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## **Proceduralism reconceived: Political conflict resolution under conditions of moral pluralism**

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Societies are possible only through the continual, far-reaching coordination of behavior among numerous individuals and across diverse groups. Citizens and others need to reach agreement, or at least mutual understanding, through ever more transient communication, with an ever-wider variety of persons, who increasingly are total strangers. They need to achieve understanding on an ever-wider array of topics, ever more of which presuppose special expertise they likely do not possess, and they may be inclined to abdicate to “experts” more and more of their decisional autonomy. General agreement on political and social norms might seem unlikely where the norms calling for deepest commitment, beyond politics, are not shared. But if normative differences preclude agreement on many issues, they need not preclude agreement on *formal* or procedural rules for coping with difference. Proceduralism is the notion both that no rule is acceptable apart from a formal method, and that the acceptable method yields an acceptable rule; a rule is acceptable by virtue of being the outcome of an agreed-upon procedure.<sup>1</sup> Elsewhere,<sup>2</sup> I argue that the proceduralist norm of neutrality is unhelpful, for example, in realizing equality in electoral participation for black Americans in the United States today. In that book, I examine a conventional conception of proceduralism in terms of which a system of political representation through popular voting is procedurally fair only insofar as it is neutral vis-à-vis each participant. This is the logic of the formula: one-person, one-vote, where “person” is unmarked with respect to any number of ascriptive and other characteristics. So understood, proceduralism entails strict indifference, for example to the racial identities of persons affected by the procedure’s outcome. But this color-blindness perpetuates the very racism it is pledged against by perpetuating arrangements in which not all participants have equal capacity to influence outcomes. Given majority-white electorates, race-neutral electoral districting dilutes

black residents' political strength, depriving them of even the *potential* to elect their own representatives. Against proceduralism so conceived I argue for a *color-conscious* proceduralism, in the form of race-conscious districting that makes locality and identity proxies for the political interests of a distinct group of citizens. In this way the political system wins legitimacy in the eyes of heretofore disenfranchised and currently underrepresented groups.

In the present article, my approach is different, as my concern here is with conditions of cultural rather than racial diversity, specifically in the context of integrating non-European Muslim immigrants into European societies. Here, I argue, proceduralism can realize fair participation in the public sphere if constructed in ways normatively "neutral" in a sense I develop below. Proceduralism as a general idea encompasses any sort of procedural device for making a decision or resolving a dispute. It takes many different forms.<sup>3</sup> In *democratic* polities, procedures can specify everything from the forms of participation and adjudication to the forms of implementation. These democratic preoccupations drive the current literature.<sup>4</sup> Joshua Cohen sees democracy as a "procedure that institutionalizes an idea of citizens as equals."<sup>5</sup> For John Rawls, the "only political consensus we can reasonably hope for is confined to democratic political procedures," such as the "right to vote and freedom of political speech and association, and whatever else is required for the electoral and legislative procedures of democracy."<sup>6</sup> Jürgen Habermas claims that the "central element of the democratic process resides in the procedure of deliberative politics."<sup>7</sup>

The idea that members of a political community might agree on procedures, even where they disagree on matters of substantive value, is at least as old as Thomas Hobbes (1588–1679).<sup>8</sup> Most liberal theories today are proceduralist in arguing for a state that provides a procedural framework dedicated to the substantive norm of democracy but that imposes few other values on citizens. Indeed this framework protects individuals from such impositions, allowing each person to go his or her own normative way as much as possible, as long as he or she respects the outcomes of democratic decisions in the public sphere.

Proceduralism can be "content-neutral" in other ways. Unlike some forms of civic republicanism, it doesn't conflate citizens' political judgments with their moral self-improvement. It allows public institutions to avoid the classical belief that only "virtuous citizens" can practice "good politics." I propose a new version in this old vein: a robust yet

normatively thin proceduralism designed to deal with the challenges to social integration posed by the moral pluralism of modern liberal societies.

I illustrate my proposal's empirical purchase with examples from Muslim immigrant communities and their relationship to state and society in France, Germany, and England today. Social integration here faces the task of dealing with many immigrants who appeal to supernatural authority in questions of right and wrong belief and conduct, an approach often intolerant of competing moral views, an approach that regards tolerance of moral pluralism itself as evil. Here social integration confronts persons likely to reject the modern European emphasis on personal liberty and permissive moralities, together with their liberal, secular foundations. Perhaps the outstanding political issue today is the relationship between "two kinds of society: on the one hand, self-consciously traditional societies and governments, where priests of the church or rabbis or imams or mullahs, and other experts in the will of God, maintain a single conception of the good that determines the way of life of the society as a whole; and on the other hand, the liberal democratic societies and governments that permit, or encourage, a plurality of conceptions of the good."<sup>9</sup> If thin proceduralism can work in these complex and difficult relationships, then its promise might be all the greater within populations where significant diversity does not yet rise to the same level as with immigrant communities in Europe from North Africa, the Indian subcontinent, and Turkey.

