deny representation or reject parties, but subjects them to the control of society. The Zapatistas' project is the dissemination of power to the areas where people live: communities, municipalities, regions. Permanent control of the representatives by the constituency, accountability, power to dismiss the leaders, participation of the peoples and social groups affected in the projects that concern them. Autonomy is the power to decide by obeying the rules that one has established for oneself. The Zapatistas are asking, for the time being, for autonomy for indigenous peoples. But autonomy includes, in the *San Andrés Agreements*, communities and municipalities. The same principle of autonomy is applicable in all associations of civil society: trades unions, unions, universities, non-governmental organizations. Autonomy is the exercise of real freedom that refuses to obey other people's dictates.

3. Community. It is indeed sad and easy to see that in our liberal society reigns selfish individualism wherein every individual seeks their own interest since the notion of a common good was long ago rendered obsolete. The supreme norm of liberal societies is universal competitiveness and in universal competitiveness the one that succeeds is always the one that has greater advantages. The liberal society has a necessary consequence: the exclusion of those who have fewer resources, namely the more disadvantaged. Faced with an exclusive society, there is only one alternative left: the community. In the community, individual interests are not eliminated, only those that exclude the interest of others. In the community, the interest of each person makes the common good his own. The service to the whole deprives itself of service to itself. The community has been the ideal, often unfulfilled, of indigenous peoples; it is this principle that they constantly keep coming back to. That is why they have so much to teach to the members of our selfish society.

The other side of the recognition of differences is the collaboration of the different ones in the achievement of a common goal. That is the function of a plural state: to promote the solidarity of all in the search for an equitable order for all. At the national level, the new project is to move beyond the competitiveness, towards the construction of a society based on solidarity. In the international arena, it replaces the domination of the faceless capital of neoliberalism by the cooperation of all nations in a new world order of justice. That is why the new nation project introduces an ethical dimension into politics. It expresses itself in a motive that drives its action: "For all, everything; nothing for us". The march towards the construction of a new nation has begun. It is everybody's march. But they have a long way to go for it will not stop

before establishing the foundations of a new nation: a nation respectful of differences, a nation that ignores exclusion, founded on the power of the real people, where rivalry and competition between those who obey only their own self-interest gives way to solidarity in building an authentic community⁷⁰.

Once again, Villoro's words provoked a response.

The Caravan and “The New Nation”

The most significant response came from Jesús Silva-Herzog (2001a), a liberal professor of ITAM⁷¹, one of the most influential think-tanks of Mexico, in an article published on 5 March 2001 in the daily newspaper *Reforma*. I am aware that quoting the whole article may seem excessive, but as the criticisms it embodies are so important to understanding the debate between liberal and communitarians about the delicate issue of granting special rights to groups and accommodating their demands of autonomy, I believe it is necessary to include the bulk of it, again in translation, partly to show how political argument is conducted at this intermediate level, in the popular press rather as opposed to academic monographs and articles, and partly to illustrate the important point that, in this setting, the fine distinctions that characterise works of that kind are absent. In these arguments, the difference between liberalism and communitarianism is as much or more a matter of style than it is of content of argument, or philosophical prepossession:

The route of the Zapatistas from the jungles of Chiapas to the political centre of the country has been accompanied by the sounds of flattery and pretension. On the one hand, Zapatismo fanatics eulogise the leader of the cause, citing with veneration the literary attributes of the well-dressed Sub-Commander and drooling at the very mention of his name. Every day the same event, the same speech, the same act is chronicled with a litany of praises as if it were a tournament of eulogies. Who will find the just qualifier for the infinite jubilation of the civil society in advance of the arrival of the Sub-Commander? How to do justice to the eyes of Marcos, the depth of his gaze, the delicate smoke of his pipe, the infinite modesty of his gestures? What chronicler will be able to capture the rebellious enthusiasm and hope that he espouses? How to portray those glances in which the dreams meet the memory? Will there be a pen that is capable of describing such rebellious dignity? The truth is that it is necessary to establish a prize in recognition of the most inspired adulator of the Sub-

⁷⁰ The translation into English is mine.

⁷¹ ITAM (Autonomous Polytechnic Institute of Mexico) is one of the most famous private universities in Mexico. It is known for its costly tuition fees and because of its neoliberal tendency. Many of the lecturers and researchers are economists trained in Chicago, Harvard and other well reputed universities in the USA. Political elites of Mexico have been educated in ITAM but they are pejoratively referred to as “neoliberal technocrats”.

Commander. On the other hand, a parade of hypocrisy accompanies the Zapatista procession. The federal government, the most diverse political actors (with the exception, certainly, of some PAN⁷² troglodytes), and business groups pretend to hide their differences and disguise themselves in Zapatista costumes. We want the same as the Zapatistas, they say. We all seek, like marchers, peace in Chiapas and the development of indigenous peoples. Vicente Fox⁷³ has contributed to this empty sloganeering that accompanies the Zapatistas, with his speech and initiatives. Under the hollow idea that we all want peace, there has been the intention not to question a single word of the rebels. I celebrate that the Zapatistas are not being fought; I regret that none dares to argue with them. There is no point in continuing to accompany the march with this parade of drool and masks. It will be necessary to debate the meaning of the march, but above all, the meaning of the Zapatista discourse. For Luis Villoro, the march is the ceremonious birth of a new nation. I hereby pick up the arguments of the philosopher.

In his article "The march towards a new nation", Luis Villoro finds three principles in the Zapatista vision that could give birth to a new Mexico. The first one is the establishment of a plural state. That a desirable Mexico should be pluralistic is something that no-one denies. Mexico must be hospitable to different groups, ideas, parties, governments, values, life projects. That is the sense of pluralism: it is a world in which many worlds fit. But it is not liberal pluralism that Villoro has in mind, nor is it what the Zapatistas defend. He suggests that the Mexican state is an imposition, an alien invention that denies the social reality of our culture. Villoro says: "the homogenous nation-state is an artifice. It does not correspond to the social and cultural reality of the country, extraordinarily diversified and complex". The argument is interesting: the liberal model of the State is questioned because it is considered a lie, an artificial mechanism, and an importation that does not correspond to the reality of our nature. The supposed social nature then acquires prescriptive meaning. The machine is perverse, but the tree is noble. The romantic conservatism of the proposal could not be more evident: if tradition orders, politics must submit. According to Villoro, the Zapatistas defend a commendable idea of radical democracy. The democracy of the liberals is episodic, superficial... and also false. Villoro writes: in representative liberal democracies, the people participate, once every three years, by depositing a ballot in a box. Then the citizen becomes absent. Others take their place. State bureaucracies and delegates of political parties are in charge of governing the citizens. They supplant the real people. Democracy is not the government of the people because the people hardly choose, they do not decide. Villoro and the Zapatistas take up the old discourse on the formalities and pitfalls of bourgeois democracy. Constitutional democracy is a regime that does not establish the reign of the people. Therefore, we must look for another democracy that goes beyond the institutions and faithfully follows the supreme popular dictates. There is no doubt that criticism of democratic representation has supporters here and there: in fact, others speak in the name of the people. What is indefensible is the proposal given as an alternative: to pretend that "The People" will directly decide everything in a sort of radical

⁷²PAN (The National Action Party), at the time the second political force of Mexico, is a party of the right, well known for its lack of sympathy towards social demands such as the autonomies claimed by indigenous peoples and their defenders.

⁷³ At the time president of Mexico.

democracy, the form of democracy that the Marquistas⁷⁴ defend. The only possible (achievable) democracy is one which renounces the illusion of embodying the will of The People. That is why Claude Lefort said, that in democracy power becomes an empty place; it comes from the people but does not belong to anyone.⁷⁵ The radical democracy that Villoro posits does not transcend liberalism. He denies it because he claims to sacralise what he calls "Real People" and that is, by the way, the most unreal thing that may exist. Of the Royal People, of the Authentic People, of the True People let us remember, the fascists once spoke. Finally, the Zapatistas claim to be bringing the community back in. "In our liberal society", says Villoro, "selfish individualism reigns. Everyone follows their own interest, losing the notion of a common goal". Villoro starts from an error: to believe that individualism is identical to selfishness. But the worrying thing is the medicine that he proposes to cure this disease. He writes: "in front of a necessarily excluding society, there is only one alternative: the community. In the community, individual interests are not eliminated, only those that necessarily exclude the interest of others." But is that true? The great engineer of modern freedom, Benjamin Constant, still has warnings for us. It does not matter if it is the federal government or the community. If these political bodies have the power, then they can threaten freedom. Is it true that the community is incapable of excluding minorities? Who speaks for individualistic doom? Thus, the neo-Zapatista discourse forgets indigenous people as it is obsessed with defending indigenous communities. PRI's corporatism in their bid to save the unions forgot the workers. That is why Zapatismo is not the birth of a new nation and, if it is, it is the birth of an undesirable nation. Luis Villoro understands that the Zapatistas have exhibited the misery of liberalism. I am convinced that they have revealed liberalism's relevance and value.⁷⁶

Unsurprisingly, Villoro was stung into action. His reply, published in the pages of the same newspaper (Villoro, 2001b), inaugurated an epistolary dialogue of a kind more common in the eighteenth-century than in today's world. Again, it seems better to give the exchanges in full, rather than engaging in extended paraphrasing, but in view of considerations of space I include them in full in Appendix 2 to the thesis, while drawing on some of the materials contained therein to inform the argument of the remainder of the chapter. The dialogue was joined by other writers and public intellectuals and came to focus more and more on the rights of indigenous and minority peoples, shaping the intellectual context in relation to which the crisis at the New Jerusalem was understood and represented by the political authorities. Popular ideas of multiculturalism, combined with a degree of embarrassment about the perceived historic failings of the liberal state, came together to create an environment in which decisive

⁷⁴ By "marquistas" Silva-Herzog refers to the supporters and enthusiastic admirers and defenders of Sub commander Marcos, de facto commander in chief of EZLN (National Zapatist Liberation Army).

⁷⁵ Surely Silva-Herzog refers here to a classical article written by Claude Lefort (1983) "The Question of Democracy".

⁷⁶ The translation into English is mine.

intervention was, perhaps, more difficult to contemplate than it seems from an external point of view.

The Debate on Indigenous Rights down to Today

These ideas were shaped by many writers of different political persuasions and from different disciplines. The philosopher Mauricio Beuchot, a Dominican catholic priest with close ties with the native communities, was one influential contributor to the debate. His analysis of multiculturalism centred on cultural identities and the ways they have historically and sociologically developed in Mexico. In his (2009) *Hermenéutica analógica y educación multicultural* (Analogical Hermeneutic and Multicultural Education) he maintains a position that finds fairness in granting group rights to groups of people that have been systematically denied rights and justice. On the other side, David Recondo (2001), in his article *Usos y costumbres, procesos electorales y autonomía indígena en Oaxaca* (Uses and Practices, Electoral processes and Indigenous Autonomy in Oaxaca) and in his book (2007) *La Política del Gatopardo: Multiculturalismo y Democracia en Oaxaca*. (The Politics of the Leopard: Multiculturalism and Democracy in Oaxaca) he describes the negative consequences of granting special group rights in the state of Oaxaca—the region of Mexico with most indigenous people: poverty, economic backwardness, with more than half of its communities and municipalities self-ruled, and numberless victims of political blackmail and manipulation, often exercised by *caciques*⁷⁷ and indigenous leaders. Legal reforms had taken place, autonomy had been granted, but the good results promised by advocates of multiculturalism and communitarianism were yet to be seen. Liberals like Recondo continued to regard with suspicion the idea that conferring special treatment on communities or groups rather than individuals brought tangible gains, whilst the intellectual heirs of Gamio and Villoro insisted that affirmative action and recognition of indigenous communities were the only ways to guarantee a fair and pluralistic society and to repair the historical damage done to those communities by centuries of injustice.

Constitutional reform and the customs and practices of indigenous peoples entered the public mind and forced their way onto the political agenda through this popular debate. In the last two decades they have been translated into a set of laws that allows many communities to

⁷⁷ Landlords that possess extensive lands and exercise political influence and control, acting like traditional local bosses.

enjoy different degrees of autonomy, particularly in the southeast states of Oaxaca and Chiapas. However, in the gap between theory and practice lie some dangers for the freedom of the indigenous peoples. Undoubtedly, one of the most controversial aspects of these laws (the so-called *San Andrés Agreements*) is how expansive the rule of customs and practices of indigenous people should be. It is said, for example, that indigenous peoples will have “the right to apply their regulatory systems in the regulation and resolution of internal conflicts respecting individual guarantees, human rights and in particular the dignity and integrity of women”.⁷⁸ According to the initiative that was proposed to the Congress by former president Vicente Fox and that now constitutes the Indigenous Act approved by the Mexican Congress on 14 August 2001, they also have the right “to choose their authorities and establish internal forms of government according to their rules in the areas of their autonomy, guaranteeing the participation of women in conditions of equity”. Later in the Act, the first point is re-stated thus: “In the municipalities, communities, auxiliary bodies of the town hall and related bodies that assume their belonging to an indigenous people, its inhabitants shall be guaranteed the right to define according to the traditional political practices of each of them, the procedures for the election of its authorities or representatives and for its own forms of internal government in a framework that ensures the unity of the national state”. Proponents of the law claim that this recognition of the indigenous norms or traditions logically derives from the right of indigenous peoples to autonomy. Critics worried that giving statutory force to such traditional norms and/or uses and practices would have the perverse consequence of limiting indigenous autonomy and bringing about a significant reduction in the number and efficacy of the rights formally owned by the members of such communities.

My argument is that the critics’ worries were well-founded. Villoro suggested that the indigenous people had a conception of democracy and justice based on consensus and the defence of the community that was radically at odds with “western democracy” and could be used as a resource to correct for the defects of the latter. Yet his position was based on a series of essentialist assumptions that lacked historical foundation. Villoro implicitly identified the indigenous and the “original” people, the first nations, the Mesoamerican, the Mayan and the Mexican, among other grand civilisations, as opposed to the “aliens” from Europe, as if the situation had remained little changed since the 16th century. In fact, the situation bears very

⁷⁸ *The San Andrés Agreements 1995* (also known as The COCOPA Law) are the foundation of the Indigenous Act that was legally approved by the Mexican Congress in 2001 giving guarantees of autonomy and respect to the Mexican indigenous communities, including the possibility of self-ruling and electing their authorities according to their own uses and practices. The quoting presented throughout these comments belongs to the 2001 Indigenous Act, which is similar to The San Andres Agreements but with some substantial differences.

little resemblance to the tragic moment of the Mesoamerican conquest. Indigenous and non-indigenous peoples are part of a single society: both groups are the contingent results of a common history nearly half a millennium in the making. Original cultures, whatever is intended by that term, have been intermingled, developed and enriched with external contributions, giving rise not to a homogeneous culture, but to an extreme diversity of forms of cultural miscegenation that extends unevenly throughout the national territory and across all the points of the social scale.

That same common history allows us to understand the emergence, in some regions, of opposing identities—indigenous versus *ladino*⁷⁹ in Chiapas—which did not exist at the time of the conquest. Indeed, we must not forget that the present-day indigenous people are the result of the uniformity policies and segregationist practices put into practice by the Spanish Crown and its officials, as the Mexican anthropologist Guillermo Bonfil Batalla has extensively documented (Bonfil, 1987)⁸⁰. On the other hand, although *ladinos* and indigenous people base their identity on the assumption that their cultures had a different origin and that one is opposed to the other, the fact is that both groups have cultural practices that derive as much from Mesoamerican societies as they do it from the European world. Thus, a large part of the traditional practices of the natives of Chiapas that now some want to preserve in their original purity have Spanish origins. That is true of the brotherhoods, for instance, so common in communities; and the traditional town hall council with its mayors and aldermen. In turn, many Mestizo practices also include elements of Mesoamerican origin. But perhaps the most worrying part of the current indigenous discourse is the almost exclusive valuation of “the proper”, “the authentic” and “the original” and the concomitant deprecation of the “colonial”, the “Western”, the “modern”.

This, perhaps, was what raised Aguilar’s suspicions about what Villoro was proposing. It implies that electoral democracy, being a Western imposition, has no place anywhere in the country. Indeed, there can be no elections by universal suffrage and secret vote, as political parties came later to the Mexican lands. Should these, then, be rejected as alien intrusions? The “*usocostumbrista*”⁸¹ perspective contains another contradiction that goes beyond semantics: the changing nature of traditions. As Viqueira (2001:32) pointed out in his contribution to the

⁷⁹*Ladino* is another name for mestizo, mostly used in Chiapas and the southeast of Mexico. It has a negative connotation for it is almost a synonym of traitor or deserter.

⁸⁰ I am referring here to Bonfil’s most influential work (1987), *México Profundo: Una civilización negada*. (Deep Mexico: A denied civilization).

⁸¹*Usocostumbrista* is an adjective that has no translation into English. It means that is related to the “customs and practices” speech, very common in the discourse of multiculturalists and communitarians.

original debate, “a tradition is what each generation transmits, what one generation delivers to the next one”. That is indeed its etymological meaning, but every generation is diverse, plural, contradictory and such is its heritage. In addition, nobody passes on to their children exactly the same values that they have received from their parents. The tradition delivered is always selective and only some aspects of received knowledge are handed on to posterity. Hence, each generation enriches the tradition, due to the changing circumstances that pose unprecedented challenges and due to the very ability of the culture to evolve. Thus, tradition, if it is alive, is always in a process of transformation, constantly renewing itself.

The paradox is that the institutionalisation of uses and practices requires “indigenous peoples [to] write down their traditions, so that they can be recognised legally” and so to fix their meaning.⁸² The question then becomes, whose is the authentic voice of tradition? In every community there is disagreement about what tradition teaches and rival factions tend to present themselves as the sole defenders of “authentic traditions”. This question is glossed over in the proposal to give legal force to the so-called “common law” or “customary law”. Who will be recognised as the legitimate interpreters of indigenous traditions: the caciques⁸³, the anthropologists or the National Indigenous Institute (INI)? Where two or more groups confront each other, each claiming to represent the “authentic” tradition, who will be the judge? The very logic the “usocostumbrista” disqualifies any external agent or institution from playing this role where consensus is absent. It is from *Jus Naturalism* and its *Nemo iudex in causa sua* that we learned of the “Evils, which necessarily follow from Mens being Judges in their own Cases” (Locke 1988:276 [II.ii.13]).

To speak of men being judges in their own cases is to draw attention to a further problem. In the negotiations of *San Andrés Agreements*,⁸⁴ feminist critics objected that some of the customs in use among the indigenous peoples were against the human rights of women. For instance, in some communities, parents arranged the marriage of their daughters after receiving a “payment” from the suitor’s family. It was also very common that women had no right to inherit their ancestral lands. What is more, women found themselves marginalised from a large

⁸² See *La Política del Gatopardo: Multiculturalismo y Democracia en Oaxaca*. (The Politics of The Leopard: Multiculturalism and Democracy in Oaxaca). (Recondo, 2007), where he describes the process through which the “Uses and Practices System” was legally implemented in Oaxaca.