### **Thick and thin forms of proceduralism**

My version follows from a distinction between "thick" and "thin" forms of normativity. This is not a distinction among levels of abstraction (between abstract norms, like the Golden Rule or Immanuel Kant's categorical imperative,<sup>10</sup> and concrete norms like the injunction to aid someone in immediate physical danger, especially if doing so is not itself dangerous). Nor is it a question of determinacy (the idea that some norms are specific and precise in meaning and application, such as "one person, one vote," while others are not, like "all persons are created equal"). Nor is it a matter of being controversial (norms allowing physician-assisted suicide are very controversial, unlike norms allowing a hospital to follow a patient's wishes not to receive life-sustaining medical treatment if he or she is terminally ill). Rather the distinction between thick and thin norms has to do with *degrees* or

*amounts of normative content*: people who share thin norms share less normative content than people who share thick ones.<sup>11</sup>

Many contemporary social theorists assume a thick normativity. Jane Mansbridge, for example, defines community in part as a “group in which the individual members can trust other members more than they can trust strangers not to ‘free ride’ or ‘defect’ in social dilemmas, not to exploit the members of the group in other ways, and, on occasion, to further the perceived needs of other members of the group rather than their own needs.”<sup>12</sup> Understood in this way, “trust” excludes strangers as possible members of the normatively thick community. In normatively thin terms, by contrast, community *would* include strangers, as it conceives of trust in ways that do not automatically exclude them.

Amitai Etzioni defines community in part as a “web of affect-laden relationships among a group of individuals” with a “measure of commitment to a set of shared values, norms, and meanings, and a shared history and identity.”<sup>13</sup> The normative thickness of this conception lies in its insistence on an emotional engagement among members, as well as the sharing not only of some norms, but of history and identity. By contrast, community in normatively thin terms requires the sharing of some norms, but not specifically emotional or historical ties, and it emphasizes how in cosmopolitan communities difference is just as important as identity. Correspondingly, thin proceduralism involves less normative sharing than does thick proceduralism. In a pluralistic society, a procedural approach will be the more successful politically, the more it can work across relevant differences without eliding them – the more it can “bracket” normatively thick differences and concentrate on thin sharings, leaving relevant differences standing within separate communities but also leaving them aside where different communities relate intercommunally.

To be sure, the normative thinness of thin proceduralism does not mean the absence of *all* normativity; thinness is not *neutrality*, nor is it *indeterminacy*. Proceduralism must be sufficiently thick, normatively, to generate answers to difficult questions about the good, the right, and the just. Yet it must be sufficiently thin to appeal to people who disagree about the nature of the good, the right, and the just. No proceduralism can operate without introducing into itself at least a few, specific substantive norms. First, a commitment to proceduralism is not normatively neutral because proceduralism is itself a norm that entails an obligation to recognize and abide by procedural outcomes. This is a

significant obligation normatively because proceduralism does not generate normatively neutral outcomes. Any result that has “winners” and “losers,” that benefits some people more than others, is hardly neutral.

Second, proceduralism entails various norms of fairness, including access to participation, conditions of participation, and sincerity in participants’ behavior. In turn, fairness gives a person reason to trust the group or organization. It binds individuals to the group and discourages individual interests and needs from challenging or undermining the group’s continued functioning. It can inspire trust: the participant’s perception that the group is treating him or her fairly means that he or she can trust the group with his or her interests. It can inspire commitment: fairness provides rational grounds for accepting the relevant authority. Individuals who regard the authoritative procedures as fair have more reason to follow the group’s interest, even if they still have no reason to embrace that interest as their own.

Under fairness, proceduralism pursues norms of equality with respect to access to participation in the political process, as well as to conditions of participation. Equal influence presupposes the legal equality of participants, hence also a “supporting framework of rights and conditions that are neither transparently procedural, as are suffrage rights, nor directly required for openness, as are rights of political expression.”<sup>14</sup> In that supporting framework figure, public policies ranging from quality public education (that prepares and motivates students to take an active, informed interest in local and national politics) to social welfare that insures that even the weakest of society’s members have the minimally necessary economic wherewithal to take advantage of their formal rights to political participation. Proceduralism filters out belief-systems that “reject adherence to prescriptive equality.”<sup>15</sup> Participants’ legal equality, and the equality of their influence, and of their freedom to express any viewpoint for consideration within a procedure, assumes a procedure beyond manipulation by those who administer or participate in it. Further, equality among participants is independent of their winning or losing disputes within the group. Losers in a procedurally adjudicated dispute need not forfeit their respect in, and value to, the group. Mutual recognition need not be contingent on success in getting one’s viewpoints adopted by the entire group. Nor need winners profit unduly in the amount of respect they garner from the group.

Adherence to the norms of fairness, equality, and respect for procedures themselves still leaves a good deal of room for thin proceduralism, in its relatively non-normative work. Even as it relies on these norms, proceduralism can reduce the polity's reliance on thick norms in the public sphere. My approach shows how proceduralism can motivate popular participation even if proceduralism is normatively thin. And it shows how proceduralism can so motivate, even assuming that normatively thick convictions are more powerful motivators to participation in the sense that deeper, more comprehensive visions affect us as humans more enduringly, more viscerally, than thin convictions. Consider by contrast two prominent forms of proceduralism which, despite their basically thin normative conception, explain popular motivation by relying on the participants' sharing of thicker norms: Jürgen Habermas's vision of moral community, and John Rawls's conception of a moral duty of fair play.

Habermas asserts that, while moral theory can "clarify the universal core of our moral intuitions and thereby ... refute value skepticism," it cannot "make any kind of substantive contribution. By singling out a procedure of decision making, [moral theory] seeks to make room for those involved, who must then find answers on their own to the moral-practical issues that come at them, or are imposed upon them."<sup>16</sup> Substantive contributions can be made only by the participants themselves, in a normative community of free discourse among equal persons who generate valid thick norms that govern the community, and in that way (and only in that way) render it moral.

Rawls's notion of "justice as fairness," with its distinctly procedural character, generates "principles of justice" from the "constraints of having a morality ... imposed upon rational and mutually self-interested parties."<sup>17</sup> One constraint is the "duty of fair play," which Rawls locates in a "procedure whereby principles [of political community] are proposed and acknowledged."<sup>18</sup> Persons deliberating on how best to constitute and organize their common practices might "first try to arrive at the principles by which complaints, and so practices themselves, are to be judged. Their procedure for this is to let each person propose the principles upon which he wishes his complaints to be tried with the understanding that, if acknowledged, the complaints of others will be similarly tried, and that no complaints will be heard at all until everyone is roughly of one mind as to how complaints are to be judged."<sup>19</sup> Justice as fairness is possible "once persons knowingly engage in a practice which they acknowledge to be fair and accept the

benefits of doing so,” such that they are then “bound by the duty of fair play to follow the rules when it comes their turn to do so, and this implies a limitation on their pursuit of self-interest in particular cases.”<sup>20</sup>

Both Rawls and Habermas construe the “constraints of having a morality” as universally valid and therefore capable of being shared by everyone. Habermas creates, and Rawls assumes, a discursively generated, empathetic, intersubjective moral point of view, embedded in shared ways of life. Both models predicate social understanding, predictability, and stable interaction – facets of social integration – on the sharing of *this* moral viewpoint, which becomes thicker and thicker as the requisite sharing is conceived in terms that make the participants more and more similar to each other in their political and normative convictions, psychological dispositions, and need-structures. In my morally thin model, by contrast, individuals are capable of viewing with equanimity values they do *not* hold, and of predicting behavior that corresponds with those values without being excited or disturbed by their own moral commitments.

My position differs from Habermas’s approach in several additional respects, sympathetic as I am to his notion of an intersubjectively generated basis for cognitive claims to truth and political claims to justice, and to his approach to strengthening participatory democracy by re-conceiving the intersubjective relationship among citizens.

First, Habermas’s communicative ethics distinguishes between participants’ expressions that are just and those that are merely self-interested, by confronting any participant’s claims with those of others with different preferences, needs, and experiences. Thus, a participant in a position of social or economic privilege may have greater regard for social justice if he or she is constrained to consider the perspectives of participants whose voices are marginal or silenced because they are socially or economically vulnerable. By contrast, my theory seeks no such substantive agreement among contending participants; rather it seeks accommodation of differences without requiring participants to transform themselves.

Second, Habermas’s commitment to European Enlightenment rationalism insists, like Kant (1724–1804), that the validity of valid claims must be universal: what is true, is true either universally or not at all. My theory, on the other hand, allows for validity (in political contexts, about public policy and social integration) that is local, not universal.<sup>21</sup>



Third, Habermas's communicative ethics, which undergirds his political theory, is committed to a more or less homogeneous public, whereas my theory accommodates significant difference within the public. In doing so my approach, unlike Habermas's, abandons the republican tradition of unity and universalism in its conception of the kind of public sphere a democratic society should seek.