⁸³ Local bosses.

⁸⁴ The *San Andrés Agreements* are accords reached and signed between the Zapatista Army of National Liberation (EZLN) and the Mexican government in 1996 in Chiapas. These agreements granted recognition, rights and autonomy to the indigenous population of Mexico. The compromise, however, was only *De Jure*. These Agreements, also known as The COCOPA Law, are the basis of the Indigenous Act, approved and ratified by the Mexican Congress in August 2001.

part of the political life of the community. In religious activities likewise women usually played a secondary role. A more chilling example still is given by Viqueira (2001:34): “in some indigenous populations from *Los Altos, Chiapas* the man who rapes a woman must, if he is single, marry his victim to repair his fault”⁸⁵. Thanks to the intervention of feminists, both liberals and non-liberals realised that it was necessary to set limits to the uses and practices scheme, and that such limits should be given by respect to individual and human rights.

A few lessons from the Mexican debate on Indigenous Rights

What lessons can be drawn for The New Jerusalem from the case of indigenous rights and what relevant parallels—if any— can be made?

The lessons are largely negative. The first lesson is that the current discussion on group rights in Mexico leaves aside the fate of religious groups. The second lesson has to do with the meagre results of multicultural public policies and the small benefits that have been conferred upon ethnic minority groups. A third lesson is related to the scope of the liberal agenda, which seems to ignore inequalities and historical legacies that allow for ongoing social injustice and marginalisation. They also fail to acknowledge that liberal practices have been insufficient to reduce poverty, inequality and injustice in the indigenous communities.

Regarding the second lesson, Recondo (2007) in his book *La Política del Gatopardo: Multiculturalismo y Democracia en Oaxaca*. (The Politics of the Leopard: Multiculturalism and Democracy in Oaxaca) elaborates on the negative consequences of granting special group rights to ethnic minorities. Using the example of Oaxaca, the province of Mexico with the largest number of indigenous people (Estatista, 2020), he argues that giving self-ruling rights to indigenous communities has led to economic backwardness, mainly because indigenous leaders have come to use such rights for their own benefit, using it to exercise manipulation and political blackmail and doing very little for their people. Extrapolating from this empirical experience, we could say that in many cases the “uses and practices” model described above has made it easy for federal officers, local politicians and *caciques* to contact community leaders to bargain directly with them. These one-to-one negotiations have allowed for the unfair *status quo* to remain in place and for corruption and injustice to prevail within communities. As chapter 1 demonstrated, this is the way in which generations of politicians have dealt with The New Jerusalem. They have treated it, *de facto*, as an indigenous

⁸⁵ The translation of Viqueira’s quotes into English is mine.

community divided into two classes, rulers and ruled, preferring to bargain with the former than to address the injustices done to the latter. Between elections, and absent political crises so manifest that they could not be ignored, the Mexican state has granted quasi-self-governing status to The New Jerusalem. The results have not been encouraging in practice. Besides, turning to the first lesson, The New Jerusalem is not an *indigenous* community: its members, even though many of them come from indigenous communities, are bound together by choice, not by chance. They are associates united in and by an ultimate concern common to all of them, not by the fact they are the living descendents of past victims of injustice. No doubt that injustice is persisting, which makes Recondo's argument only more pointed; but that injustice is different from the injustices faced by the dissident minority in The New Jerusalem and the two ought not to be conflated.

The third lesson, to broaden the point made just above, is confirmed by the 2020 National Census (INEGI, op cit): the states with greatest indigenous populations are still the poorest states of the federation (Oaxaca, Chiapas, Guerrero and Yucatán). After more than 200 years of liberalism, deep economic and social inequalities remain; and indigenous peoples and native communities are still holding the worst share. The liberal state has not succeeded in addressing the historical injustice that roots the indigenous in poverty. The failure to acknowledge collective identities as such seems, indeed, to be the Achilles heel of liberal policies: for it is the case that for the members of indigenous communities, their fate is inextricably linked to the fate of the group to which they belong to—as is the case, for different reasons discussed in chapter 1, with the citizens of The New Jerusalem. In the one case, we might say, the community is bound together by a shared past and vision of that past; in the other, by a contemplated future and vision of the future. Of course, the past is not really past: it lives on in structures of power and domination that roll on down the years and roll over the same people again and again. The existence and implications of these historic structural injustices has become a focus of interest recently for political theorists who wish to address and redress wrongs which liberal states helped to create, help to perpetuate, and prefer not to think about (see Nuti, 2019); but they apply in the case of The New Jerusalem indirectly rather than directly, insofar as differentials of power and a track record of marginalisation and manipulation (whether of the community by the state or of the community by its leaders) make trust difficult, in the absence of which both toleration and compromise are considerably more difficult to achieve. In principle and in practice, the state has treated The New Jerusalem on analogy with indigenous communities, "known quantities", as it were, with tried and tested rules of engagement (the fact that engagement has failed to improve the lot of these

communities in practice is beside the point, normatively speaking); but it is a different kind of beast, and ought to have been understood as such.

This category mistake helps to explain the floundering response, intellectually as well as practically, of the Mexican authorities to the succession of crises in the New Jerusalem. The Mexican debate on minority rights yielded little by way of immediately deployable theoretical tools to address the conflicts when they exploded: it didn't really help to make sense of what was going on; indeed, it invited the authorities to treat it as a different kind of problem than it was and to soft-pedal when more robust action was required. The major religious eviction that took place in The New Jerusalem in 1982 when 4,000 people were displaced by force in one single night went unaddressed. Similarly, the inaction of the legal authorities was striking in the aftermath of the pogrom that consumed the community in 1998, when Agapito Gómez, "The Blessed", was sent to prison on accusations of rape and abuse of underage women. At the time, he and his armed guards were found responsible for the murder and the forceful eviction of 150 families and 31 priests (Marrero, 2014); an individual was prosecuted but the community was let alone. It seems important to include religious groups, with an emphasis on insular groups, in the wider discussion over group rights and individual rights and to treat them in their own terms, rather than by analogy with indigenous groups. We need theoretical clarity and precision about the character of such communities if we are to address the issues raised by their internal and external relations more effectively.

But this brings me back to the starting point of the thesis. What if groups do not respect the rights of their members, particularly the most vulnerable ones? Are contemporary theories of toleration (whether liberal or multicultural) adequate for providing states with effective theoretical tools to deal with the challenge posed by, let us say, an insular religiously extreme minority group, such as The New Jerusalem? The next chapter analyses what occurs when some of the most representative theories on groups run up against political reality.

—Chapter 5—

THEORY vs. PRACTICE: TOLERATION AND THE NEW JERUSALEM

*If politics are a dimension of history, they are also a call for political and moral criticism.
This is criticism: the acid that dissolves images. In this case —and perhaps in all—
criticism is but one of the modes imagination works,
one of its manifestations. Imagination is critical in our age. Criticism may not be the dream,
but it teaches us to dream and so to distinguish between the spectres of nightmares and the true visions.
Criticism is the learning of the imagination in its second round, the imagination cured of fantasy,
and determined to face the reality of the world.
Criticism tells us that we must learn to dissolve the idols:
learn to dissolve them within us.
We have to learn to be air;
to be a dream
in freedom.*

Octavio Paz. *Postdata*, 1969

In this chapter, I set some of the most influential theories I have so far discussed (both liberal and multicultural) that advocate either toleration for, or the empowerment of, minority groups against concrete reality. I assess their value when applied to real-life questions and explore how successfully they cope with contentious issues such as children's rights, the right of exit and the oppression of vulnerable members in the light of The New Jerusalem case and other important judicial examples, like the well-known Yoder case (1972), and the not so well-known cases of *Santa Clara Pueblo v. Martinez* (1978), and the *United States v. Wheeler* (1978), where individuals sought the state's protection against their own communities. How far can jurisprudence succeed where political theory fails in offering clear answers in such cases? In the discussion that follows I endeavour to answer these questions while bringing to light some of the shortcomings and theoretical loopholes of current liberal and multicultural models. In particular, I examine the difficulties raised for the adequacy of the right to exit by the millenarian belief system of the members of The New Jerusalem discussed in chapter 1. In that chapter I was principally concerned with the bearing of that system of belief on the actions of the members of that community. Here I explore its normative implications, and the ways in which it helps to illuminate some of the unstated assumptions embodied in liberal and multicultural thinking alike.

One more general purpose of the chapter is to reinforce a theme that runs throughout the thesis, that the relationship between theory and practice is more complex than liberals, especially, are apt to suppose. Another is to show that developmental, or dialectical consideration of the strengths and weaknesses of competing theories allows us to proceed

incrementally towards a better all-round picture of the theoretical and practical possibilities before us rather than an all-or-nothing approach that thinks only in terms of dichotomous alternatives. One benefit of proceeding step-by-step in this way is that it helps us to see that there are different kinds of argument in play, not just different arguments; and these different kinds of argument at once reflect and assume different attitudes or approaches to the relationship between theory and practice and to the problem of minority rights: what kind of problem it is, and so how it can be best solved.

As Ann Phillips (2005) notes, much recent liberal political theory, perhaps under Rawls's influence, approaches the problem from the judicial standpoint, identifying and invoking "a number of principles relating to the rights of the individual and group" and arranging them "in the appropriate hierarchy in order to generate a solution" (Phillips 2005:115). The deliberative approach, by contrast, suggests that "principles of justice are formed in particular historical contexts, and cannot therefore be appealed to as the *deus ex machina* to settle inter-cultural disputes". It assumes that what is needed instead is "resolution through dialogue rather than adjudication from on high" (Phillips 2005:115-16). Phillips argues that these two approaches tend to generate dichotomous alternatives because they presuppose them in assuming that there are "fundamentally opposed understandings of justice that need to be weighed up or democratically resolved" (Phillips 2005:116). It is more profitable, she suggests, to think about such problems from the perspective of the political activist. From this perspective, the puzzle of what is normatively "right" cannot be detached from judgements about the effects of one's actions (Phillips 2005:118). Beyond the theoretical debates and the exhibition of good intentions, the results in practice are what really count for the activist; and the best results are obtained when the particular is paid as much attention as the universal and we understand what is really at stake, here and now, for the participants in a dispute: the political and contextual concerns that lie behind their slogans; where there is room for manoeuvre and when there is not.

Getting clear about the details, understanding from the inside, so to speak, so Phillips suggests, oftentimes indicates that an apparent conflict between the rights of a minority and the rights of a sub-group within it is illusory: there is not a clash of values but rather difficulties "somewhere else in the chain" that need to be confronted sensitively and even-handedly. I share elements of this intuition and while I do not make explicit use Phillips's categories in the

argument that follows,⁸⁶ they are helpful insofar as they clarify the important point that much of the critique that I offer in this chapter is comparative in more than one dimension: as I move from consideration of Kukathas and Balint to Kymlicka to Shachar, I am not only comparing the merits of different arguments; I am moving along a spectrum which reflects differing conceptions of the nature and limits of political theory. It would be unduly programmatic to say that it reflects a shift from the judicial to the deliberative to the activist; but my chapter follows Phillips's cue in suggesting that the tendency to think in the first way especially is at once dominant and unhelpful, exerting a gravitational pull that is especially strong at moments of crisis: when things start to get messy, or awkward, it is often easier to fall back into the assertion of principle than to dig down into the practical complications. For what it is worth, I take the view that there is a time and place for each approach, and that each one can illuminate aspects of the problem that others cannot; by the same token, no one approach by itself discloses exactly when it is time to contemplate alternatives. That is another reason for adopting the comparative approach adopted here, and for considering in sequence authors who differ in their approaches as well as their arguments.

The chapter is divided into four sections. In the first section, I address a position that is close to libertarian, Chandran Kukathas's. Next, I assess the model of a contemporary liberal, Peter Balint, to see what these models have to say and what prescriptions would they provide to deal effectively with the situation prevailing in The New Jerusalem. I argue that neither model is adequate to the situation. Third, I critically assess the theory of one of the champions of multiculturalism, Will Kymlicka, and find difficulties with his theory too. Finally, I explore what seems to be a promising alternative, provided by Ayelet Shachar's model of Transformative Accommodation (TA). I conclude that, though more adequate than its rivals, Schahar's model faces problems that a case like The New Jerusalem throws sharply into focus and that, for all that it addresses defects with the other models analysed, an alternative approach to hers is nevertheless required. I begin with Kukathas.

Kukathas's Quasi-Libertarian Model

Kukathas's theory (which I outlined in chapter 3) is developed with style and defended trenchantly. It flows out of a commitment to freedom of association as a commanding value

⁸⁶ It will be seen that the approach I recommend/adopt in ch.6 is similar, but not identical to, the "political activist" approach outlined by Phillips and so to avoid confusion it seemed better to argue in my own terms.

which is reflected in Kukathas's reluctance to confer on the state the right or power to intervene at will in the internal lives of communities and groups under its wider jurisdiction. His theory of free association implies a high degree of tolerance that makes room for a multicultural social order without conceding any of the multiculturalist's claims of justice. It presupposes a state (a monopoly legal system) that enforces rights for all persons but not for cultures, to which it is, or ought to be, indifferent, because it is concerned only to defend rights, and cultures *per se* have none (see Kukathas 1998). However, when looked at through the lens of the challenge posed by The New Jerusalem, some problems emerge: first, his reluctance to countenance state intervention leaves members of that community exposed to the depredations of its self-appointed leaders; second, his understanding of a free society is a "your culture or your rights" type of approach that does not meet the demand of groups whose concern is not only to be free to pursue their own way of life as they choose but to ensure the survival of their culture; third, the tension between group differences and individual autonomy is deeper than he admits; and, fourth, he provides no feasible solution to the actual difficulties minorities within minorities actually face. I consider these problems in turn to see why they would constitute a failure when addressing an extreme case, like the one incarnated in The New Jerusalem.

The first problematic aspect of Kukathas's theory, his "indifferent" state, has the potential side-effect of leaving oppressed minorities within minority groups vulnerable to abuses. Although Kukathas takes seriously segregation and violence, and his state would intervene to prevent a massacre (or, more ambiguously, acts of sedition that threatens the peace of the wider community), the position he adopts is analogous to the one that obtains, here and now, in international society: there are many different groups (states in this case) engaged in all kinds of activities we find anything from distasteful or utterly reprehensible (the treatment of black youths by police forces in the USA, the treatment of women in Afghanistan, of immigrant workers in the Gulf States, the genocide of the Uighurs in China) yet these are tolerated. No attempt is made to interfere with the internal lives of these communities (states), even in cases where fundamental rights are being threatened. So also, Kukathas implies, within the liberal state. The state has no moral right to attempt to rectify unfairnesses within groups or even between groups. The end of the state is "settlement among groups". It is what makes groups' coexistence possible (1996:97). It cannot hope to be more: "If there is an ultimate authority that determines what ways are morally acceptable, liberalism is lost" (2003:139), he asserts. Kukathas wants "toleration without domination" (Walzer 1997b:110), and this requires the state, a potential instrument of domination, to play a recessive role.

Kukathas writes of the state not as a *Leviathan* comprised of many thousands of individuals⁸⁷ but as constituted by a changing number of communities. While the state is composed of communities, it should not be thought of one more community among the rest, but as the arrangement that makes this collectivity of communities possible: “(The State) is much more of an association of associations (...), not an association of alike associations but of diverse associations. It is not for the state to determine what forms—or form—the associations which comprise it will take. The state is a political settlement that encompasses these diverse associations, but it is not their creator or their shaper. It does not make judgments about whether those ways are good or bad, liberal or illiberal” (Kukathas 2003:160-61). This conception allows for self-governing groups to operate under the aegis of the state, which stands above and apart from them and regulates their interactions in the name of peace and order. Its role is limited to assuring that those groups peacefully coexist.

This is not to say that Kukathas downplays abuse or oppression within groups. He takes both issues seriously, but he does not give the state any moral authority to act upon them, nor does he believe the state can or should be trusted to amend them. He is suspicious of the state, arguing that there is no guarantee that it will be any less oppressive than the traditional communities whose practices are in question. History provides plentiful dispiriting evidence of the state’s willingness to assume the role of oppressor. If there are practices that happen to be harmful or unfair, other means should be employed against them, not the coercive force of the state. Persuasion, he argues, is not only more effective than force but it is also much less invasive and damaging to the communities in question (1997a:88-89) and, in any event, liberal capitalist culture will prevail in the longer run as those communities, being mutable, will be changed by their exposure to the forces it unleashes. In the meantime, as long as they live peacefully with other communities, it is for each one to regulate the lives of its members as it chooses.

No doubt it is true that states have used the coercive power at their disposal for ill as well as good. This seems a weak reason to impose upon it the self-denying ordinance Kukathas recommends. The consequences of state indifference are not difficult to predict. As Barry correctly noticed: “if the state should turn a blind eye to private coercion, this will bring about coercive results” (2001:43). The New Jerusalem is a striking example of what can happen when

⁸⁷ The frontispiece of Hobbes’s *Leviathan* (1651), famously depicted this idea, with the state represented as a person, more exactly a giant king, holding sword and sceptre, his body (and so his strength) composed of countless homunculi side by side, their heads covered and bowed in awed reverence.

the state relinquishes its right to intervene when minorities within a group are being oppressed. The remedy he proposes for such results, as we shall see, is inadequate.

The nature of that inadequacy answers to the nature of his theory. In that theory, toleration is paramount and prevails over alternative principles because no “common standpoint of morality” is posited (Kukathas 1997a:69). Most discussions of the clash between liberal mores and traditional cultures, Kukathas observes, begin by asking how far cultural practices that offend liberal moral sensibilities ought to be tolerated, which is question-begging. It assumes that the liberal moral standpoint is the common standpoint of morality. This in turn licenses the invocation of the state as an instrument for enforcing morality and the pursuit of common citizenship as a normative ideal. We should consider instead what sort of regime we would need to have if no particular culture was privileged. The conclusion he reaches, which finds expression in the last paragraph of *The Liberal Archipelago*, is that it would be a regime of tolerance.

A tolerant society, then, consists of a diverse array of communities that do not necessarily share similar values and in which no one set of cultural norms can play trumps. To some extent, these communities are autonomous and self-contained with minimal interactions between them (like islands in an archipelago). Kukathas is open about the implications of this position. A given community might practice female genital mutilation; another might prohibit blood or medulla transfusions or deny modern medical care; children may be uneducated, or subjected to what others would find cruel practices, or denied proper medical care. Marriage may be coerced and gender relations grossly unequal (1997a:88-97). But the state cannot set itself up as a judge for all, claiming to be morally superior to others and commanding what practices should be observed and what others should not: it is for each group to manage its own patterns of life according to its own norms.