Fourth, Habermas's notion of the kind of rationality appropriate to the deliberation of social and political issues is again Kantian in its "purity": Habermas distinguishes between "communicative" and "instrumental" reason, between the morally superior rationality that can place any normative goal into question, and rationality oriented to the most efficient achievement of a goal simply accepted as given. My theory, while certainly rationalist in the Enlightenment sense, does not fear infection by the instrumental concerns of human agents. On the contrary, it takes instrumental concerns into account by proposing accommodation rather than agreement, under conditions where agreement would be defeated if all instrumental concerns were ruled out of bounds.

Finally, Habermas's emphasis on the rational springs of behavior devalues, as does Kant, the affectual presuppositions or predispositions or biases – what David Hume calls "moral sentiment" – that sometimes precede and guide what we subsequently formulate as, and then find, rationally persuasive.<sup>22</sup> On the other hand, Hume (1711–1776), as an Enlightenment thinker, believes, as Habermas does, that humans even here, in moral sentiment, eventually work their way to consensus. A normatively thin approach to social and cultural diversity presupposes that difference, divisiveness, and what Stuart Hampshire calls "local loyalties," are not merely contingent and ultimately surmountable features of human existence, but are permanent if shifting, unavoidable if malleable.<sup>23</sup> It expects no deep normative consensus.

One who does not share all the norms of other relevant persons can still learn that the "behavior of [those] other people under various circumstances is predictable, irrespective of knowledge of their motivation, and thus is capable of being predictably related to one's own actions."<sup>24</sup> Where people can understand and predict each other's behavior, there social integration is possible (though not of course implied). An immigrant community could be integrated into the host society even where immigrant and host share few thick norms. A striking example concerns Muslims in Britain today who call for

recognition of Shari'ah family law, a religious law governing domestic areas of life such as marriage (including polygamy and arranged marriage), divorce, custody of children, and inheritance. Such recognition is plausible within current British political culture even as it, as a secular political liberalism tolerant of cultural and religious pluralism, shares few of Shari'ah's norms.

Of course, Muslims who view these issues as legal are asking for legal, not cultural, pluralism, and at that point the dominant political culture likely draws the line: it will not support a separate legal system or separate legislation for Muslims. But without embracing Shari'ah's values, the dominant culture could well provide training in the religion and culture of the Muslim community to judges and lawyers serving in family courts. And the host culture's respect for personal and communal freedom would tolerate Shari'ah as a form of communal self-determination, as long as it did not violate certain norms of the host community. Such norms include the right of all individuals (including members of the Muslim community) to be free of religious coercion, for example, to be free of political or religious authorities seeking to regain control politically, socially, and religiously over a community showing signs of "going astray," at least from the older generation's perspective.<sup>25</sup>

Among British Muslims, concern with Shari'ah has more to do with rites, and with ethics broadly construed, than with family law, particularly as it relates to the position of women.<sup>26</sup> Obviously, the very definition of Islamic family law, or the question of who decides what Islamic family law in an individual European country is, or who has the authority to apply and enforce it, may well be disputed within the relevant community. Regardless of how those disputes come out, European democracy and civil rights trump Shari'ah in their commitment to individual rights (hence the right of the individual Muslim not to be a member of a community invoked, for example, by Muslims who would have the Shari'ah apply to them); in their commitment to freedom of expression (hence the individual's right to refuse any one interpretation, and his or her right to proffer alternative interpretations, of the Shari'ah); and in their commitment to freedom of religious belief and the right to be free of religion (hence Muslims who decline association with this or that religious group representing itself as the voice of the Muslim community or of Islam generally).

If what is shared in social integration is a matter more of culture than personality, then the normative and motivational diversity found in communities or societies organized around thin norms is tolerable because modern liberal culture, in its sheer capaciousness (by comparison to the individual personality), can bear diversity better than any individual personality can. In this sense, in Britain today political traditions of tolerance for cultural differences facilitate young women's Islamic associations that resist parental authority by "reconstruct[ing] 'custom', and particularly arranged marriages, as the ignorant practice of uneducated and uninformed immigrants from South Asia, including their own parents."<sup>27</sup> Political multiculturalism in the host country supports Muslim women's re-interpreting Islamic culture and religious authenticity in ways that allow participants to re-define their rights toward their parents and toward men.

### **The motivational force of normatively thin proceduralism**

I have argued that procedures neutral toward various competing normative worldviews can still allow for moral sources of individual motivation that result from procedure. I have argued that groups and individuals can be socially integrated without thick motivational sharing. And I have argued that persons who do not share the thick norms of other persons will still find the latter's behavior predictable under various circumstances, even if ignorant of the latter's motivation. But I still need to show *how* normatively thin proceduralism (which would promote social integration by generating non-coercive grounds for cooperation with authority) can develop motivational force in groups and individuals. I need to show how proceduralism can motivate the participation of citizens and other affected persons in political community precisely *because* it is normatively thin. Proceduralism can do so, I argue, in at least six ways: (1) by generating "correct" results; (2) by accommodating a system of majoritarian rule; (3) by emphasizing participants' interests over their identities, and then urging compromise among competing interests; (4) by employing techniques such as "balancing" the interests of individual members with those of the group, or "bracketing" differences, or reducing normative complexity; (5) by providing its own grounding, in this way "solving" the problem of the lack of ultimate or exterior foundations for political community today; and (6) by pursuing a *modus vivendi* in the sense of mutual accommodation rather than agreement on substantive matters. I now take up each in turn.

(1) A procedure is substantively rather than formally correct where its standards are shaped by beliefs about what kinds of procedure generate substantively “better” decisions (“better” in the sense of truer or wiser, for example). Where correctness is substantive, the norms that govern the acceptability of procedural outcomes are not themselves procedural, and the outcomes claim to be *intrinsically* right. Here the relevant procedure is a kind of truth-machine possessing an independent standard (independent of the procedure itself) for deciding which outcome is correct. Correctness of this sort requires the normatively thick assumption of a criterion of rightness separate from, and prior to, the procedure nonetheless intended to determine the rightness of the decision.

Proceduralism is normatively thin where it reduces an issue to the formal correctness of its deliberation. Here citizens who accept the outcome of a procedure do so because they regard the procedure itself as valid. They can be motivated by the “correct” result of procedures where the procedure validates the result. They can be motivated where “correctness” derives from the formal correctness of the procedure itself, which might include norms such as public-ness, transparency, deliberativeness, and rational discursiveness. In other words, citizens can be motivated where the norms that govern the acceptability of procedural outcomes are themselves procedural. People can be motivated to comply with the outcome simply because it was procedurally generated (in a procedure with endorsable features) and not because there is some reason to think it intrinsically right.

Proceduralism is normatively thin also where participants comply with the outcome given the procedure’s rational character. While a procedural framework can never guarantee the participant an outcome he or she will consider valid, it can justify his or her presumption that the outcome will be acceptable at least on rational grounds. An outcome within a procedural framework can be acceptable on rational grounds, even for someone who rejects the decision on the basis of his or her personal preferences. He or she need not change those preferences to be able to comply with a procedurally unobjectionable outcome. Here part of the procedure’s rational character lies in its deliberative nature, such that losers in a particular round of deliberation might be reluctant to refuse cooperation even with decisions they consider unfair, and perhaps taken despite their dissent. On the other hand, political procedures in liberal societies can allow for robust critique on the part of the losers, up to (but not including) the point of civil disobedience. Where critique assumes forms that incur legal sanctions, the critics in their

illegal actions are no longer committed to the procedural framework.<sup>28</sup> But for persons open to rational argumentation, a political procedure that involves deliberation will elicit, better than any non-deliberative alternative, the willing compliance of all those whose compliance is sought and needed.<sup>29</sup>

Consider public education under conditions of cultural and religious diversity. In Europe, religious education in public schools traditionally has been synonymous with instruction in Christianity. A procedural approach, by contrast, would favor no particular religion, but would instruct about several (including Islam), and would do so neutrally from an essentially secular stance. Instead of treating the pupil as a participant in this or that faith, a procedural approach would instruct, without advocacy, about both a participant's viewpoint (taking spirituality and claims to otherworldly dimensions of human thought and experience seriously) and an outside observer's standpoint (approaching religion as a social and cultural phenomenon). A procedural approach would not propagate faith but would provide a religiously neutral framework for learning thoughtfully about religion, in three ways: first, by providing young people with knowledge about different religious faiths, including an appreciation of the deep significance of any religious faith to its adherents; second, by teaching about the individual's legal right to freedom of (and legal right to freedom from) religious belief and practice; and third, by helping pupils identify, develop, and articulate their own considered views about religious belief. This approach distinguishes between religiously neutral religious education (the responsibility of all schools) and religious catechesis (the responsibility of the relevant religious communities, even if provided as an elective to interested students in particular schools in mutually acceptable agreement between community and school).