Groups are not homogeneous, unified structures that act and react like a single person. Typically, though not exclusively, they are hierarchically ordered and directed by authorities with an interest in maintaining their own authority, not averse to associating their own continuing preeminence with the survival of the group itself. Kukathas is not much concerned about the survival of groups in particular: over the years, he intimates, many will disappear (depending on the support they receive from their members) and be replaced by others; it is no business of the state to protect or rescue any community from the threat of disappearance. Its business is to defend the rights of individuals. The problem with this conception is that it leaves many individuals facing an unappetising dilemma: my culture (my group) or my rights? which in theory is skewed towards rights and in practice seems skewed towards groups.

In theory it implausibly imagines that groups exist in a state of permanently shifting simultaneity, all equal, popping in and out of existence as the choices of their members to pursue their plans of life in this way or that render them instrumentally useful or useless to those plans. As Walzer observes, in reality all these things take time, and one likely product of change over time is the development of exactly the kind of common moral standpoint Kukathas wishes to deny. When a new group comes on the scene, the question that arises is not, how do we all now, as equals, agree to new terms of mutual cooperation and tolerance, but, should *we* tolerate them? (Walzer 1997b:108).

In practice it understates the degree to which our plans of life are framed through group membership and sometimes limited in ways we cannot readily apprehend by the norms to which we are subject and, more pointedly, by the authorities who impose them. It may be, as some argue, that cultural identities exercise a strong pull on individuals who tend to be reluctant to rationally discuss their views with the rest of the society, though the implicit identification of rationality with rights and cultural identity with irrationality and closed-mindedness is questionable (cf. Archard 2007), but to the extent that the argument is valid, it is something which treating cultures as islands each under their own self-jurisdiction does little to address.

The Right to Exit

Kukathas's way of dealing with these problems is to insist on one limit to tolerance, which is the counterpart to the centrality in his scheme of thought of the freedom of association. This is the "right to exit". If a community is oppressive, people can choose to leave it. But obviously, in most cases, children are not in a position to exercise this right unassisted. Neither is it clear that women could exercise it easily in communities where they lack substantial property rights and where their access to society outside the extended family is tightly controlled (see Farer 2014:13). And then there is The New Jerusalem.

There, children are prevented from attending public school and canalized into a religious school where they are exclusively taught approved religious doctrine. We have seen that Kukathas rejects interfering with the group's authorities' decisions about how to educate their members. Most liberals hold that this education, however it is delivered, should be minimally decent and sufficient to allow its recipients to make their own way in their future lives (Eisenberg 2005; Spinner-Halev 2000; Gutmann 1995, 1980). Kukathas's posture of indifference excludes him from being among them. As Brian Barry notes, "If [the state in effect] grants immunity to parents to do things to their own children that would be illegal if

they did that to any other children, the state is handing over power to parents in a particularly brutal and uncontrolled way” (Barry 2001:43). And not only to parents. Education at The New Jerusalem has been sized by the self-called majority group “The Loyals”, and attempts by “The Dissidents” to send their children to a public elementary school outside the city walls have been met by a combination of practical obstacles, physical threats, and social stigma. Kukathas’s position may be that illiberal communities cannot rightly punish apostasy (see Farer 2014:13), but it is not obvious why or how, in this case, there is not a legitimate route to the same destination on his principles.

This brings us back to an issue highlighted in chapter 1, namely the way in which the structure of beliefs that distinguishes the members of the New Jerusalem creates an insuperable barrier to their ever availing themselves of the “right to exit”. This right is not something that only Kukathas gives special prominence. Rawls, for instance, suggests that all manner of particular associations “may be freely organized as their members wish, and they may have their own internal life” subject to “the restriction that their members have a real choice of whether to continue their affiliation” (Rawls 1999b:212). Multiculturalists like Kymlicka, too, advocate for the sufficiency of the “right of exit”, arguing that such a right would allow dissidents that no longer want to belong to a certain community to revise their choices and to, eventually, leave the group and choose another way of life.⁸⁸ Even liberals, such as Balint (2018), who want to avoid the idea that toleration is based on some thick conception of autonomy, still want to say that it matters that a person’s life is decided by their own choices and so some kind of “right of exit”, however minimal, is implicit, even if it is not announced explicitly, in the notion that there is value, perhaps a special value, associated with the individual’s control over his or her own actions and life-plans. And yet, for members of millenarian groups like The New Jerusalem, this whole debate simply begs the question.

Let us consider how, if at all, “the right of exit” would work for the citizens of The New Jerusalem. Exit rights make sense for as long as they are feasible. There must be something else or somewhere else to meaningfully exit to. Such rights become useless if the exit is not an accountable possibility. The members of the New Jerusalem community live in expectation of the end of times and the devastation of all that currently exists outside the walls of their city. They exhibit an “unconditional apocalypticism” (Wessinger 2011:723) insofar as they are convinced that the world cannot be saved from destruction by human effort and the imminent cataclysm cannot be averted. Only the holy city can be saved and their ultimate concern, for

⁸⁸ See Kymlicka 1994.

their own salvation, cannot be separated from the fate of their city. To speak in this setting of control over one's own life plans is, for the relevant purposes, irrational not rational, because their ultimate concern is located within a worldview consisting of a cosmology and views of human nature that combine to render freedom of choice an illusion and separation from the community a practical nullity. They cannot separate themselves from it without belying everything that they believe and everything they are and hope to be. Exiting the community would equal abjuring the possibility of salvation and so abandoning their ultimate concern.

Millenarian groups, of course, are not the only sort of group in which the fate of individuals is believed by members to be tied to the fate of the whole. Other religious groups, ethnic groups, and cultural groups can be viewed in these terms, families too. As a result, it may be necessary to distinguish between what might be termed a "prudential" and a "principled" argument against the viability of the "right of exit". The prudential argument is that the costs of exiting the community are too high to bear to make the "right to exit" sufficient to protect internal dissidents. Costs here are construed in secular terms. The dependence of all the members of the community on their leaders and the community is enormous, such that it makes it socially and economically very difficult to leave (and the more vulnerable members of the community, especially women and children, tend to be exposed to greater costs of multiple kinds at once that make doing so especially wrenching). Growing up in such a community produces all kinds of profound effects, shaping one's values and sense-of-self so powerfully that abandoning it seems so unlike the process a consumer exchanging one health club for another that any similarities seem irrelevant when set beside the differences. Liberal critics of Kukathas, like Green (1998), make this point: there are conditions necessary for the right of exit to be effective and these conditions imply a much wider range of rights, including freedom of dissociation, right of mobility, freedom of expression, and fair share of common resources (Green 1998:177-79). These rights, Green argues, are rooted in the value of autonomy, that underwrites the right of exit too, and framed by a notion of harm that is individuated: the question is, will this choice protect me against harm or bring me harm? It assumes that it is possible for individuals to weigh all these harms on the same scale and determine by that means whether it is better to stay or to exit.

Green states frankly that this right, and the wider rights needed to make it effective, "works to make certain kinds of group life harder to sustain": "an unreflective attachment in which interests of the self and group are not distinguished becomes nearly impossible" in this setting (Green 1998:185). Leaving aside the unargued assertion that such attachment in necessarily unreflective, the implication is that group loyalty of the sort experienced in the New

Jerusalem is nowadays impossible: autonomy trumps, is felt everywhere, and the question is always one to be asked and answered in terms of an assessment of the weight of the relevant costs and benefits of choosing to leave or remain. The alternative is to reject autonomy and privilege “cultural survival for its own sake”, and Green is “not persuaded that there is, in fact, much value” in that.

But that is not quite the alternative as it presents itself to the members of the New Jerusalem. They are not weighing the benefits of choice against the costs of cultural homogenization, because the situation is one in which cost-benefit analysis is redundant. Whether it costs nothing or brings worldly riches (however transiently) is beside the point: leaving is inconceivable because any choice besides staying implies self-annihilation. It is tempting to convert the argument into an extreme version of the prudential argument, in which the costs of exit are unusually high; but the point is that they are *infinitely* high, which means that it is impossible to make any intelligible calculation on the other side. So while there are, no doubt, significant worldly harms that result from their staying, it makes no sense to argue that the right of exit could protect them from these or compensate them for their losses, because by leaving they believe that will lose everything forever. Their ultimate concern requires them to remain within the walls of the city and so, in principle as well as practice, a right of exit is useless.

In contrast to Kukathas, Peter Balint says little about the right of exit. Does his theory of toleration offer any better protection than Kukathas’s to minorities facing the situation of many children and parents in The New Jerusalem? My argument is that it does not.

Balint’s “Active Indifference” Model

Balint’s theoretical model of a tolerant society, like Kukathas’s, seems inadequate to the real challenges posed by insular religious groups that do not respect the rights of their members. I find four main problems with his theory. First, his conception of toleration lacks the objection component that provides toleration with its moral force. As a result, he falls into the trap of one of the classic paradoxes of tolerance: that we can end up tolerating either intolerable things or tolerating for the wrong reasons. In neglecting the moral element of the notion, second, his version of toleration slides, or collapses, into indifference (he explicitly advocates for what he calls “Active Indifference”), and this produces a harmful effect when added to his understanding of what should be the state’s role in a multicultural society. Rather like Kukathas, though for different reasons, he favours, third, a “hands-off” state. Such a state is

poorly positioned to address abuses that take place inside the groups that it tolerates and deprives itself of one strong reason for intervening to address them by, fourth, repudiating the argument of autonomy used by classical liberals like Mill to justify toleration. Balint has good reasons for rejecting that argument, reasons which reflect his sensitivity to the implications of pluralism, but I believe that the practical implications of that rejection need to be addressed with the same degree of sensitivity.

None of this should be read as suggesting that Balint's model of toleration lacks merit. On the contrary, Balint is making a powerful contribution to our understanding of toleration as a political practice, as opposed to a moral attitude or personal virtue, and a noteworthy counterblast to the multiculturalist's call to go beyond toleration. Instead, argues Balint, it is necessary to rescue the liberal ideal of toleration and put it to work to meet the contemporary challenge of diversity.

His theory successfully engages with the traditional accounts of toleration and makes two core normative assertions. The first grounds toleration practices in freedom, negatively understood as non-interference. The liberal assumption is that it is interference, not non-interference, that has to be legitimated. Consequently, it is intolerance that must be justified and not toleration and it is reasons for being intolerant that must be offered, not reasons to be tolerant. The second normative claim, which embodies the tolerant default he presupposes, is expressed in his apology for state neutrality. Balint argues that the state should uphold an "active indifference" as opposed to displaying either forbearance—which means negatively evaluating an object of toleration but putting up with it—or respect for difference; which means positively evaluating what would otherwise be objects of toleration and recognising them as worthy of respect.

On his liberal model, the state should remain neutral among the array of differences that generate diversity. This indifference sets the scene for his 'hands-off' approach, according to which, the state cannot intervene with tolerated ways of life. His reluctance to give the state more room for intervention derives from his ideal of neutrality. He believes a neutral, actively indifferent state will produce more freedom for all: "If one cares, as we should, about people living their lives as they see fit, then, as I will argue, it is toleration and neutrality that should be recognized and respected, and interventionist policies and laws that try to target and help particular citizens to achieve this good should be strongly resisted" (2017:16).

His notion of toleration is not purely normative but also descriptive. His abolition of the moral objection component, and his adoption of a "broad understanding of toleration" implies the idea that toleration includes indifference. He even goes further in stretching the scope of

the concept to include respect for difference. I certainly agree with Balint that toleration understood as a political practice should be respected as a key liberal value, yet I am not sure that toleration should include indifference and even respect for difference. I maintain that indifference is not the proper matter for toleration, and that respect for difference will make toleration redundant, as I aim to show in the following paragraphs.

Balint is able to treat toleration in these capacious terms because he dispenses with the objection component that, as we saw in chapter 2, is crucial to the concept in its traditional form. I think his descriptive and non-moralised understanding of toleration requires additional context. Let us start with the structure of the concept as he construes it.

Balint describes the “orthodox” view of toleration as it follows: “toleration must always have three basic components: an objection, the power to negatively act on the objection, and intentionally not acting in this way. It is, therefore, a type of forbearance. Many views are even stricter, requiring the reasons for the objection and the withholding of negative interfering to be of the morally right kind” (2017:5). Further on, against this moralised ‘orthodoxy’ he juxtaposes his own account: “there is a much broader understanding that does not require objection, but simply power and intentional non-hindrance” (Ibid.). On this account, toleration is not the result of overcoming one’s objections through self-restraint, because it is not necessarily the result of an exercise of forbearance on anyone’s part. It might just as well be by not having objections in the first place that one decides not to interfere with another’s way of life. In such cases we do not practice any kind of virtuous self-restriction. It is merely that we do not feel impelled to interfere at all. Balint refers to this account as a “broader form of toleration” or “permissive toleration”. It requires only the power to interfere and the intentional decision not to do so. In this way, he entirely withdraws the objection component present in the “forbearance” form of toleration, in which negative valuation is what gives toleration its peculiar sense and reference.

Balint does not suggest that forbearance is not toleration. His argument is that it is only one form that toleration can take: there is toleration whenever one intentionally decides not to interfere with another’s actions for some reason (moral, pragmatic, or of some other kind), whether or not negative valuing is also present. As he puts it, “one form does certainly not cancel the other out. In both a descriptive and normative sense, both understandings are required” (Ibid.:6).

An obvious worry with this line of argument is that dropping the objection component evacuates toleration of its peculiar sense and reference and extends its meaning so far that it becomes interchangeable with non-interference. A tolerant society, understood in this

“permissive” sense, will be synonymous with a free society, especially if we follow Balint and other Berlinian liberals in understanding freedom in its negative formulation as equivalent to “the absence of interference” (see Balint 2018, 2017; Carter 2003, 1999; and Berlin 1958). Then it looks as if toleration is a superfluous term: we could ditch it from our moral vocabulary. The loss of conceptual precision this entails, however, matters not only in terms of our capacity to distinguish between importantly different states of affairs but in terms of its practical consequences: of course it is true that people can and do object to or take offence at almost everything, but it seems important to be able to distinguish between practices which are freely allowed in a given society and practices which are tolerated, not least because it tells the members of that community something important about the kind of community it is and what kinds of conduct matter to it: that offensive speech is tolerated, as opposed to being freely allowed, tells those on the receiving end of it that the community is not indifferent to the offence felt and, by extension, to those who feel it. Horton, for one, presses this point against Balint: “we should only talk about *toleration* where there is an initial objection; once the objection has been firmly jettisoned then talk of *toleration* loses its grip” (2020:193).⁸⁹

One reason why Balint is largely untroubled by this worry is that he denies that his neutral state is indifferent in the sense the previous example implies. It is not indifferent in the sense that it doesn’t care what the range of different ways of life it superintends happens to be, or how the living of divergent ways of life works itself out in practice. It is, rather, *actively* indifferent, meaning that it responds to diversity by ensuring that, as far as possible, it deals with divergent ways of life by being neutral between them. As he puts it, “an institution/law/policy is never neutral in the abstract, but between a range of things (in this case people’s justice-respecting ways of life). If the range changes, so should the institution/law/policy if it is to remain neutral. It is not enough to say the institution/law/policy was or even is neutrally justified; if the same justification can be met in a different way that is more neutral in intent towards the existing range of ways of life, then there is a strong case for change” (Balint 2020:226-27). So, as a community becomes more diverse ethnically and religiously, it ought to change to reflect that increased diversity, as, for example, by no longer requiring its police force to wear only one form of headwear which its Sikh officers cannot countenance. Here neutrality means removing an area of privilege (enjoyed by officers of other religions or not religious), rather than “adding new categories (e.g. exemptions, recognition,

⁸⁹ Balint rejects the criticism. See Balint (2020).

and minority rights)” (Balint 2020:227). This, he argues, is the “best way of realising the freedom for those with divergent ways of life to live their lives as they see fit” (Ibid.).

This, then, is Balint’s response to the multiculturalists’ claim that the “indifferent state” in practice favours the majority group and upholds the status quo (on the “indifferent state” see Barry 2001; Kukathas 1998, 2003). Balint deals with the multicultural challenge by reconceiving the concept of neutrality: if a policy discriminates against a minority group (or some members of that group), it is not justified because it is not neutral; it should remain in place only if a sound, neutral justification can be given for it. If such justification cannot be provided, the policy should be removed for everyone, not only for the minorities affected, or replaced by a revised policy which can be justified on grounds that such policy is neutral between all the different ways of life affected by it.

Balint’s neutral state is self-reflective and “difference-sensitive” (2017:52), and the neutrality it exhibits is, at least as he presents it, radical in its implications (2020:226) because the need to be responsive to changes to the range ways of life between which it is neutral requires it to remove violations of neutrality whenever they become apparent (as with the case of police headwear discussed above). What it emphatically should not do, Balint argues, is respond to such changes by adding new forms of recognition for difference. One reason for that is straightforwardly practical. “Given the size of modern states, and the almost infinite amount of often changing diversity, it seems that trying to be “hands-on” will be more difficult than being “hands-off”, especially if one is concerned with protecting individual freedom (...) it will be easier and more viable to remain neutral by withdrawing support rather than constantly trying to juggle support for various minorities” (2017:72). But as this passage makes clear, there is also present an assumption that interference as a rule is worse rather than better, and that the less a state interferes, the less impact it will have upon the ways of life it superintends and so the less it will have to worry about whether that impact is distributed equally. A minimalist participation of the state tends to be less harmful for all; and so its effects. For Balint, hands-off entails better off.

Accordingly, Balint is disposed to resist granting any form of special rights to groups; he says “no” to giving fishing and hunting rights to aboriginal peoples over their territories; he says “no” to state support for minority languages and dialects; he says “no” to authorising different treatment for indigenous groups according to their uses and practices. It is not, in his view, normatively desirable to grant special rights to groups or cultures, especially if one is interested in protecting the most vulnerable members of society. As he argues elsewhere, “treating people as members of groups—even with the best of intentions—can have negative

consequences. Put simply, the political recognition of particular groups can lead to the political construction of these groups: it provides incentives for people to present themselves as authentic members of groups, often fails to see diversity within groups and can lead to certain people, often women, being further disadvantaged by group recognition”. The social salience of group membership cannot be ignored—it is a fact of modern political life in diverse societies—but it does not follow that we should accord groups special normative salience. We will tend to find, Balint thinks, that those matters of moral concern or interests that its advocates identify with group membership can be disaggregated and addressed separately and distinctly as individual interests. Once those interests have been identified, it becomes possible to assess whether or not they are being satisfied and if they are being satisfied unevenly, to remove existing impediments to their satisfaction (Balint 2018:375-84). If a rule is unfair or unequal, we should not have that rule in the first place for anyone. To Balint, there is no room for exceptions. If an exception is to be made, it should be extended to everyone. In this way, he attempts to forge a middle path between Kukathas’s model of local communitarianism and the classical liberal idea that the state ought to foster an overarching national identity: genuine equality of opportunity and fair access to resources can foster the feelings of belonging the advocates of group rights claim for culture without compromising the normative principles of the liberal state.

Balint’s view, in sum, is that it is wrong for the state to discriminate between different ways of life, different cultures, and to award any of them special privileges or rights. In this respect it resembles Kukathas’s view, but it demands more of the state, which keeps its hands off culture but is active in ensuring that opportunities and resources are equally accessible regardless of one’s culture. Balint is unapologetic in taking it for granted that this is what states ought to be like. As he concedes, he simply “assume[s] a state that ha[s] this sort of basic nondiscriminatory framework” and his argument is that “beyond such an (interfering) framework, less interference would generally be preferable”. The problem, from the perspective of the inhabitants of The New Jerusalem, and, I would argue, of many citizens of liberal states besides, is that this assumption is questionable. It may be true in theory, but it is not descriptively true that such a state obtains. Balint appears to be assuming that it is true in both senses. Neither does it seem true, in light of this case, that less interference in the internal workings of cultural groups is better: Balint’s qualifier here “generally”, like his simplifying assumption, does a great deal of work in avoiding exactly the sort of hard case The New Jerusalem represents.

Kymlicka's Multicultural Model

Balint, we have seen, is reluctant to ground toleration on the importance of autonomy, which he takes to rest on controversial metaphysical claims that are not universally shared. Mill's claim, for instance, that "Over himself, over his own mind and body, the individual is sovereign" (Mill 1989:13) would not be accepted by or acceptable to someone who believes that sovereignty over human beings resides with God. Balint thinks it is preferable, in conditions of diversity, to eschew appeals to this aspect of Mill's thinking while continuing to adopt the broadly Millian line that "what ultimately matters is that people can live their (non-harming) lives as they see fit, and that any state-imposed impediments to this need justification" (Balint 2020:228). It is this last clause that underwrites his vision of the "hands-off" state. Kymlicka takes a different view.

Kymlicka argues for the value of cultural membership as instrumental to the underlying good of individual autonomy. It is only a rich and secure cultural structure that provides the context for individual choice and flourishing (Kymlicka 1989a:164). It makes the world meaningful for those born into it. An individual, he writes, needs to be part of a societal culture in order to acquire the tools necessary for autonomous choice, such as self-respect, a selection of valuable options and different ways of life, a sense of history, personal capacity, agency and identity. The specific values, beliefs and rituals of a given culture may change over time, but it is important that it continues to exist as "a viable community of individuals with a shared heritage", providing the means by which its members learn and develop the ability to make autonomous choices (Kymlicka 1989a:168).

This ability is diminished, if not lost, where cultures are unable to control the socialization of the young and are compelled by the liberal state to jettison elements (such as, e.g. hierarchy, patriarchal social structures, shared religious rituals) of a strong culture that by its nature tightly integrates all of its components. The result is increasing alienation, intellectual confusion, and loss of self-respect in persons who lack the constituent conditions of autonomous agency. What this means, negatively, is that a state that is indifferent to the erosion of traditional cultures or which actively attempts to detach people from their cultural identity in order to strengthen their ties to the state, either as a bearer of dominant or superior culture or as nondiscriminatory framework of universally valid norms, should not really be called liberal: such a state threatens the sense of self that liberalism valorises and ought to protect (see Farer 2004:10).

What it means positively is that “[r]espect for the autonomy of the members of minority cultures requires respect for their cultural structure, and that in turn may require special linguistic, educational, and even political rights for minority cultures” (Kymlicka 1989b:903). In order to give to the members of minority cultures the same opportunity to access the good of autonomy, it may be necessary to limit or entrench upon the rights of members of the majority culture. Hence Kymlicka, unlike Balint, supports aboriginal demands to restrict the property rights of whites in aboriginal land as well as the imposition of restrictions on migrant workers (Kymlicka 1995:43). Kymlicka, then, argues for special cultural rights as part of a liberal theory of equality, but his support for cultural recognition ceases at the point that a given culture or practice opposes his master value of autonomy (see Crowder 2013:21). As a result, his commitment to difference and diversity is narrower than his reputation as a leading prophet of multiculturalism might suggest; and in his recent works, he has made clear that access to special treatment is importantly conditional.

I find at least three problems with Kymlicka’s argument. The first is that Kymlicka arbitrarily limits the scope of groups entitled to be granted special rights to only one kind of minority, what he calls “societal groups”, excluding a number of other important minorities. Second, he ties access to recognition exclusively to minorities that respect and promote the value of autonomy and that do not restrict the freedom of their members. If only autonomy-promoters are to be tolerated, it means that only liberal-like communities can be part of the liberal state. Kymlicka softens the hard edge of this position by suggesting that autonomy promotion is present to some degree in most cultural contexts (Kymlicka 1995:94), but it still threatens to outlaw minority groups that reject individual autonomy or subordinate it to other values. A third, and related issue, is that there is a tension between Kymlicka’s commitment to autonomy and his commitment to protecting the rights of minority cultures to control the socialisation of their young people, which finds expression in his ambivalence about giving parents the right to educate their children according to their particular beliefs. These parents might argue that their religion bonds its members in shared values so constitutive of their identities that no harm is done if they are not exposed to alternative religious viewpoints, but that significant harm *is* done if they are prevented from receiving that education in the faith that gives meaning to their existence and provides the context Kymlicka himself says is needed to make choices meaningful for them. Kymlicka rejects the “communitarian politics at the subnational level”, arguing that individual autonomy must include the opportunity to question inherited social roles and norms as well as to benefit from the structure they give to life

(Kymlicka 1995:82). My worry is that this position leads to consequences that happen to work against liberalism, as I will show in the following paragraphs.

Kymlicka's argument for state action to guarantee the survival of minority groups and cultures was subjected to an intense critique, particularly from other liberal and feminist theorists (Kukathas 2003, 1995; Barry 2001; Shachar 2000; Okin 1999; Waldron 1995, to mention some of the more well-known critiques). Perhaps as a result of this critique, Kymlicka was moved to clarify that the group-differentiated rights for which he was advocating only applied to "societal cultures". These were defined as national minorities that are generally large; whose members speak a distinct language; possess a significant territorial concentration, and are willing to preserve their own culture in order not to be assimilated. Such cultures, he says, offer their members ways of life that embrace "social, educational, religious, recreational and economic life encompassing both public and private spheres" (1995:76).

The problem with only recognising "societal groups" is that it will neglect several important minorities, leaving them vulnerable to both external interference and forced or insidious assimilation. Most ethnic groups and other important vulnerable minorities, like smaller religious groups, the LGBTQ community, and the communities of immigrants are excluded from its scope—"national minorities typically have the sort of societal culture that should be protected, while immigrants typically do not" (Kymlicka 1995:94)—and on grounds that do not seem entirely persuasive: the idea that national minorities did not choose to place themselves in the position in which they find themselves, whereas immigrants did, scarcely does justice to the complexity of a case like that of African Americans in the United States (see Kymlicka 1997:77-79). Likewise the fact that national minorities have pressed for recognition in ways that— as yet— immigrant groups have not, does not explain why, normatively speaking, the cases are different. Nor is it perfectly clear, in any case, that all indigenous peoples meet these requirements. He refers to some when illustrating which cultures do and which do not qualify: "American Indian tribes and Puerto Ricans, like the Aboriginal peoples and Québécois in Canada, are not just subgroups within a common culture, but genuinely distinct societal cultures" (1995:80), Kymlicka writes; but many of such groups and tribes appear to lack the capacity to provide their members with a way of life that includes "social, educational, religious, recreational and economic aspects" adequate to their needs or the resources they need to provide their members with the bases of autonomy, still less the means of living a good life.

In *Liberalism, Community and Culture* (1989a), Kymlicka identified two conditions which needed to be met for individuals to lead a "good life". The first refers to a capacity:

people must be able to take their own decisions and make choices according to their beliefs and the values that they uphold. We have seen that Kymlicka holds that cultures provide the context for the development of this capacity. But the second condition places side constraints on the kinds of culture Kymlicka seeks to protect: those which provide the conditions “necessary to acquire an awareness of different views about the good life, and an ability to examine these views intelligently” (Kymlicka 1995:81). This is why his theory of minority rights presupposes a broader liberal theory of justice and equality: because it assumes a “traditional liberal concern for education, and freedom of expression and association. These liberties—he goes on—enable us to judge what is valuable, and to learn about other ways of life” (ibid.; cf. 1989a:264) Thus, Kymlicka subjects minority and religious rights to the overriding right of individuals to act autonomously in pursuit of their good and insists on their right to question beliefs and “to examine them in light of whatever information, examples, and arguments our culture can provide” (Kymlicka 1995:81). “Our culture” in the final analysis plays trumps. In his view, there must be “freedom within a minority group” (Ibid.:152) and the individual right to dissent from the group. Minority groups ought not to be persecuted by the state; but illiberal minorities ought not to restrict the liberty of their own members (Kymlicka 1995:158). In this way, “individual freedom of choice and a secure cultural context from which individuals can make their choices” (Kymlicka 1989a:169) can be rendered compatible, but this is done by excluding cultural contexts which are inhospitable to Kymlicka’s own, particular conception of autonomy.

Some cultures, he writes (1996c:95),

far from enabling autonomy, simply assign particular roles and duties to people, and prevent people from questioning or revising them. Other cultures allow this autonomy to some, while denying it to others, such as women, lower castes, or visible minorities. Clearly, these sorts of cultures do not promote liberal values. This shows that liberals cannot endorse cultural membership uncritically.

What it also shows is that Kymlicka is operating with a somewhat narrow conception of autonomy as “rational revisability”: “(C)hoice enables us to assess and learn what is good in life. It presupposes that we have an essential interest in identifying and revising those of our current beliefs about value which are mistaken. When I use the term autonomy, therefore, it is in this sense of ‘rational revisability’” (Kymlicka 1995:212); but (*pace* his claim at p. 94, mentioned above, that autonomy-promotion figures in most cultural settings) this is not how

everyone uses the term.⁹⁰ Many men and women who have chosen to live a religious life of obedience, often with the strong support of their religious communities, may reasonably reject this conception of what an autonomous life consists in, while believing no less reasonably that they have chosen not only to practice and follow their religion but have also confirmed the choices they have made many times over in preference to available alternatives. As Jeff Spinner-Halev points out, religious people who have chosen to live a life of obedience are most of the time free to review their beliefs: they choose to cleave to their values and principles over those of the mainstream society (Spinner-Halev 2000: Ch. 3). It surely is not necessary to be a liberal to exercise choice and to live the life one has chosen for oneself.⁹¹

The implications of Kymlicka's conception of autonomy come into sharp focus when he discusses education as part of his discussion of how liberal states should treat illiberal groups. Kymlicka criticises Rawls for offering "no solution" to the problem of "insulated minorities" such as the Amish, the Hutterites or the Mennonites (1995:41-42) who reject the ideal of autonomy and demand groups rights that give them special privileges, including the right to educate their children into their own preferred ways of life. Education in their view, so Kymlicka suggests, is a matter of re-orientating the individual's self-regard and nurturing the desire to live by the will of the community, not of preparing children to take up the rights and duties of citizenship (Kymlicka 1996c:102), and so Rawls's claim that his conception of political liberalism is compatible with their withdrawing from the wider society is false, because by implicitly rejecting the rights and duties of citizenship for their children, such minorities are rejecting political justice and its associated conceptions. In fact, political liberalism requires enforcing liberal education to protect liberal political rights in minority communities "that have a strong social consensus in favour of group rights, and a strong historical claim to them as well" (Kymlicka 1996c:96).

The problem is that Kymlicka's alternative leaves us no better off than Rawls's. He wants, he says, to defend liberalism based on autonomy on the one hand but exhibit caution

⁹⁰ Kymlicka (1996c) obscures this point to some extent by distinguishing his own conception from still narrower ones associated respectively with Kant (autonomy as an expression of our rational nature) and a particular reading of Mill (autonomy as non-conformist individuality), arguing that his conception of autonomy is "simply" the ability to assess what is good in life, and why. It is not obvious how assigning particular roles and duties to people could ever prevent people from even *questioning* them.

⁹¹ I do not deny that people may be influenced by what Gould calls "improper socialization" (Gould, 1990:50) so that they cannot rationally comprehend the different courses of action open to them or those courses of action may be themselves unduly limited in practice: in certain traditional cultures that do not formally prohibit women from pursuing an education, many women may still choose not to do so, either because there are informal costs (e.g. the diminution of marriage prospects), or because the opportunities for acquiring education are too scarce or too expensive, or both (Ibid:36-38). I am merely saying that this is not necessarily so in every case.

about “imposing the full set of liberal political institutions on non-liberal minorities” (Ibid.), but the issue is really, as he acknowledges, about exemptions from the scope of those institutions which already are imposed *de jure*. When he concedes certain exemptions—“education exemptions for the Amish, theocratic government for the Pueblo Indians”—he states explicitly that this is “a compromise of, not an instantiation of, liberal principles, because it violates a fundamental liberal principle of freedom of conscience [which is difficult to distinguish from his conception of autonomy]”, the implication being that this is a morally undesirable concession to reality that ought, over time, to become superfluous as “liberal reformers inside the group... promote their liberal ideas through reason or example, and liberals outside... lend their support to any efforts the community makes to liberalize” (Kymlicka 1996c:96).

I will return to the issue of compromise in the next chapter. For the present, I merely observe that the processes on which Kymlicka relies for his solution seem to require precisely what his concession puts into question. In recent times, when claims for exemptions from mandatory education have come before the courts and the courts have upheld the obligation on the part of public schools to deliver a curriculum predicated on liberal principles,⁹² the result has been that parents have removed their children from public schools and continued their education through religious schools and home-schooling, thereby reducing the opportunity for liberal reformers to promote their ideas through reason and example. When a teacher shows equal respect to male and female children, exhibits tolerance of difference and respect for alternative beliefs, they teach liberal values by their deeds as much as by the curriculum. Allowing minority groups to withdraw their children from public education on religious grounds removes this possibility.

None of this is to say that Kymlicka’s theory lacks merit. His is undoubtedly one of the few models that have found a balance to compellingly conciliate value conflict—between the values of cultural groups and the values of individual equality. My concern is that when it comes to the crunch he slides back into precisely the kind of liberal theorizing he is trying to go beyond. Other directions of travel are available. It is possible, at least in prospect, to move beyond the liberal versus multicultural dispute and their proposed either/or predicaments: “the

⁹² A famous and recent case, *Mozert v Hawkins* has been widely debated by liberals. Parents were concerned about the school exposing their children to viewpoints and ideas that they considered contrary to their religion without the school emphasising to their children that the Bible’s truth was above all other doctrines and viewpoints. They asked for their children to be excepted from taking this course in particular. The court sided with the school’s authorities and refused any exception. The Court did not suggest any form of accommodation. Parents responded by home-schooling their children (see a detailed analysis of this case in Spinner-Halev, 2000: Ch. 5).

individual or the group” and “your culture or your rights” dichotomies. One such attempt has been made Ayelet Shachar, whose notion of “Transformative Accommodation” is discussed in the following section. Shachar’s model is not specifically tailored to fit insular millenarian groups, but it introduces considerations of such obvious relevance to the case that it is worth analysing at greater length, to see if the approach to the problem it embodies, and the solution it implies, is more convincing and more adequate to the issues raised by The New Jerusalem than the approaches and arguments we have been discussing so far.

Shachar’s Transformative Accommodation (TA) Model

It is precisely the possibility that cultural rights as collective rights for minorities will end up disadvantaging or oppressing some members of the community, in particular, “minorities within minorities” such as women and children, that is explored in the writings of Ayelet Shachar (2001). Many philosophers and social scientists have theorised about group rights versus individual rights, on the basis of a handful of well-known cases, including those invoked by Kymlicka. Shachar’s key insight is to see that “principles and theoretical formulations [that] may seem attractive on paper... cannot [be] fully appreciate[d] ...until we see them interpreted and applied in a variety of specific contexts” (Shachar 2001:8). The shape of the problem, as it is well-known, and indeed more or less as Kymlicka described it: how to uphold individual rights while paying due deference to the claims of groups within the framework of a constitutional state; how to ensure the rights of minorities without compromising liberal principles on the one side or imposing those principles on groups that do not share them on the other side?—or more sharply, how to liberalize a cultural community without destroying it (Kymlicka 1989a:170). What tends to follow is either an assertion of the priority of the one over the other or an assertion that the two can be reconciled followed by a litany of the difficulties involved in actually reconciling them: either what is required of the state, or what is required of minority groups.

This “either/or” impasse is the point from which most discussions begin and to which they eventually return. Kymlicka, for example, observes that “explaining how minority rights can coexist with human rights, and how minority rights are limited by principles of individual liberty democracy and social justice is the real test of the multicultural model” (Kymlicka 1995:6); but the real test, I think, is not merely to *explain how*, but to demonstrate (i) in practice and (ii) over time that vulnerable minorities can be protected at the same time as individuals and as bearers and continuators of a minority culture.

Shachar's contribution to this enterprise is to propose what she calls multicultural jurisdictions, rather than a monopoly of jurisdictional authority, as a solution to the paradox of multicultural vulnerability. This proposal moves beyond two existing approaches along the lines just now identified: a "Re-Universalized Citizenship" approach, pioneered by feminists like Young (1989) and Okin (1997), which claims that when the rights of individuals are in dispute with the rest of the group members, the state should side with the individual and guarantee individual rights by direct intervention; and the "Unavoidable Costs" approach (favoured by Kukathas), that maintains that individuals who do not exercise their right to exit minority communities have, in effect, volunteered to bear certain costs in terms of their rights as citizens in order to avail themselves of the benefits they perceive to lie in group membership (Kukathas, 1992a). Shachar's work pays attention to the actual interactions between legal state and different "private orders": minority groups like the Pueblo Indians and other indigenous communities seeking to maintain their uses and practices and sustain their own cultural norms. "Private orders", in this frame of reference, are legal entities the existence of which is recognised by the state and which enjoy jurisdiction over their members that the state cannot override *ceteris paribus*. They grant the minority groups accorded this status a substantial degree of autonomy (see Sagy 2011) to continue uses and practices that otherwise would be either prohibited by or dissolve upon prolonged contact with the majority culture.

The advocates of "Re-Universalized Citizenship" had pointed to obvious dangers with this kind of model. For instance, Okin (1997) argued that multicultural policies of accommodation were almost inevitably connected to the prevalence of discriminatory practices and power imbalances within minority groups. Granting protection or special treatment to minority groups, she suggested, seemed to come at the unavoidable cost of increasing oppression of the most vulnerable members of such groups (see also Eisenberg and Spinner-Halev 2005). It empowered the group's authorities (usually male elders) to act in ways that were potentially as oppressive or even tyrannical as anything the state could muster. Likewise it encouraged them to exaggerate the degree of homogeneity and consensus within the group to make their case and demands stronger before society and the state (and, of course, to buttress their own position at the same time).