In addition to the public schools that service the overwhelming majority of Muslim students, proceduralism allows for state-supported Muslim schools similar to those run by Protestant and Catholic churches and by Jewish organizations. A procedurally oriented curriculum entails respect for parental choice, rejection of discrimination and prejudice, openness to cultural differences, and, hence, rejection of calls for immigrants' complete assimilation. To be acceptable to the host country's liberal political culture and laws, such schools cannot uphold all aspects of the traditional religious and cultural traditions (for example, the subordination of women), will privilege independent critical thinking over the authority of religious teaching, and will still require that

all students attend state-mandated courses in sex education. Such arrangements do not preclude a devotion to religious faith, tradition, or practice. Of course, persons who reject thin normativity will reject such schools, and in later pages I address means of persuading them of thin proceduralism's merits.

(2) Majority rule is a procedure; but it is a procedure that must be carefully circumscribed. Legally guaranteed rights of minorities – especially rights protecting minorities from majorities, including majorities generated by voting – are norms governing the acceptability of procedural outcomes. Although not procedural, such norms are *not* thick. They are constraints, such as those placed in the political process on “winners” vis-à-vis “losers.” They always trump any possible majoritarian preference to the contrary. Constraints are relevant to the goal of generating norms through normatively thin proceduralism. While thin proceduralism places as few constraints as possible on procedurally generated outcomes, it does place such minimal and formal constraints as respecting participants' legal equality and civil rights, and not damaging the community's general welfare. In this sense a society would be prevented from “eliminating” its minoritarian members not simply because a procedure of majority rule had not (yet) generated a rule allowing genocide, but because constraints on procedurally generated outcomes foreclose any such violation of legal equality and civil rights.<sup>30</sup>

Someone who loses a majority decision may still accept the result *rationaly* because such acceptance need not imply his or her *normative* agreement. He or she embraces the outcome's rationale (the norms that govern the acceptability of procedural outcomes are themselves procedural, such as public-ness, transparency, deliberativeness, and rational discursiveness) but not its content. He or she rejects for him- or herself the particular belief held by the majority, even as he or she complies with it. Further motivating compliance with decisions one cannot embrace is that, under democratic circumstances, today's minority can attempt to become tomorrow's majority.

Thus, a normatively thin proceduralism can embrace majoritarianism (or the basic fact of majoritarianism, that there are winners and losers, hence that in the political arena one normative view may legitimately prevail over competing ones) where majoritarianism does not violate rights of minorities. Majority rule can impose on the losers decisions that may well violate some of their values, values on which the losers

cannot compromise yet that they may be compelled not to act upon depending on the outcomes of majority decisions (as well as the outcomes of judicial rulings, which represent the “majority rule” of the majority opinion). But the fact that outcomes favor one solution over another does not vitiate the procedure’s normative thinness.

Certainly the private observation of religious belief need not conflict with the individual’s civic responsibilities; and the public accommodation of religion is a matter for public law and social policy. Precisely members of minoritarian faiths, and persons marginalized because of their immigrant status, should participate in politics, by voting and other procedural forms of advocating their interests. For some Muslims these include the provision of *halal* meat in public institutions, such as schools and hospitals, or “gaining designated areas of public cemeteries for Muslims, obtaining permission for burial in a cloth shroud instead of a coffin, and urging speedy issuing of death certificates for burial within twenty-four hours.”<sup>31</sup> Sharing interests, immigrant groups can best negotiate with state agencies if they can elect their own candidates to public office. Evidently “most Muslims, and Hindus and Sikhs for that matter, conduct their political activities through the traditional British political parties who appear to encourage both Muslims and Hindus to stand as candidates to the city and county councils.”<sup>32</sup> By proceduralist lights, non-Muslims can represent Muslims; Muslims can represent non-Muslim members of their electoral ward; a Muslim candidate will not necessarily bring in Muslim votes,<sup>33</sup> and may well attract non-Muslim votes.<sup>34</sup>

(3) Processes by which personal identity is forged in modern communities increasingly diverge from processes by which collective identities are formed.<sup>35</sup> Private autonomy (the pursuit, under personal conceptions of identity, of the best way to live one’s life) is at times in tension with public autonomy (the pursuit, under shared conceptions of identity, of how life should be lived). How then do we find common ground within diversity without violating the autonomy of individuals and groups?

Identity-based differences are among the least amenable to political, legal, or administrative resolution. They do not yield to settlement by political compromise or balancing, or by administrative fiat or judicial ruling. Examples include matters of religious or ideological principle (“Should a sect that annually reenacts the crucifixion of Jesus using a live, consenting adult in the role of Jesus be exempt from laws punish-

ing assault and homicide?”, a question posed by G. Gunther and K. Sullivan, *Constitutional Law* (Westbury: Foundation Press, 2001)); matters of cultural and historical understanding or interpretive plausibility (“Does the phrase ‘cruel and unusual punishment’ encompass capital punishment?”); and conflicts of personal or collective identity (“Is social justice for racial and ethnic minorities achieved or precluded by their assimilation to the majoritarian culture?”). Such issues cannot be settled through some calculated distribution of compensations. Losses of incommensurables cannot be compensated.

Nonetheless, in democratic societies a great deal of political agreement is possible only *as* compromise. Given the intensely normative nature of many identities, compromise over (some) *interests* likely is more possible than compromise over (some) *identities*. Where they can be normatively thin, governmental interests likely can be reconciled with the interests of individuals or groups without requiring the participants and other affected persons to relinquish deep-seated identities. Where political compromise is not an option, there personal or group identity may well be violated. For example the American state has a significant administrative interest in the efficient operation of two highly regulated state institutions, the military and prisons. In these institutions, that interest often trumps a citizen’s right to freedom of religious expression, as when an Orthodox Jewish officer has no right to wear a yarmulke while on military duty,<sup>36</sup> and a Muslim in prison no right to attend *Jumu’ah* (a Friday midday service).<sup>37</sup> Here there is no compromise over religious identity, and an identity damaged as a result can hardly be compensated.

As Axel Honneth argues, identity in this context is a matter of social recognition: individuals form their identity in part through experiences of being recognized by others; honor, dignity, and status derive from the normative and emotional approval and encouragement that a society and community give the individual’s objectives, lifestyle, or method of self-realization.<sup>38</sup> Cultural traditions or hierarchies of social values that denigrate or reject individual beliefs or ways of life, that withhold or withdraw communal solidarity, damage the individual’s self-esteem, his or her relationship to self.

But identities *can* be preserved where interests are open to compromise. Success in compromise requires the often-unlikely convergence of the individual’s normative commitments with those of the polity. In many cases, compromises will be the more possible, the thinner they



are normatively: individuals, groups, even institutions can work their way to compromise on thinly normative grounds more easily than on normatively thick ones.

Consider, for example, two different ways of life, each claiming exemption from a general law, each asserting a right to the free exercise of one's religion. Old Order Amish in Wisconsin objected to the state requirement of high school education in the belief that their spiritual salvation requires them to live in their religious community apart from the secular world and its influences.<sup>39</sup> But they did not object to public school attendance through the eighth grade, convinced as they were that younger children are less susceptible to worldly influences than youth of high school age, and that the literacy gained in the earlier grades prepares children to become good farmers, citizens, and students of the Bible. The collective identity and normative commitments of the Amish evidently resonated with the Supreme Court, unlike a case in which a Mormon claimed that polygamy was his religious duty.<sup>40</sup> Here the Court upheld a law criminalizing polygamy in what were then the "territories."

The Amish may have been successful in their quest, unlike the Mormon, because they needed *less* to draw on their identity. The less a group's identity is at odds with the majority's various identities, the less it needs to invoke that identity in appeals to the public or to its elected representatives. American political culture may be challenged more by polygamy in the community (because polygamy contravenes the country's legal and cultural commitment to sexual equality) than by a number of children not attending the ninth and tenth grades for religious reasons. The Mormon case asked the Court to tolerate a difference greater than the one whose tolerance the Amish sought: in the Mormon case, the difference would affect children at least from birth to maturity, and married women for their entire life, which is certainly thick in enforcing a "deviant" way of life over a lifetime. (The Amish also provided an agriculturally based alternative to the state-mandated curriculum.<sup>41</sup>) The latter's success before the Court may have rested on a normatively thin compromise, as a compromise of the state's interest in education in the ninth and tenth grades. The difference between two years in a regular public school, and two years learning agriculture, does not rise to the level of questioning *basic* cultural and political commitments. The Mormon claim unsuccessfully sought what could only be a normatively thick compromise, a compromise of the polity's commitment to the legal equality of the sexes. Consider now the Euro-