Shachar seeks to address these potential dangers through a method of joint governance that she calls Transformative Accommodation (TA). To Shachar, "the key to breaking the 'either/or' impasse lies in re-examining the question of jurisdiction—that is, the methodology for determining which legal forum has the authority to resolve a given legal dispute according to certain legal principles" (Shachar 2001:89). If, instead of thinking of the state and minority

groups as conflicting jurisdictions, we see the multicultural challenge as an opportunity to mobilise multiple jurisdictions to favour the less advantaged members of any minority group progress is possible. We can empower individuals inside marginal groups, rather than elites; individuals can decide which jurisdiction is the better for them to advance a claim in or defend an interest in (of course subject to certain specific conditions).

Transformative Accommodation is structured around three main principles: the appropriate allocation of legal authority; the no-monopoly rule; and the establishment of clearly delineated choice options. Shachar suggests that a minority group (or culturally-differentiated group) should have exclusive jurisdiction over certain matters, such as territorial borders, matters related to family issues, such as divorce, marriage, surname arrangements but, on the grounds of appropriate allocation of legal authority or sub-matter proposed, it cannot claim jurisdiction over the distributive aspect of family law: issues like property division, child support or alimony will abide by the state's rules and therefore will be under the direct legal domain and jurisdiction of the state. Equally, criminal law and education would be shared realms between the culturally-differentiated group and the state, again on a sub-matter or appropriate allocation basis.

The model is based on two further premises. First, given a clearly outlined selection of choices, the members of the culturally differentiated group will be in a position to reject the group's jurisdictional authority and will have the right to apply for state's judicial review; second, this structure generates positive incentives both for the state and the cultural group to make themselves, so to speak, the jurisdiction of choice but neither can bootstrap its way to becoming a monopoly legal system in its own right.

Shachar goes on to test the effectiveness of the model against real legal cases, which are given a counterfactual treatment: If TA, then x. The idea is to show that her model would generate better, juster outcomes. Two cases in particular are central to her argument: "Santa Clara Pueblo v. María Martínez" and "United States v. Anthony Robert Wheeler".

The case, which came before the US courts in 1980, concerned the power of Pueblo Indians over their members and whether members of the Pueblo community had the right to appeal ordinances taken according to the community's procedures. The Respondents were the Santa Clara Pueblo, an Indian tribal group that settled in the United States's territories long before the Europeans settled and conquered the land, and its governor, Lucario Padilla. The Petitioners were Julia Martínez, a full member of the Santa Clara Pueblo, and her daughter Maria Martínez. They asked the US Supreme Court to reverse a tribal ordinance that denied membership in the Pueblo to children of female members who marry outside the tribe, but it

granted membership to children of male members married outside the tribe. Martínez was married to a member of the Navajo Nation, which, according to the uses and practices of Santa Clara Pueblo, made her children outcasts. They were automatically ineligible for membership in the Pueblo and lost all their rights as a result. Martínez's children were allowed to live with her on the reservation, but they were denied political rights, like those of voting or holding office, and were prevented from actively participating in any decisions concerning the Pueblo. And they would be required to leave the Pueblo as soon as her mother died and prevented from inheriting her land or claiming any share of the community's assets.

Mrs Martínez provided evidence that Pueblo's legal decision had discriminated against her and her family on the grounds of sex, gender, and ancestry, in violation of the Indian Civil Rights Act (ICRA, 1968)⁹³, which provides in relevant part that "no Indian tribe in exercising powers of self-government shall ... deny to any person within its jurisdiction the equal protection of its laws". The case was taken first into the United States District Court for New Mexico, which decided in favour of the Respondents on the grounds that membership rules were critical to the "social self-definition" of tribes and thus "vital to the tribe's survival as a distinct community". To that end, it found that striking the proper balance between equal protection and tribal self-determination was best left to the Pueblo's judgment (Santa Clara, 436 U.S. 54). The 10th Circuit Court of Appeals, to which Martínez's was an appellant, decided that no "compelling tribal interest" could ever justify the ordinance's sex-based classification. This decision was appealed in turn to the Supreme Court, which reversed the 10th Circuit Court's decision and ruled that the tribe's ordinance was valid on the ground of Pueblo sovereignty, arguing a jurisdictional incapacity to rule on the matter.

"Santa Clara Pueblo v. Martínez" (along with "The United States v. Wheeler" and "Oliphant v. Suquamish Indian Tribe" cases) was a seminal case because it established that the state had no jurisdiction over Indian reservations or their communities and that members of the community were subject to its sovereign jurisdiction. Shachar argues that if Transformative Accommodation had been available for Mrs Martínez, the outcome would have been different, and much preferable.

Shachar also adduces the case of "United States v. Anthony Robert Wheeler". In 1974, Wheeler was found guilty of indirectly corrupting a minor by the authorities of the Navajo tribe to which he belonged. A few months later, he was indicted under the same charges by a federal court. Wheeler was found guilty by a grand jury, but he attempted to quash the conviction

⁹³ ICRA. Pub. L. 90-284, 82 Stat. 73, enacted April 11, 1968.

alleging a violation of the Fifth Amendment, specifically the “Double Jeopardy Principle” which denied that “any person (shall) be subject for the same offence to be twice put in jeopardy of life or limb...” (U.S. Const. Amend V). The United States District Court dismissed his case. He appealed their decision and shortly after, the Ninth Circuit Court of Appeals confirmed the dismissal. The verdict of the court was unanimous. Its legal reasoning was grounded on sovereignty. The matter was for the court to confirm if an Indian tribe had the necessary sovereignty to judge and punish tribal members. They found that the Navajo nation had the power to do so and that, since the Navajo tribe was acting as an independent sovereign, the “Double Jeopardy Principle” did not apply. The clause does not forbid prosecution by two different sovereign nations and so does not preclude the federal prosecution of a Native American even if he has already been prosecuted by his tribe for the same offence. As a result, Wheeler was prosecuted and sentenced twice. The question Shachar asks is, had the model of Transformative Accommodation been applied to this case, would he have been treated more fairly? According to Shachar, the answer is yes.

Consider now a third case, one that Shachar does not consider, that of the children of parents in the New Jerusalem who wished to access state education. What does Shachar’s model have to say about this case?

The New Jerusalem and Transformative Accommodation

*The Convention on The Rights of The Child*⁹⁴, subscribed by the United Nations General Assembly in November 1989 (of which Mexico is a signatory state) is nowadays the most widely ratified human rights legally-binding treaty ever subscribed. In Article 28, it states:

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

⁹⁴ United Nations. *The Convention on the Rights of The Child*. Available at: <https://www.unicef.org/child-rights-convention/convention-text#> (Accessed 1 November 2020).

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

The Mexican state, as a signatory party, commits to guarantee children's rights and access to education. Similarly, The Political Constitution of The Mexican United States declares in Article 3 (Last reformed 2019):

Everyone has the right to education. The State Federation, the States of the Union, Mexico City, and the Municipalities will provide and guarantee initial, preschool, primary, secondary, upper-secondary, and higher education. Initial education, preschool, primary, and secondary are equal to basic education and it will be mandatory. Higher education will also be mandatory in terms of section X of this article. Initial education is children's right and it will be the responsibility of the state to raise awareness of its importance.

Yet, the Mexican state did not intervene to force the religious authorities of The New Jerusalem to restore the children's right to education. Instead, after lengthy negotiation, the government of the state of Michoacán secured the agreement of the authorities for children to attend a temporary school outside the community. By the time an agreement was reached, there had been considerable violence, suffering, and the effective loss of an entire academic year. Could the model of Transformative Accommodation have been of any utility in this case? By analysing Shachar treatment of the prior cases, it is possible to establish where, in her view, it would have brought gains. Having conducted this analysis, I shall turn to comment on some of the problems that I think Shachar's model would face if put into practice.

In "Santa Clara Pueblo v. Martínez" case, the Transformative Accommodation approach would have meant that Maria Martínez would have had the opportunity to choose whether she wanted her claim to be heard by the Pueblo authorities or by the New Mexico State's courts. Even if her children had been dispossessed (as happened) by the Pueblo, she would have been granted the right to appeal before the judicial power of New Mexico, which would have had the authority to review, if not to overturn, the Pueblo's sentence. So, at least, Martínez and Martínez would have been benefited from a second chance to make their case, and very probably they would have been granted a suspension of the indictment or economic

compensation. According to TA, the state has the power to review the group's authorities' sentences in the light of potential human rights violations or individual rights transgressions. If the state had found that Martínez had been discriminated against on the basis of gender, it would have instructed the Pueblo's governor to provide the petitioners with redress equivalent to the damage incurred. As Shachar puts it, "joint governance opens up the possibility to empower women (and other disproportionately burdened classes of group members) by ensuring that neither the group nor the state authority is shut out of the decision-making process when the individual has a legitimate interest in being governed, and served, by both" (Shachar 2001:150).

Regarding the case of "The United States v. Wheeler", the TA model is succinct: "power over the sub-matter of conviction rests in the hands of a presiding judge [speaking for the state] while authority over sentencing is vested in the hands of an Aboriginal community (the minority group), which assumes responsibility for the punishment and rehabilitation of the convicted" (Ibid.:161). Again, the model envisages the exercise of joint governance. In criminal justice, there are always two elements: the "conviction", and the "sentencing". The first element refers to whether the defendant is guilty or not guilty, and it is in open court a procedure normally decided by a jury. The second sub-matter to be addressed is "sentencing", which deals with the appropriate means of punishment, protection of the public, and rehabilitation of the offender, and is carried out by a presiding judge (Ibid.). A criminal case is not concluded until both sub-matters have been addressed. On Shachar's model, Wheeler would not have been sentenced twice (as he was on the presupposition of two mutually exclusive jurisdictions). Rather, the state would have been in charge of the sub-matter of "conviction", whereas his community would have dealt with his sentencing.

I turn now to the children of The New Jerusalem. How would the TA model have worked in this case? Shachar (Ibid.:155) sketches the outlines of an answer which

complies... with the joint governance ideal of encouraging input from different sources of authority in co-governing a given social arena, encourages the education of children in a setting that overcomes the "either/or" choice between excluding religion altogether from the curriculum (the strict separationist approach) or fully upholding and sponsoring faith-based schooling (the strict neutrality approach). Joint governance imagines public schools as spaces where children from different backgrounds can learn about their own communities and distinct histories (in a secure and supportive environment), while establishing a minimal level of commonality between them as members of a larger, shared political entity.

Shachar cites the examples of the Netherlands and Denmark, states that financially support different religious schools that promote diverse religious traditions and beliefs. She adds that: “In Germany, the Länders organize the religious classes, that are generally two to three hours a week, for which students break up into different classes according to their religious affiliation. There need only be six to eight students of a given *nomoi* group to justify a class being held for them” (Shachar 2001:156).

These examples tend to suggest that the TA model offers resources that would have, at a minimum, helped to ease some of the tensions that made the situation in The New Jerusalem so combustible. The Loyals objected to some of the subjects taught in the public school. They tried to persuade teachers and educational authorities to exempt their children from classes that, in their view, disputed the Bible’s tenets, and from sex education classes that offended their values. No exceptions or accommodations of any sort were offered. In principle, TA would have offered options to accommodate the religious petitions and concerns of The Loyals as well as the subsequent concerns of The Dissidents. Religious lessons would have been taught, provided by their own spiritual leaders, in accordance with the beliefs and principles of the community. That is what the model is about: accommodating diversity. Had the TA model been an option, the conflict might possibly have been avoided.

Some Problems with the TA Model

On the other hand, I believe that there are reasons to think that, for all its appeal as a model, Shachar’s model of Transformative Accommodation would have run up against significant difficulties in terms of operability. The incentive structure assumed by Shachar does not seem to acknowledge sufficiently strongly that the same interests that drive a state to allow a cultural group some degree of autonomy will also cut against the impulse to press without stint its institutional claims to represent vulnerable group members who seek its protection: the more it becomes the jurisdiction of choice, the more it will raise suspicions that it is embarking upon a surreptitious “re-universalization” of citizenship. *Mutatis mutandis*, the same interests that encourage a group’s vulnerable members to appeal to the group’s fora to settle disputes may discourage subsequent appeals against the group’s sentences to the state’s courts. Empirical cases, such as the “Emmanuel School of Girls” in the Israeli occupied territories, extensively documented by Tehila Sagy (2018); the “Pueblo vs Martínez” case (summarized and explained above), and The New Jerusalem case that has been explored in this thesis, all show that in reality states seem to have a vested interest in not interfering in

jurisdictions that they have formally recognised as autonomous (because they do not wish to pay the political costs associated to such potential interventions).

In the Girls' School case, analysed by Sagy, the court simply stepped back from monitoring the school's discriminatory practices, proclaiming that its leaders had to compromise but that the court did not have the resources to "monitor" what happened inside schools (Sagy 2018:640); in the "Pueblo v. Martínez" example, the state adduced a "lack of jurisdiction" and dismissed the case; with The New Jerusalem, the Mexican federal government argued that the Naborist group was not "officially registered and, therefore, non-existent" (sic) as a religious group and that, as a result, the Under secretariat for Religious Affairs could not legitimately intervene in the case (see chapter 2). Regardless of its formal responsibilities, or duties, one way or the other, states will find a way to justify the denial of justice when unwilling to bear the political costs of enforcing it. Sagy explains why: "the state has a certain stake in private ordering [and it is] the power of the group in relation to the state [that] determines that interest" (2018:636). The case analysed by Sagy gives an account of the increasing power of the Haredi ultra-orthodox community in Israel, empirically confirming her theory: the more powerful the group, the less likely for the state to interfere with its internal affairs.

Michael Walzer briefly mentions in *On Toleration* how difficult it is for liberal states to interfere with states that do not respect the essential rights of its members, even when having the power to do so, even when the oppressing states are vassal states of the liberal one, and even where the liberal state recognises its moral and legal obligation to interfere. He took the example of an ancient Indian practice of *suttee* (Walzer 1997:61).

The *Sati* or *suttee* was a historical practice found predominantly among the Hindus, particularly in the western and northern regions of India. Once the husband had passed away, the widow had to sacrifice herself by placing herself on the funeral pyre of her dead spouse. If the widow refused, she would be "assisted" by her neighbours, relatives, and other funeral attendants, who would tie her up to the pyre to make sure she performed her part. This practice was denounced by Christian evangelists as early as 1803 but the British East India Company and the British Governor-General of India allowed it to continue, being reluctant to interfere with what they described as "religious private matters" (see Gilmartin, 1997). It was only the combination of Christian evangelists, William Carey among them, and Hindu reformers like Ram Mohan that eventually pushed the British government in India to enact the "Bengal Satti Regulation" that prohibited the practice in 1829.

In the interim, thousands of women had been burned alive. A report written by a Christian-Evangelical organization for the period 1815-1824 lists the suttees' numbers for each

year of the period, which amounts to 5,997 only in the region of Bengal alone (an average of 666 casualties per year). The same report records 635 *Sati* fatalities per year in the region of Madras, and 655 per year in the Bombay (Mumbai) region (The Missionary Herald, 1829.:124-31). On this basis, over the ten-year period, more than 19,000 women died in these three regions, many of them coercively “assisted” by diligent *Sati* watchdogs.

Walzer (1997:62) writes of

(T)he extraordinary reluctance with which the British finally, in 1829, banned the suttee (the self-immolation of a Hindu widow on her husband's funeral pyre) in their Indian states. For many years, the East India Company and then the British government tolerated the practice because of what a twentieth-century historian calls their "declared intention of respecting both Hindu and Muslim beliefs and allowing the free exercise of religious rights... It is at least conceivable [he continues] that consociational arrangements might produce a similar [kind of] toleration, if the power of the joined communities was in near balance and the leaders of one of them were strongly committed to this or that customary practice.

The structural similarities with the case of the New Jerusalem do not need to be laboured. It is another example of the way in which the distribution of power, even in relatively small quantities, affects the state's willingness to intervene to prohibit practices it deprecates among minority groups, even when it acknowledges a moral obligation to do so.

Analogous worries apply when considering the incentive to pursue justice outside the “private order”. Internal group power relations allow for private ordering but at the same time, they deter vulnerable members from seeking state's protection or redress. The unsuccessful results achieved in the empirical cases mentioned just now are scarcely untypical. Vulnerable group members are well aware of such precedents, and certainly of the social costs of challenging their private fora. The viciousness and effectiveness of the “social sanction” inside a small group, that Mill and many others described extensively; the high-costs related to the “right of exit”, and the almost null hopes the victims hold of receiving justice outside their communities, are just some of the discouraging subjects that prevent the oppressed from diversifying their access to justice. Why did The Dissidents not simply leave La Ermita and find somewhere else to worship their virgin? Why do oppressed people among the Pueblo or The Navajo Nation remain in their communities despite the treatment they have received? The answer has to do with the costs of leaving: the price is too high. No doubt Shachar would argue that these costs would not obtain, or not to the same degree, in the transformed situation brought

about by the operationalisation of multicultural jurisdictions; but there is, at the very least, a cart-horse problem that needs to be addressed.

Finally, Shachar's second premise, that is, a "free market" form of jurisdiction that enables members inside the group to choose the justice provider that they prefer, seems to take the causal processes of social reproduction too trustingly for granted. Healthy competition between the group leaders and the state is no more likely in practice, and may be less likely, than a race to the bottom. The examples outlined above show that public institutions in charge of delivering justice frequently and readily find reasons not to protect the rights of the vulnerable within powerful collectivities. Too often they lack the motivation to favour the disadvantaged members of powerless and politically irrelevant groups. Theila Sagy explains this phenomenon as a direct consequence of what she calls "the rule of conservation of power" (2018:631). She argues, plausibly, that "the power of a group remains a constant in relation both to individuals within it and to the state". If Sagy's understanding of power is correct (as the empirical evidence seems to suggest), then two basic premises of the TA model will be flawed premises. Neither the appropriate allocation of legal authority or the no-monopoly (of jurisdiction) rule will likely operate in the way Shachar assumes.

Shachar herself explains how she sees the "Kinetic" model she has designed operating in practice (Shachar 2001:163):

Sentencing and healing circles are by definition non-adversarial. No one can come under their jurisdiction unless they voluntarily choose to do so, either after they have been convicted, or after they have pleaded guilty to charges laid by the state. Yet even after this initial choice of jurisdiction, individuals may "reverse" the jurisdiction of the circle by turning to the state, the failsafe authority, if they believe that their sentence and healing process is not conducted fairly by the community. This "opt-out" option means that the state can theoretically take over the responsibilities of the community if it is too harsh (or too lenient) in its sentencing. Transformative accommodation also grants the community a right to use the "reversal" option as a means of disciplining the offender, if and when it becomes clear that that person is failing to cooperate in the healing process. In such cases, the offender must face the state's punishment apparatus instead. This "kinetic" division of powers thus endows each non-monopolist power center, together with the individual,[with] the capacity to monitor the other power-holder's exercise of authority.

The Transformative Accommodation model is, to my mind, a step in the right direction. It allows us to approach the problem of reconciling groups rights and individual rights from a broader and more innovative perspective. And yet, life is usually more multifaceted and complex than any intricate theoretical model. The realities of The New Jerusalem are difficult

to square with the optimistic picture of mutual correction and healing painted by Shachar. Theory and practice still seem very far apart indeed.

—Chapter 6—
COMPROMISE AND TOLERATION: A NORMATIVE PROPOSAL

This final chapter takes off from the theoretical problems that became evident in chapter 5 and, finding existing theories of different kinds wanting in various ways, sketches a new answer to the core normative question of the thesis: How should modern liberal states deal with religiously extreme minority groups that do not respect the rights of their members? The first section suggests that it might be useful to think about this problem in a different way. I suggest that recent literature about “international” toleration, specifically the appropriate response of liberal states to theocratic states in the international system of states and the meaning and scope of toleration in that setting, has lessons to teach for the case of The New Jerusalem. In particular, in its “realism” about the exigencies of practical politics, it avoids some of the simplifying and moralizing tendencies identified in the previous chapter.⁹⁵ This section also highlights the distinction made in this literature between the strict requirements of justice and the pragmatics of compromise and the tendency to present toleration as a requirement of justice, thus setting it in opposition to compromise. The next section argues that the relationship between toleration and compromise need not be oppositional. I suggest that toleration need not be invoked as an *alternative* to compromising but can be put to work instead to imbue such compromise with the moral content it might otherwise lack. I conclude that a form of moral compromise complemented by a conditional arrangement of political toleration could be a viable way to deal with complex cases where toleration, as traditionally understood, seems to fall short of protecting individual rights within minority groups that are prone to oppress their minorities. I also spend some time explaining what I believe could and should be done in The New Jerusalem to improve the life of its inhabitants, emphasizing children’s rights. Concrete examples are provided of how to implement a comprehensive form of political compromise, in hope that light may be shed on similar cases where liberal states have to deal with insular religious groups that hold illiberal values and practices. I begin, then, with “international” toleration.

⁹⁵ As noted at the beginning of the previous chapter, it comes close to the “political activist” perspective discussed by Phillips in several respects, though it differs in others.

What if The New Jerusalem were a state?

If the New Jerusalem were a state, the Mexican government would likely tolerate it. After all, liberal states habitually tolerate illiberal and even theocratic states (Trubowitz 2011; Spinner-Halev 2000; Walzer 1997). Although they tend to think of themselves, and to represent themselves publicly, as having uncompromising moral commitments to certain rights and liberties deemed essential and inalienable, when developing and advancing their foreign policies, they sooner or later face the question of whether there are reasons (both practical and moral) to engage with states, and to overlook practices within those states, they dislike or find morally repellent. As Michael Blake puts it, it is widely acknowledged that it is “appropriate for a liberal state to ask whether there are moral reasons to regard certain non-liberal states as having rights to non-interference in the perpetuation of their particular forms of government. It is appropriate, that is, to ask whether there are at least some non-liberal states that deserve to be treated with the distinctive moral attitude known as tolerance” (Blake 2007:1). There are many reasons why states opt to avoid interference in the affairs of another state (even if that state overrides liberties and rights regarded as inviolable by the liberal state): many relate, one way or another, to the exigencies of political expediency, including the mutual convenience of having a stable international system and the need of skipping unnecessary confrontation and endless and costly wars. (See Chatterjee and Scheid 2003).

It is worth emphasising that such exigencies, while perhaps appearing to constitute no more than a checklist of prudential consideration, are still a source of moral reasons *per se*. As Blake goes on to say, “To engage the mechanisms of international coercion—through economic sanction, say, or warfare—is to use tools that inevitably cause enormous human damage, in both the short and long runs. To use these tools badly, without adequate cause, is both morally and prudentially wrong. This sort of moral reason, however, should be distinguished from tolerance itself” (Blake 2007:2). Of course, liberal theorists make this and like distinctions as matter of course (see e.g. Heyd 2021). Liberal states make the distinction too, not only in theory, not least because they do not wish to have their own loftily professed commitments to tolerance and liberty reduced to the worldlier and more pragmatic avoidance of interfering with the beliefs and practices of others because of a wish to achieve peace, compromise, coexistence, and social stability; but also in practice, when adopting stronger and weaker policies in relation to illiberal states of various kinds.

Approaching the problem of The New Jerusalem from this direction may be the more instructive in the light of the fact that the Mexican government has for practical purposes

treated it not as a city that falls under its legal jurisdiction but rather as a city-state within a state, an independent polity⁹⁶, at least between elections. So its approach may be better understood through the lens of international toleration than via some version of domestic toleration, whether liberal or multicultural. At least, this will give us a counterpoint from which to assess the approaches discussed hitherto in this thesis from a different perspective. *De facto* The New Jerusalem has been treated by the Mexican state as a sort of sovereign state; but what kind of state, meriting what kind of treatment—what does toleration between states involve?

This question has been discussed much in the academic literature at least since the publication of John Rawls's *The Law of Peoples* (1999). In his seminal writings *A Theory of Justice* (1971) and *Political Liberalism* (1993) Rawls made arguments designed to establish a fair and secure basis for political principles of toleration. In the earlier work, his view of toleration was rooted in a comprehensive conception of autonomy. In the later work, his defence of toleration proceeded from the claim that diverse individuals would come to tolerate one another by developing an “overlapping consensus”: individuals and groups with diverse metaphysical views and different plans of life would find reasons to agree about certain principles of justice that included, by inference, principles of toleration. This claim relied on a sweepingly general historical argument about the way in which people solve their conflicts: by adopting the practice of toleration as means of mutual relief from something worse. The costs of ongoing wars of religion being too high to bear, they agreed to support a “neutral” state, which allows them to follow their own plans of life and bear witness to their own religious beliefs, but prevents them from seeking to require those beliefs of others, acting as umpire in disputes between individuals and groups with diverse perspectives on what beliefs are true and what the ends of life ought to be. The state is agnostic about the ends of life but provides the basic structure through which individuals and groups pursue their ends as they see fit.

Rawls's idea of “Justice as Fairness”, then, sets limits to political power without trying to evaluate the relative merits of different conceptions of the good. The principles of toleration it upholds will be agreed to by individuals and groups from diverse perspectives because these principles will appear reasonable to all of them despite their differences. The idea of toleration results from a political consensus that is developed on analogy to the social contract that Rawls describes at length in *A Theory of Justice*. The result is a scheme of equal basic liberties which

⁹⁶ As I have described in Chapter 1, The New Jerusalem could be technically regarded as a state within a state as the “holy” authorities of the city successfully claim and exercise the monopoly of violence throughout all its territory. Moreover, they systematically refuse to comply with the local and federal laws and regulations currently applicable in the state of Michoacán, Mexico.

is equally accessible to all citizens. These basic civil liberties form the basis for political toleration.

When in 1999 Rawls discussed the extension of this scheme of justice as fairness from the domestic to the international sphere, many of his previous admirers were taken aback. Political toleration and equality, in Rawls's domestic view of the state, are mutually supporting: members of a state seek and expect to be tolerated as a specification of what equality means. But Rawls's understanding of tolerance in the international arena looked quite different and more difficult to match with the moral equality of individuals. As Blake (2007) notices: "When we are asked to tolerate those whose governments are illiberal, what we are being asked to do is to tolerate those who themselves demand the right to be coercively intolerant. This, after all, is what it means for a government to be illiberal; illiberal regimes just are those regimes who do not seek to treat people as moral equals... to tolerate that is morally quite a different thing than to tolerate domestic religious pluralism" (2007:7).

In fact, Rawls distinguishes between different kinds of illiberal regimes and different degrees of tolerance. Some regimes, he thinks, are in a position analogous to individuals in the domestic sphere who, while they do not endorse comprehensive liberal conceptions—they would not, for example, agree that autonomy ought to be regarded as the defining characteristic of human beings—are nevertheless able to find reasons to endorse the same set of principles of public justice to which liberals subscribe. The principles they would endorse would be narrower than those that characterise domestic political justice. They would not include such liberal democratic rights as the rights to freedom of expression and association, freedom of religion, equal political participation, but they would include such basic human rights as the right to life and security, and the right to basic subsistence. Likewise, while they are not themselves liberal, they are respectful of other peoples in the relations with them, liberal and illiberal peoples alike (Rawls 1999a:64-75). Rawls terms such peoples "Decent peoples" because they conform to the minimum standards of decency enshrined in his Law of Peoples.

"Decent peoples" stand in contrast to those Rawls calls "outlaw societies", which violate the human rights of their citizens. They do not accept the principles of conduct that other peoples abide by and are *eo ipso* unreasonable, since reasonable peoples by definition endorse those principles (Rawls 1999a:80-81). They do so, not because they are liberal principles but because they are principles that express a shared understanding and experience of living together as diverse peoples and the basic norms of reciprocity that are required to facilitate a common existence. Nowadays these norms tend to be expressed in the language of human rights and while some states reject what they take to be attempts by Anglophone and/or Western

liberal states to specify the contents of those rights as they determine, few if any, openly deny universal human rights (even when they are violating them). An “outlaw state” as Rawls construes it denies the rights to life, security and subsistence that decent peoples recognise. As such, it should not be tolerated. Indeed, it may be sanctioned, or even attacked, when the self-defence of liberal and decent peoples warrants it (Rawls 1999a:37,81,93). However, this is not the same as saying that toleration and non-intervention amount to the same thing, or that their limits coincide with one another.

As Kok-Chor Tan explains, tolerating another society involves much more than refraining from intervening by force against it. It also entails notions of acceptance and recognition. When liberal peoples tolerate decent peoples, “they not only refrain from acting coercively against them” (by not engaging in military intervention, for example) but,

they are, more fundamentally, recognizing the legitimacy of decent peoples and their status as equals. Toleration thus expresses a certain normative attitude towards the subject that is being tolerated, and is not just a prescription against military action against the subject (Tan 2005: 691).

In other words, Rawls’s international toleration, in view of Tan, should not be understood primarily as a principle that defines the limits of intervention but, more fundamentally, as a principle that defines the limits of permissible criticisms and judgments between peoples regarded as free and equal. If and when a state does intervene to defend human rights, it may be said to be acting to enforce a judgment that the rights violation is morally unacceptable. But judging that a human rights violation is wrong is distinct from enforcing that judgment, and, for Rawls, the principle of toleration in this setting is concerned primarily with the boundaries of judgment rather than with enforcement. In other words, Rawls’s account of toleration “deals with the more fundamental question of appropriate judgment rather than intervention—his principle of toleration sets limits on the kinds of judgment that liberal peoples may reasonably make, and not just the kinds of action that they may take to enforce their judgment” (Tan 2005:691).

This distinction between making a judgment (criticizing) and enforcing that judgment (intervening) is also made by Kymlicka (1995:164-66). It clarifies the point that even though outlaw societies fail to meet the test for liberal toleration, it need not follow that they must be attacked or intervened against, just as some minority cultures which are deservedly criticised for their cultural practices may not have those practices prohibited by liberal states. Whether or not a liberal people may act with force against a tyrannical or outlaw regime—and, *pari*

passu, whether or not a liberal state may act with force against an illiberal minority that abuses fundamental rights—will depend on a variety of further moral and pragmatic considerations, including “the severity of the wrongs of the regime, the potential repercussions (locally and globally) of forceful military action, the probability of success of a military action, and so on. Waging war against a tyrannical regime, even purely for the purpose of protecting basic rights, brings into play additional considerations about the morality of going to war that the fact of illegitimacy in itself does not address” (Tan 2005:691).

That toleration includes recognition and not merely non-intervention is, Tan concludes, an important point for Rawls’s project. It underwrites Rawls’s claim that decent peoples are accepted into the society of peoples not for instrumental reasons, for the sake of stability or peace or economic benefit, but as a matter of justice. For Rawls, their tolerance is a requirement of justice, not a compromise. This distinction is one to which I shall return shortly.

Tan fills out what tolerance means on Rawls’s account by emphasising that it allows space for private (liberal) citizens to challenge decent peoples within the rules of the basic structure of the society of peoples and to organise non-violently to press for their reform (Rawls 1999a:84). If it did not, as Tan correctly observes, Rawls’s international theory would be in contradiction with his domestic theory of justice, which gives individual citizens the right to criticise non-liberal ways of life and to organise to protest against them non-violently through the liberal freedoms of expression and association enshrined in his first principle of justice. The idea seems to be that individual liberals in liberal societies are able to promote liberal values globally through private non-governmental channels, not that these liberal rights are attributed to liberal citizens belonging to decent peoples. Critics have found this conception of tolerance excessively “weak” (see Blake 2007, 2003; Benhabib 2006) but it has the merit of reflecting the political realities of a world in which illiberal peoples exist at the level of states and inside those states. The making of judgments and its enforcement appear to answer to radically different sets of criteria. Can it help us to make sense of the problem of The New Jerusalem?

Since its foundation in 1973, the very existence of The New Jerusalem and the apocalyptic and segregationist nature of its leaders put the Mexican state in an awkward position. For decades, successive governments have attempted to find a middle way between the extremes of imposing the country’s majority way of life on the thousands of inhabitants of “The City of the Virgin” on the one side, and giving free rein to toleration on the other, handing the community *de facto* and perhaps *de jure* control of its own interior life, putting the fates of its citizens, including the minority of dissidents, under the control of the city’s religious authorities.

These two positions embody *in concreto* the two poles that have defined and delimited the liberalism versus multiculturalism debate in the last two generations. Matthew Festenstein helpfully labels these, respectively, as “Negative Universalism” and “Liberal Culturalism” (Festenstein 2005:66). The first centres on a state that fulfils its purpose by guaranteeing the rights of individuals, not by granting differentiated rights to groups and minorities. The second centres on cultural identities that are regarded as normatively compelling and attempts to reconfigure the state, and liberal political theory, on terms that do full justice to their claims. At the limit, the two meet each other round the back, the state *qua* monopoly legal system determining what is and what is not the kind of group that deserves to have special cultural rights. Many writers, like the Mexican politicians discussed in chapter 1, have tried to carve out a middle way between these poles; but they have, like their counterparts, ended up swinging unsteadily between them, lurching from universalist prescriptions/threats of force to proclamations of the need to show tolerance to a religious minority. The politicians, in particular, have blamed this state of affairs on the unwillingness of the contending parties in the city to find their own middle ground, to compromise. So the Mexican state, like Rawls and Kymlicka, has insisted on distinguishing between tolerance and compromise.

In the space that remains, I argue that compromise and toleration should be regarded as partners as much as antagonists. Compromise is not an alternative to toleration but the practical acknowledgement that the objection component is an ineradicable feature of toleration. It is not the expression of indifference, but of the fact that tolerance is difficult, sometimes (though not always) involving conflicts of value that make demands upon us that we cannot always, and perhaps never, satisfy without remainder.

Compromise and Toleration

Throughout my research into The New Jerusalem and the theories of toleration and minority groups that promise to shed light on the problems it posed, I found that, often, the language of toleration was shadowed by the language of compromise: politicians urged compromise, claimed to have found it, realized they had failed to find it, and appealed to toleration as an alternative to compromise: we need to tolerate because we cannot reach compromise. The relationship between toleration and compromise, I propose, is more complex than this binary formula suggests.

The sort of compromise I am talking about, and which I link to toleration, is of a moral order. My understanding of compromise covers those cases in which the parties believe they have a moral interest in or motive for accepting or rejecting a given policy, as opposed to acting from purely pragmatic or self-interested motives, but where there is disagreement about what that interest requires. Rostbøll offers a definition that I will take as my own: a compromise is “an agreement in which all sides make concessions in order to be able to reach a collective decision and in which the concessions are motivated by the presence of disagreement” (Rostbøll 2018:4).

From this definition, we can infer that compromise includes the idea of mutuality and reciprocity. The fact that every party needs to give something or to submit a demand means that everyone has to make concessions. In other words: compromise implies that there is not a total winner as no one gets the outcome they preferred, and no-one gains without at the same time losing something they value. Agreement means getting, not their first choice, but a second-best they are willing to accept because they regard the value of making a collective, mutually-agreed and mutually-binding decision trumps the value of that first choice. All things considered, it is better to have an agreement of this sort than not, and it is impossible to reach that agreement without conceding something (not principle, but rather the idea that the world can be made to reflect perfectly one’s own moral point of view). One gives and, in doing so, gains the proverbial bird in the hand worth two in the bush. It is the continuing existence of background disagreement that differentiates compromise from consensus (which involves agreement in the form of concord) and from simple bargaining. It was Habermas (1996:141 *et passim*) who stated that in mutual consensus one is motivated solely by the merits of the reasons concerning the dispute, whereas in compromise disagreement *per se* becomes a motive and a reason. In contrast, in haggling, the parties involved are pushed by the differential forces between to reach a *modus vivendi* that is apt to collapse if the balance of forces changes, like the house in Swift’s story that collapses when a bird lands on its roof.

A distinguishing feature of compromise, then, is that it does not eradicate disagreements. Once a compromise agreement has been achieved, and once all the parties accept that the decision reached is the right one, they still believe that the positions they adopted *ex ante* were correct at least to some degree. Parties that agree to compromise do not agree that they were wrong to begin with. They only agree to compromise because they regard it is worthwhile to give up their first choice for the sake of a collective decision. The same decision, arrived at by reflection and concession, involving incremental shifts of position by all parties which eventually bring them into alignment, would not be aptly described as a compromise. The

parties would have reached consensus. Consensus precludes disagreement (because it has been eliminated during the process of arriving at consensus) whereas compromise is nourished by disagreement and by the need to overcome it without cancelling or discounting it.

Compromise may be further disambiguated into at least three types. Following others, I call these Deep Compromise, Moral Compromise and Political Compromise respectively. They are closely related, but exhibit differences in scope and degree that, when applied to concrete cases, make it necessary to distinguish them clearly.

Deep Compromise stands in contrast to “shallow compromise” (also referred to as “bare compromise”) (Richardson 2002; Bellamy 2012). In a shallow compromise, the parties assume that their opponents’ position is given, and they regard their own position as given too. Accordingly, they seek a middle point that is equally acceptable to both parties because it splits the difference between them (Bellamy, 2012). Contrastingly, parties to a Deep Compromise do not see their ends as wholly given or fixed, but seek a compromise in which the ends—or perhaps more exactly, their own understandings of the possible reasons for and against those ends—are modified. According to Rostbøll (2018:5), Deep Compromise differs from bare compromise “because it involves an element of deliberation and learning. The parties do not just aim to maximize their own policy preferences, they acknowledge that they can learn from others in the combination of arguing and bargaining that characterizes deliberation” of this special sort. Or as Bohman (1996:101) puts it, Deep Compromise “weeds out unreasonable positions and brings people closer together”⁹⁷ because it forces them to articulate to themselves and others the reasons they have for adopting the positions they have adopted and exhibiting the preferences they do. In so doing they engage, of necessity, in the kind of exchange of reasons and mutuality that elevates their activity above a mere exercise in bargaining and persuasion. It is no longer a purely instrumental exercise. One might say, the effort to achieve compromise comes to be made not only for the sake of agreement, but for the sake of justice.

The particular form of Deep Compromise I am proposing as a feasible solution to improve the current circumstances in The New Jerusalem is what I call Moral Compromise. Moral Compromise, to define it, is a substantial (Deep) compromise in which both the resolution and the conflict are morally considered by all the parties involved (May, 2005). By “morally considered” it is meant that the agents have a normative judgement that implies a particular conception of the good and therefore a moral judgement of what is the “right thing to do” as opposed to “the wrong” (May, op cit). As Rostbøll (op cit: 8) explains, “A normative

⁹⁷ As cited in Rostbøll (2018).

theory of compromise requires us to accept that citizens in pluralistic societies cannot agree on justice or on what the law ought to be. Compromise is needed because there is no shared conception of toleration or justice—if there was one, no compromise would be needed”—and because, in order to incarnate the principle of self-determination that is core to the democratic ideal, the law has to respect and reflect the status of all citizens as joint participants in self-legislation.

A merely or crudely Political Compromise, in contradistinction, is a form of shallow compromise in which the aim is to balance, or to appear to balance, concessions: as such it verges on bargaining and can be strategic in the pejorative sense of the word, as when one party gives up something to which is in reality indifferent in order to give the appearance of compromising or insists upon a particular principle as absolute while allowing its ongoing violation in the name of its ultimate realisation. The various temporary compromises enforced by the state upon the parties in The New Jerusalem may be thought to possess this character. They failed in part because the different parties, namely the Mexican state and the religious authorities of the holy city, belonged to different “moral universes” (compare Phillips 2005: 133). They did not only disagree on what was “the best” way to serve justice but on whose justice should be served and what the “right” way to do it was. The form of deep—substantial—compromise needed to be reached is, as I said at the beginning of this section, political, because it concerns the rules governing people whom chance or choice has brought together, but it is of a moral order because both the resolution and the conflict have to be “morally considered” by all the parties involved.

The Divorce between Toleration and Compromise

Compromise is not toleration. Neither is toleration *eo ipso* a form of compromise. If it is claimed that, on the contrary, toleration is always a second-best option because it presupposes accepting something that one finds objectionable, and in this sense involves compromise, the reply is that toleration concerns what we ought to allow others to do, not what we would prefer them to do or not do, not what we have agreed with them that they and we can or cannot do.

Consider one of the many situations that take place at present in The New Jerusalem: The majoritarian group of the community, The Loyals, believe that no one should be allowed to use mobile phones or any other modern means of communication inside the community. To do so goes against the will of the Holy Virgin and the prophecies of the current clairvoyant, “Mamá Catalina”. Still, they accept that these ordinances are not shared by other members of the

community, namely the minoritarian and more liberal group known as the Dissidents, fundamentally because this smaller group do not take as valid the prophecies of Mama Catalina, whom they regard as a fraud. The Loyals are well aware of this; and of The Dissidents' use of modern technology. They tolerate the "vicious" presence of technology inside the Holy City for the sake of peace. (They will breach the peace on other pretexts they deem more important). They do not think The Dissidents are right in any way; they are not willing to compromise or negotiate on the issue; but they do not want bloodshed on this score, so they look the other way. The Loyals continue to hold that the practices and beliefs of The Dissidents are morally and religiously wrong and *vice versa*.

This may be a reason why authors such as Bellamy and Hollis (1998) have argued that compromise is "more than" and expresses a higher ideal than mere tolerance. Are they right? My answer, paradoxically, is yes and no: compromise is at the same time "higher" and "lower" than toleration. It is of a "lower" order than toleration insofar as, for the tolerant person or state, it is a second-best policy. No partisan thinks it is the best policy in itself. Rostbøll (2018:8) makes the point well: "insofar as one accepts a compromise, one also compromises (some of) one's principles. By contrast, if one thinks toleration is the right policy, one does not compromise one's principles by accepting a policy of toleration". Yet, on the other hand, when two parties begin in mutual disagreement and achieve a political compromise, they are doing something quite different from, and more than, tolerating each other's differences. Tolerating involves accepting people's equal right to live as they choose as subjects of the same law. Compromise implies at least two parties participating in making that law and becoming its co-authors. Where toleration demands respecting (and sometimes bearing with) rival conceptions of the good in a given society, compromise encodes people's disagreements in a law to which all agree to be bound. Rostbøll glosses this difference by saying that "(while) toleration is an answer to the question of what the law ought to be, compromise is a response to disagreement on what the law ought to be" (Rostbøll 2018:10).

Toleration and compromise join hands in appealing to the value or good of respect: respect for persons as fellow citizens, respect for the law, respect for the implications of diversity. In the classical account of toleration, individuals are asked to respect others' right to hold and uphold different conceptions of the good⁹⁸. In the case of compromise, individuals are asked not only to show respect for each person's right to pursue their own idea of the good (as it would be required in any exercise of toleration) but to show respect for their conceptions

⁹⁸ For a detailed analysis of the role that respect plays in the notion of toleration see McKinnon 2006.

of what the law (in particular, coercive laws) ought to prohibit or allow: their views, as much as ours, count for something, even when we think they are wildly wrong. If a conception of toleration tells us how and why diverse subjects can be equally subject to the same rule of law, a theory of compromise tells us how they might be included in producing these coercive laws; laws that will define a common good or common interest and the terms in which it may legitimately be pursued. Compromise gives us reasons to endorse a policy we would otherwise eschew: reasons which “are not aimed at correcting our first-order policy preferences, but are second-order reasons telling us that we should accept a compromise agreement given disagreement at the first-order level” (May 2005:319).

As Bellamy argues, the reasons to seek and accept compromise are all the more pressing “in complex and pluralist societies, where social differentiation and ethnic diversity means that citizens bring very different perspectives and life experiences to bear on a problem and are apt to weigh it in different ways”. Finding room for all these values may not be possible: it may not be possible to accommodate perspective in a single harmonious kingdom of ends. The only reasonable moral response to this practical dilemma, Bellamy suggests “may be to appeal to the democratic ethos and seek a compromise under fair conditions”. This response, he continues, cannot be regarded as seeking the “best” balance of views through mutual moral correction, because no such ‘optimal’ position exists. At least, it is beyond the limits of practical reason for real human agents to arrive at it. Consequently, citizens and politicians must pursue other avenues, including “non-majoritarian electoral systems, that is those systems that use some form of PR rather than plurality voting and even institutionalize proportionality in the administrative structures, as consociational systems do, effectively institutionalize compromise in this way as a means of accommodating pluralism” (Bellamy 2012:458). Shachar’s Transformative Accommodation model would be another possible means of institutionalising this uncompromising commitment to compromise.

Harmonizing Compromise and Toleration

The normative proposal with which I would like to end is the suggestion that, whatever the differences between toleration and compromise, there are gains to make by treating them as mutually reinforcing and complementary rather than as opposed to one another. Respect provides an important conceptual bridge between the two; models like Bellamy’s and Shachar’s suggest an institutional means to the practical end of dealing with conflicts like the one in The New Jerusalem in a principled way without falling prey to either of the extremes

that the various participants in the liberalism versus multiculturalism debates, both in academic circles and in practical politics, find themselves pulled between.

One of the most familiar charges levelled against liberal political thought and political practice since the eighteenth century is that its advocates look down on those who do not share its values and treats them as morally inferior or opprobrious beings: Toleration has been traditionally regarded as a virtuous activity the stronger or more rationally bestow on the weaker and mistaken. By generously tolerating the wrong, the morally superior beings dispensing toleration maintain a hierarchical relationship with the tolerated. The same charge has been levelled at Rawls's theory of international toleration. In taking it upon himself to determine the criteria on which states are to be deemed civilised and reasonable or outlaw, Rawls turns the "different-thinking Other" not just into "my adversary, but an enemy of humanity because he fails to accept what I know is true of all humanity" (Koskeniemi 2001: 493). On the other side, compromise is deprecated because it is seen as morally questionable, as something requires one to betray one's principles (Luban, 1985). Both Kymlicka and Rawls counterpose compromise to principle.

My suggestion, following Rostbøll (2018, 2017 cf. 2011), is that if we succeed in integrating toleration and compromise, we can mitigate the charge of arrogance and liberal ethnocentrism associated with the first line of argument and the worry about abandonment of principles associated with the second. Let us begin with the idea that compromise can compensate for the potential arrogance of toleration. According to Rostbøll, "toleration becomes arrogant when it elevates the tolerator over the tolerated, that is, when the tolerator regards him or herself as having a standing that the tolerated does not have (Rostbøll 2009:633). There are two sides to this problem: The first is that the person who tolerates sees his acceptance of the other's actions as something he bestows on the tolerated, something he grants and "gives" to the other from a higher place. Therefore, the tolerated becomes dependent on the generosity and the magnanimity of the tolerator who is willing to grant the tolerance. The second is that the tolerator, in so acting, takes for granted that he or she knows the best way to define and practice the toleration required (see Forst 2007:219). However, if we do not take the meaning and implications of toleration as given, but instead we think of toleration as a product of, or on analogy with, a political compromise, it becomes much harder to represent it, or to receive it, as "an imposition of the strong and arrogant over the weak and wrong others".

In a deep form of compromise (like political and moral compromises), the parties involved treat each other as equals and the result is always a product that incorporates the opinions and views of all of them. The dynamic of compromise accepts that the meaning and

implications of questions related to justice, toleration included, should not and will not be taken as given, but must be the product of the compromising process as such. Likewise, if people should be allowed to live their lives as they see fit, according to their own sense of justice and their own conception of the good, other things equal, public policy should not be imposed by one group over other groups but should be the result of a kind of compromise between all groups. If states design and implement public policy and rules according to the only wish of the majority group, let us say the majority culture, it is likely that public policy will favour the majoritarian group and it will be biased toward it, advancing its culture at the expense of the other groups. In contrast, by incorporating other groups' views and demands via a political compromise, the resulting laws and policies will be more inclusive, as inclusive as is practicable given the existing range of justice-respecting ways of life that obtains in a particular society.

Although it is true that not necessarily all forms of compromise will eventually produce more tolerant policies, compromise nowise implies the abandonment of principle in pursuit of any agreement whatever, or an agreement for the wrong reasons. These charges against compromise, which run together in the "ambivalence of compromise", embody two complaints: "(Compromise) is unprincipled (either) because it requires one to give up one's own principles when they clash with the other side's principles, or it is unprincipled because it involves a rejection of the existence of objective principles at all" (Rostbøll 2018:12). Here toleration can help to delimit what sorts of compromise are morally acceptable: intolerant compromises should be avoided. This statement may appear too demanding; but the mere idea of compromise already entails a commitment to mutual respect and a commitment to respect the achieved agreement resulting from compromise. A politics of compromise does not respond only to political expediency: it contains, and expresses principle, it is not the repudiation of principle.

My hope is that it may be possible to build upon the grounds of toleration and mutual respect via a theory and practice of compromise capable of offering new solutions to intricate cases like that of The New Jerusalem where toleration by itself seems not to be enough. I realise that there are significant difficulties with building robust and enduring agreements where compromise has been lacking, and that toleration and compromise are terms loaded with all kinds of associations that make it difficult to for all potentially compromising parties to sign up to institutional arrangements predicated upon them. Some differences, as Bellamy notes in one way and Rawls notes in another, are too great to be bridged by either toleration or compromise. But it seems to me that freeing compromise from some of the negative

connotations that attach to it, and toleration likewise, is an important step in the right direction.

Putting the proposal to work

How might this work in the case of The New Jerusalem? In practice, given different scenarios, compromise may yield different results. One possible scenario, unfortunately, is the failure to achieve compromise; another is the failure to make it last. We can fairly ask: what would happen then? Would toleration become then the fall-back option? I believe a counterfactual reading of The New Jerusalem crisis of 2012 could help elucidate the problem and suggest a possible answer or answers to these questions.

Let us begin with the immediate trigger for conflict: The Mexican authorities built the first and only elementary school in the community in 2010 with the consent of the religious “holy” authorities. As Varela (2012) states, the school was accepted by the community at first and was running smoothly for the first two years. Then an issue related to clothing arose: The “pious” rulers of the city noticed that the girls attending the school were wearing “improper” clothes, namely skirts that were, or looked, “too short” (Varela, op cit). They met to discuss the seriousness of the offence and, after some deliberation, The Loyals concluded that the school could continue to operate normally, provided that the teachers agreed to follow the city’s sacred regulations, namely that skirts would have to be worn down to the ankle and that girls should not be allowed to wear trousers or jeans, as these garments were considered “impure”. On the same principle, girls should be required to cover their heads with a veil. The Loyals communicated to the school teachers that the boys, conversely, were expected to have their hair cut very short and that they ought not to be allowed to practice any round-ball sport, as the ball resembled the shape of Earth’s sacred form and so to hit or kick it was a desecration offensive to the Virgin. Children were, however, allowed to play American football because it was played with an ovoid ball.

An official petition was handed over to the school principal, requiring adjustments to students’ uniforms. The school categorically rejected the request. Aggrieved, The Loyals invaded the school and effectively prevented its teaching activities from August 2011 (Marrero, 2014). From that point, only a few “obedient” children were given the chance to attend the “authorized” school in the village, the religious institute San Juan Bosco School, where children had to wear proper clothing at all times and were taught to read and write but only via the Bible and other holy texts written by its founder, Papa Nabor, especially his catechism.

What would have happened if the school principal and the academic board had offered

some kind of accommodation, instead of adamantly rejecting the religious petition? How counterproductive would it have been for the school to modify their uniforms in deference to the religious beliefs of the majority of the community? Could adjustments to the students' uniforms have prevented a crisis that ended with the physical destruction of the school, the loss of two academic years for children, the further division of the already-divided community and the loss of several human lives? The likelihood is that a few adjustments in something as trivial as the uniform would have made the difference from the earliest stage of the problem. A will to adapt some of the standard school regulations to the particular religious needs of the community would have allowed the school to continue its academic activities, probably until the present time. Undoubtedly, pursuing compromise would have been more productive than the intransigence and refusal to engage in dialogue that eventuated.

Similar thoughts are invited when we consider those petitions that the religious authorities submitted regarding the school curriculum. It might well have been possible to include all the children of The New Jerusalem in the public school—Dissidents and Loyals alike—by adapting the school curriculum (within reason) to the religious needs of the community. There would have been several advantages of expanding the public school to include all children: it would have exposed them to a wider range of values, not least liberal values; it would have broadened their education; it would have required them to interact in an academic environment with the other children, whatever the opinions of their parents, and so taught them the virtues of civility, mutual assistance and critical thinking. All this could have been done if only a few contentious issues had been excluded from certain subjects to avoid religious conflict. Instead, no doubt for reasons of principle, the school authorities were unwilling to countenance any change to the curriculum, because they were unwilling to be seen as instruments of a project of religious domination and therefore were reluctant to compromise the values of a secular education. Principled tenacity has its place, but, I suggest, compromise in this case would have been preferable.

For instance, if the educational authorities had agreed to make some concessions to accommodate religious demands, that would have prevented the closure of the school and permitted the continuation of the wider educational life of the community. Thereupon, children would not have been taken out of the school to receive only religious education at home, deprived of an institutional setting for socialization and the acquisition of social and civic virtues. An openness to negotiate over religious demands and accommodate them, when possible, would be tantamount to showing respect for the group's values while recognising their right to be part of the solution by coming together in a shared solution, rather than seeing them as inhabitants

of an alien and hostile “moral universe” (see Phillips 2005:133). Surely this would have been appreciated by the religious authorities and the majoritarian conservative population for it acknowledges their right to be heard, their right to be taken seriously. The process could have started by carefully listening to their demands, understanding them from the inside, and ended in compromising with them to come up with a workable solution that could be accepted by the different parties. Negotiating and compromising instead of disavowing and imposing.

What would have happened in the event of a failure to compromise? What if the parties remained intransigent and the leaders refused to cooperate? In one sense, we know the answer to that question, because there *was* no compromise: each party, for different reasons, was unwilling or unable to take the steps needed to make Deep Compromise, above all, to recognize a shared moral responsibility for achieving an abiding solution. From the start, the crisis polarized around principles that were set in absolute opposition to one another, framing the problem in terms that made compromise difficult. It is striking that what compromises there were, even if they were narrowly political ones, occurred only when threat of force on the part of the state made clear that direct intervention in the internal affairs of the community was a genuine possibility. At that point, The Loyals gave ground, because principles could no longer be played as trumps: the realities of power shifted the terms of the game.

Toleration allowed the competing parties to cleave to principle and enabled the state authorities to commend their own principles twice over: the principle that secular education was universal right, and the principle that different cultures and cosmologies ought to be respected. But in practice, the results were sub-optimal, to put it politely. Had the problem been framed instead as I am recommending, in the spirit of Phillips’s political activist as a specific problem in a specific context rather than as a clash of uncompromisable principle, the results may have been better. This is not to say that toleration achieved nothing in the case: on the contrary, it probably avoided a great deal of harm. But it also came with costs, one of which was to imply that compromise was impossible without a renunciation of fundamental values or ultimate concerns. The counterfactual possibilities I canvassed above imply otherwise: even when fundamentally opposed understandings of justice are in play, shared judgements may be arrived at “somewhere else in the chain” (Phillips 2005: 133). The resulting compromise would be political, but not narrowly so: it would be a deep compromise reflecting mutual understanding and respect rather than differentials of power and momentary strategic interests.

Conclusions

How, then, should liberal states best address challenges like the one posed by The New Jerusalem? The real clash between multiculturalism and liberalism does not centre on contrasting attitudes towards diversity, as is commonly thought. Multiculturalists indeed disavow policies of assimilation and cultural homogeneity as a pre-condition for economic and political inclusion, but so do the majority of liberals. (The liberal defence of religious freedom and the separation of church and state provide ample evidence of this truth). The rupture comes over their contrasting construals of equality and culture and could be reduced to two matters directly related to the composition of the word “Multicultural”. The first corresponds to the lexeme “Multi”, that is, the preservation of diversity through *group-differentiated rights* and other accommodating schemes, whereas the second touches on the “Cultural”, that is, the conviction that cultural belonging is vital to identity, which is critical for self-realization and the establishment of a fair society. Both lexemes clash with the liberal conception of autonomy and equality, setting the scene for a contest that is more often a matter of nuance and degree than outright opposition.

I have examined the theories developed by the rival parties to this contest, and also theories like Shachar’s which attempt to move beyond the inherited terms of the problem. I set these theories against reality to identify some of their hidden problems. They seem to fail to address a complex case like the one explored in this thesis, the case of The New Jerusalem. Should the Mexican state continue to tolerate the oppression of the dissident minority inside the walls of The New Jerusalem? Should the government instead use the overwhelming coercive force at its disposal to enforce the rights of The Dissidents and their children, send the religious leaders of The Loyals to jail, treating it as an outlaw state that poses a threat to the rights of every Mexican citizen? What would happen to children in either case?

Though often unfavourably regarded by political theory, I propose that a policy of deep compromise (moral compromise) could be a viable solution as opposed to the policy of toleration as indifference that has failed to avoid abuses inside the community and even to protect fundamental rights. A policy of compromise—like toleration—respects diversity, not only in the sense that everyone should be allowed to pursue their own conception of the good but in the sense that diversity itself should be incorporated while making coercive laws and policies. A policy of moral compromise places side constraints on how laws are made, and who should be consulted in their making and taken into account when enforcing them. This policy of compromise would, I suggest, make a genuine difference to The New Jerusalem and its

people.

Toleration as indifference has had, to date, 48 years to show whether it was the most adequate response to the challenge of The New Jerusalem and a viable and valid means of guaranteeing peaceful coexistence in the community. The historical evidence points to failure: it has often produced more harm than it was intended to avoid. A more inclusive and participative policy is desirable.

As I have shown throughout the chapters of this thesis, there are numerous political obstacles and legal hindrances to solving the conflict between the need for group protection, and the paradox of multicultural vulnerability; but, as Shachar (2001:148) has pointed out, the alternatives are utterly unacceptable: either to abandon all hope of multicultural accommodation or to abandon all hope of protecting vulnerable members from the abuse of power of their own communities. While there is no “one size fits all” solution to the problem, any attempt seriously committed to meeting the challenge will have to address not only the recognition of cultural differences, and the right of minority groups not to be directly harmed, subjected to neglect, or forcibly or silently robbed of the bases of their culture. It will also have to recognise the latent risks of harmful intra-group effects. We have to acknowledge that if we are to disentangle what has been, for successive Mexican governments, an irresolvable puzzle.

I have explored in some detail the shortcomings of Kukathas and Balint’s models. I offered reasons for thinking we should reject the “hands-off” approach which in different ways they adopt. Similarly, I argued that the liberal universalist approach that proposes to treat the unequal as equals is flawed theoretically and practically. The first approach, at its most extreme, gives groups the license to oppress their less-favoured members; the second leads to a “your culture or your rights” dilemma that damages individual choice and denies the right of groups to coexist within a majority culture as bearers of their own distinctive norms and values. We need to go beyond this artificial dichotomy of “either/or” and to do that it is necessary to change the perspective from which the problems in view are approached.

In this thesis, I have suggested that Shachar’s Transformative Accommodation model is a promising beginning in this direction. Her proposal for joint governance offers an attractive answer to the paradox of multicultural vulnerability by shifting the debate about differentiated citizenship and overlapping jurisdictions onto a new plane of analysis. She finds creative solutions that I have explained in Ch. 5., to reduce subjugation within groups. Her theoretical arrangement exchanges the problematic “right of exit” and its enforced abandonment of the individual’s culture for a dynamic incentive structure that encourages communities to examine their discriminatory practices as a means of boosting their jurisdictional authority. Her theory

bears against the legitimising of internal oppression, by empowering vulnerable insiders rather than elites. Members of group are empowered with legal tools that recognise them both as “rights-bearers” and “culture-bearers”. Her model gives individuals the ability to choose which jurisdiction they may prefer to appeal to for settling their disputes.

At the same time, there are difficulties with the model that make it difficult to conclude that the model is workable as it stands. It seems to take an unduly optimistic view of the way in which its incentive structures will operate in practice and draws the wrong lessons from the legal cases it uses to stress test its components. These cases tend to suggest that the state’s authorities are reluctant (if not unable or unwilling) to interfere with groups’ internal affairs once they have granted them special rights. The New Jerusalem case is just another example that confirms this phenomenon of power, and the limitations of the model to work in practice despite its theoretical merits.

This thesis does not attempt to provide a rival theoretical model that will at one stroke resolve the tension between group rights and individual rights. Nor does it offer blanket solutions to the problems that contemporary theorists of toleration have made it their business to contemplate or to imagine up. Instead, this work has tried to contribute to the normative discussion on toleration by revealing and making explicit some of the shortcomings of theory in the face of a real example of a modern state struggling to accommodate illiberal diversity on terms that are either stable or just. I have suggested a normative solution to the puzzle posed by The New Jerusalem though, and I have offered a glimpse, at a rather general level, of how moral compromise could work alongside policies of toleration to afford long-lasting agreements. How to shape and implement those arrangements, however, is out of the reach of this work. Still, I hope my research could be a starting point for other endeavours.

The liberal theories I have examined prescribe toleration as the most feasible solution towards religious minority groups, except for those extreme cases of ultraconservative, insular religious groups that, like “outlaw states” fail to respect the basic rights of their members. In such cases, both multiculturalists and liberals are against toleration; what they are for is much less clear. I suggest an intermediate point from which to move forwards: moral compromise and political negotiation alongside toleration. Concretely, it will be possible to incorporate all the children of the community in the public school by adapting the school curriculum, to the extent possible, to the religious needs of the community. This will prevent children from being taken out of the school to exclusively-religious and home schooling. It opens up the space for liberal challenge from inside the community, as well as criticism from outside, without imposing liberal norms on a recalcitrant majority. It shows respect for their values by removing

or modifying topics or ways of delivering education they cannot countenance, rather than insisting on a liberal curriculum on the one side or conceding to their demands entire and exiting the community. Compromising will be a better way to benefit the children, the community and the society as a whole.

The argument I have advanced is that modern liberal states need to embrace comprehensive forms of compromise if they are to deal more effectively with very conservative religious groups, such as the insular community considered in this thesis. Liberalism faces the challenge of finding new forms of toleration that are the result of intense and thoughtful compromise. A moral compromise could be a long-lasting solution for a case where both liberal and multicultural prescriptions seem to have fallen short. The upshot will be a revived version of toleration that is clearly differentiated from modern forms of indifference.



APPENDIX 1

History of The New Jerusalem Chronology of Events

- 1973** The Holy Virgin is said to have appeared before Mamá Salomé.
Mamá Salomé and Papá Nabor found The Holy City of The New Jerusalem (TNJ), claiming to act under The Virgin's command.
Papá Nabor becomes the supreme leader of The Holy City.
Mamá Salomé is appointed the first official seer of TNJ.
- 1981** Mamá Salomé, first seer of The Holy City, dies
- 1982** The battle for succession after Mamá Salomé's death divides the community between the followers of Mamá Margarita and Mamá Chuy.
Papá Nabor sides with Mamá Chuy and anoints her the new seer of TNJ.
Mamá margarita is forced into reclusion and is detained incommunicado.
4,000 families are expelled by force from the community in one night.
- 1998** Agapito Gómez (a former criminal) is appointed as "The Blessed" clairvoyant of the Holy City and replaces Mamá Chuy as official seer of the community.
Seer Agapito seizes power taking advantage of Papá Nabor's infirm condition.
Agapito, The Blessed, is sent to prison on accusations of rape and abuse of underage women. He and his armed guards are found responsible for murder and the forceful eviction of 150 families and 31 priests.
The Blessed is sent to prison.
The government of Michoacán pays for Agapito's onerous bond and releases him.
- 2008** In February Papá Nabor dies.
Agapito appoints Martín de Tours as the new supreme leader.
In September seer Agapito dies of natural causes.
A crisis for succession follows when Bishop Santiago "The Greater" (Papá Nabor's favourite man) demands recognition of his position.
Violence erupts in the community and confronts its inhabitants.
Martín de Tours seizes power as the new supreme leader, despite Papá Nabor's public refusal to confirm him.
The Community splits into two groups: "The Loyals", followers of Martín de Tours and "The Dissidents", followers of Bishop Santiago "The Greater".
The Dissidents are persecuted, oppressed and forced to live on the outskirts of the community.
Martín de Tours appoints "Mamá Catalina" (Agapito's daughter) as the new seer of TNJ.
- 2010** The first elementary school is inaugurated inside The New Jerusalem by Governor Leonel Godoy.
- 2012** Seer Mamá Catalina claims that "The Virgin wants blood" for the devil is hidden inside the school.
Mamá Catalina orders the elementary school to be set on fire.
The Loyals burn the school to the ground, claiming to act under The Virgin's command.
Children are not allowed to go to school and violence erupts between the two groups.
The pressure of national media and human rights associations force the Mexican government to intervene.
The police are sent to the community to avoid a pogrom.
The police are expelled from the community by The Loyals.
The Dissident's children are forced to take classes outside the community.
- 2020** The holy authorities of TNJ refuse to follow any sanitary measures related to COVID-19.
The government of the state of Michoacán imposes a "sanitary barrier" banning access to the immediate vicinity of The Holy City to avoid further spread of the virus in the nearby villages.

APPENDIX 2

An epistolary dialogue between Multiculturalism (Luis Villoro) and Liberalism (Jesús Silva-Herzog Márquez) in Mexico

Going beyond Liberalism?

LUIS VILLORO⁹⁹

On 5 March 2001, Jesús Silva-Herzog Márquez published an article on “The March and the New Nation” in which he refers to a writing of mine published in *La Jornada* under that name. Despite his scorn and his inclination to sting the other with poisoned adjectives, I see it as a healthy exception to the usual verbiage. I am afraid that an ambiguity is hidden in the background of his article. Silva-Herzog judges my personal interpretation of the Zapatista ideology as a pre-liberal stance; I judge otherwise. I start to point out the limits of liberalism and try to overcome it in a new conception. If the expression were not too pretentious, I would say that my conception is neither pre-liberal nor anti-liberal but seeks to be post-liberal. About this, I have written in other less journalistic works that, naturally, Silva-Herzog does not know about. Why should he know about them? So, I have titled this piece of writing “Going beyond Liberalism?” At least I see three ways of passing beyond liberalism. Let us capitulate these briefly,

1. The modern nation-state is a short episode in the history of the West. It is a product of the nationalism that accompanies the liberal-democratic revolutions. It holds that every State (power system) must correspond to a single nation (community of culture) and vice versa. It does not admit, therefore, a plurality of official languages, collective forms of life, normative systems, educational

⁹⁹ This is a short newspaper article published by Luis Villoro in the Mexican daily newspaper *Reforma* on 14 March 2001 under the title “Going Beyond Liberalism?” (The translation into English is mine). This article is referenced in the bibliography as (Villoro, 2001b).

projects. The plural state is not simply “tolerant” or “hospitable”, it includes political and legal institutions that recognise a plurality of autonomous peoples and guarantee their cooperation within the framework of a superior unit. This conception of the State differs from the traditional liberal idea, both centralist and federal, for it is not justified in the tradition but in the self-determination of different peoples who agree on a political pact. The most reasonable current multiculturalist thought maintains that the recognition of collective rights of the peoples that make up a plural state is not opposed to individual rights but, on the contrary, is a condition for the full exercise of them.

2. The original meaning of democracy. For authors like Locke, Rousseau, Kant and many others, the original meaning of democracy was to achieve an association where members were obeying themselves. The current representative democracy has been reduced to a set of procedures to choose governors to whom we all obey. Many current authors, from the bosom of a democratic thought, point out the limits of that operational democracy. They handle different expressions: "expanded" democracy (Bobbio), "participative" (Held), "radical" (Lumnis, Laclau¹⁰⁰). None here proposes to eliminate the procedures of representative democracy, but to complement them with measures and laws that allow citizens to participate in power, particularly in matters that concern them. I am claiming for a system where the leaders become subjects of accountability. Is not this the meaning of the Zapatista's motto "command by obeying"? Is there something more opposed, not only to fascism, but to any form of authoritarian regime?
3. The liberal regime is based on universal competition between particular interests, competition in the market, in the professional sphere, in positions and functions... competition in politics. Competition necessarily engenders the exclusion of the least advantaged. In a deeply unequal society like ours, the less advantaged happen to be the majority. The conception of the traditional liberal state demands its neutrality in the face of universal competition; although it does not explicitly seek it, it

¹⁰⁰ See Laclau (2005) *On Populist Reason*.

implies exclusion. The community, on the other hand, has as its goal of achieving the inclusion of everyone. It tries to replace the universal competition with cooperation and solidarity. It supposes a State that is not neutral but committed to the common good: the gradual suppression of the enormous existing inequalities and the consolidation of solidarity projects in various spheres of social life. The community does not have to be contrary to the exercise of individual liberties. Parodying an author cited by Silva-Herzog, Benjamin Constant, we could distinguish a “community of the ancients” from a “community of the moderns”¹⁰¹. The first would be justified in traditional uses, the second in the autonomous election of citizens who engage with others in a covenant of solidarity. The first one could impose the autarchy of the whole to the freedom of individuals, the second would derive the autarchy of the whole from the agreement of the individuals that embrace such agreement. In the Zapatista movement I see the possibility of moving from the first type of community to the second one. The San Andrés Agreements, by vindicating the community values of indigenous peoples, within the framework provided by the respect of individual rights and freedoms, are a step towards that direction.

To enter Liberalism

JESÚS SILVA-HERZOG MÁRQUEZ¹⁰²

There are many types of silence. In the beautiful essay, “The Meaning of Silence” (Verdehalago, 1996), Luis Villoro has explored its deep richness. “The world is both a discursive word and a silent presence”. Both the universe and men are constituted by silence. The absence of a word serves as a sign of an experience and makes it up for an attitude: “the stillness that distinguishes a grave or placid soul; the gentle silence that hides a humble attitude

¹⁰¹ See the classic text by Constant (1819) *The Liberty of Ancients compared to that of Moderns*.

¹⁰² This is my own and entirely free translation into English of a short newspaper article published by Jesús Silva-Herzog Márquez on 19 March 2001 in the old-favourite daily newspaper *Reforma* as a response to Luis Villoro’s article “To Enter Liberalism” (*Reforma* 14 March 2001). This article is referenced in the bibliography as (Silva-Herzog, 2001b).

or the haughty silence that reveals pride and contempt; the noble silence of the one who listens and the pharisaic silence of those who judge”. It has been a common place in the Mexican intellectual world to kill debate by silence. It is the prevailing culture of ignoring the other: that arguments that do not ratify or confirm my ideas have to be covered by disdain and silence. Luis Villoro has read my criticism of his arguments in defence of the Zapatista project and has insisted on his reasoning in a letter published by the newspaper *Reforma* on Wednesday 14th. Villoro’s lucidity forces us to consider again the reasons why I think that Mexico does not need to “transcend” nor to go “beyond” liberalism but, on the contrary, to “enter” it. I am convinced that, for Mexico, liberalism is not an old idea or a harmful practice; it is the key orientation to build a country of citizens. Villoro argues that the multiculturalist argument does not contradict liberalism: it overcomes it, he says. I think his arguments do not support that claim. Despite its intentions, the multiculturalist project embraced by the defenders of Zapatismo is definitely an anti-liberal sketch of the world. Let us see the notion of community that Luis Villoro defends. Faced with the vile selfishness of the liberal regime that fatally generates exclusion, the community “aims to achieve the no-exclusion of anyone. It tries to overcome the universal competition for cooperation and solidarity”. Such statement about communities does not provide any evidence, it does not even seek it. It is an essentialist thesis that lacks historical foundation. It is a romantic postcard, not an argument. According to that portrait, the communities seek the good of all, they do not intend to eliminate anyone, they do not want anyone to suffer and they walk together to reach the shared goal. The image is beautiful ... but false.

Many people are moved by this idea of a fraternal society alien to the selfish bites of modernity, which frequently excludes and crushes. That is why the idealisation of the community cannot be a reasonable platform to build a “new nation”, much less to seek justice for indigenous peoples. This notion maintains that the enemy of the indigenous people is always outside their community. It argues that the community space is necessarily the natural ally of the indigenous because it is a fraternal, solidary

environment, launched to the noble search for the common good, and that seeks, above all, the loving protection of their children. The threats that threaten the indigenous bark outside the community, in that rugged territory of the foreign culture. Multiculturalism idealises the community, that is, it falsifies its nature and character. Communitarians and Multiculturalists value cultural authenticity for they believe that the most important thing for an indigenous person is to be an indigenous that lives in his community. They stumble, therefore, by stepping on with the same stone with which the old nationalists collide: it is worth being indigenous, not because it is valuable but for indigenous' sake, as Jorge Cuesta might say. I do not believe that communitarian traditionalism is the desirable policy in the face of exclusion. I think the convenient door is the one that takes us to the liberal house, not the one that takes us out of it. It is false that liberalism defends a State that is blind to inequality, a State that becomes an accomplice of social exclusion. When it is well understood, liberalism has a remarkable vocation for justice and fairness. The very Adam Smith—that insensitive ogre that many quote without reading him carefully—said that the second duty of the State (after securing peace) was to protect every member of society from the injustice or oppression of any other member of society.¹⁰³ Yes, from other members of the society, though it may sound little “postmodern” and even unfriendly to the devotees of novelty. I think that the desirable policy in the face of the exclusion of the indigenous should not be a community sign but a social democratic seal, namely the left wing of liberalism.

The other point that, in my opinion, confesses the anti-liberalism of Luis Villoro's argument is his notion of democracy. I agree with Villoro that it is desirable to somehow vivify representative democracy. There is no doubt that there is a malaise in the world with the performance of democracy. However, I do not see in the Zapatista discourse an idea of a more democratic democracy. It is regarded as a brilliant proposal the motto “to command by obeying”. The phrase is charming, but perhaps so because of its vagueness. All power can be justified thus—some

¹⁰³ See the idea fully developed in *The Wealth of Nations* (Smith 1776).

say that they command obeying God, others claim that they obey reason, and there are others that obey the orders of the people. Every policy declares itself obedient to a venerable principle. The phrase “to command by obeying” is beautiful ... and banal. What matters —and here I recall liberal constitutionalist Benjamin Constant— are the institutional mechanisms of command and obedience. If the leader is the people, how will we know their will? How it is expressed, through what procedures? What are the limits of political command and what are the borders of obedience?

The motto, of course, does not say anything about that because it is nothing more than a slogan. What amazes me is that a philosopher as rigorous and serious as Luis Villoro, the author of “Believe, Know, Master” accepts as valid and reasonable a simple slogan. Here is the topicality of the liberal project for Mexico: to take institutions seriously. No one can doubt that it is desirable that political power obey Mexican society. Yet, since that entity is ungraspable, capricious and wants many things at once, what we can try best is to obey the law. The construction of a constitutional State, the great project of liberalism, is not an issue exceeded but, on the contrary, one of the pending and more important historical issues of Mexico. For this, it is necessary to turn away from that contempt of the Zapatistas for politics. In any form of politics, they smell nothing but rotten matter. We should also resist and deny their contempt for all forms of legality. They seem to regard in legality nothing but tramps of the powerful. The legal procedures (those formalities that the so-called progressive despise greatly) are the tutelary deities of civilization, as Constant has opined. And they are also, needless to say, the only defense of the poor.

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