pean context. In Germany, the older Turkish immigrant generation's demands for power concern politics in the country of origin, whereas the younger generation's wish for identification concerns culture in Germany (where the younger generation wants to stay and live<sup>42</sup> and, often as not, to live as Muslims). Large sectors of the Muslim population seek legal recognition for Islam, while the individual Muslim seeks social legitimacy through German citizenship. Either way, Islam is no cultural threat to the host country's national identity where "Turkish Muslims ask for German citizenship while retaining their cultural particularities without Islamic political demands."<sup>43</sup> The immigrants are constrained to compromise over identity where the heterogeneity of the Muslim population in Europe makes it necessary for immigrants to re-define their "Muslim-ness" independently of the individual Muslims' particular regional, national, and ethnic-cultural backgrounds, and what are merely particular forms of Islam's expression, expendable if Muslims in Europe are to work together to defend the same religion in a non-Islamic environment. Having done this, the immigrants are constrained to compromise over interests not identity: over different forms of integration into the host society, over different ways to find in the host society allowance for the Muslim as Muslim to participate fully in the wider society. Muslim immigrants best pursue integration into the host society by pursuing their compromises with that society (such as compromises over interests, including maintaining aspects of Muslim identity) rather than over identity (such as demands that the host society change its culture to accommodate the immigrants). In this process, young, educated, second-generation immigrants tend to distance themselves "both from their parents, who continue to link their culture with Islam, and from the religious community leaderships"<sup>44</sup> who do not share their particular concerns or experiences, which will tend to be closer to the host country's interests, for example with respect to the employee's legal rights in the workplace; or a system of social security to provide him or her support in case of illness or unemployment, and in old-age retirement; or opportunities in education for the individual and his or her children; or freedom in the choice of one's profession; or legal and economic conditions for doing business.

(4) The fact that normatively thin proceduralism resonates with individual rights and individualist sympathies does not rule out group-based forms of proceduralist democracy. Agreement in morally diverse societies is likely to be only partial and to vary over time. The interests of smaller groups or minorities must often be "balanced" with those of

larger or dominant groups. Balancing treats normative commitments and viewpoints as generalizable interests that can be calibrated sufficiently for weighing, comparing, and making trade-offs. Calibrating competing normative claims, by balancing competing arguments against each other, is an interpretive enterprise; it requires standards of measurement that will vary with context and other contingencies. But plausible standards can be constructed. For example, a group of people with different thick normativities (some, for example, adhering to religious faith; some, to atheism) might be able to agree not only *that* personal agency should be protected, but also on *how* it might be protected. A group may have a normatively thin common interest in protecting agency, and might pursue a normatively thin means toward protecting it. It might do so through legislation securing such individual rights as mental and bodily integrity, privacy, free expression, free assembly, and free movement – and perhaps the economic wherewithal to secure such abstract rights – while bracketing issues of the good life.<sup>45</sup>

Thin proceduralism can employ a further technique: it can reduce normative complexity so that it is “no longer necessary in meeting the demands of justice to keep track of the endless variety of circumstances and the changing relative positions of particular persons.”<sup>46</sup> A “good” reduction leaves as wide a scope as possible by “bracketing” or “de-normativizing” the issues as much as possible, that is, by formulating them in non-normative ways, or at least in ways thinly normative rather than thickly so. The issue of abortion, for example, is thematized thickly when treated in terms of moral rightness or wrongness, but thinly when treated in medical terms of physical and mental health of the mother, or in legal terms like the possibly competing rights of the mother, father, and fetus.

“Balancing,” “bracketing,” and other techniques of normatively thin proceduralism need not damage the participants’ agency. They can be the very expression of agency, in the sense that the balancers, the bracketers, and the complexity-reducers are embracing or rejecting particular normative claims. And they are freely and consciously binding themselves to the outcome in ways that guide their behavior. In Western Europe or North America people of different thick normativities, of diverse comprehensive worldviews, of dissimilar conceptions of the good life, can easily agree on the desirability of, even right to, personal agency. This attachment to personal agency is normatively thin because the capacity for agency does not prescribe how any

individual will actually employ it under concrete circumstances. Some Muslim immigrants may not be culturally disposed to the desirability of, let alone putative right to, wide freedom for the individual. But probably all immigrants will be disposed to group-based forms of self-determination and identity-construction. Where the cultural autonomy and integrity of Muslim immigrants to Europe is possible, there the minority group's interests might be balanced against those of dominant groups by constructing the minority group's identity in terms of (a) religion, not ethnicity and (b) citizenship, not national ethnic identity.

(a) In Germany, this approach would entail granting Islam the status enjoyed by various other confessions, namely that of a *Körperschaft des öffentlichen Rechts* (a public corporate body). This status would integrate Islam into the group of publicly recognized religions in Germany, thereby according to its representatives some measure of cultural and legal independence. By this means, Muslims would be included in a social environment that communicatively grants, indeed encourages, differences in group identity (recognizing Muslims as worthy of respect equal to Christians and Jews). At the same time, it would transform Islam's current status as an outsider religion largely determined transnationally rather than by Muslim residents of Germany (some of whom are citizens), to an accepted social vehicle for group expression within that country. Status as a public corporate body would also guard against governmental efforts to limit Islam completely to the private sphere, while addressing Muslims' fear of either complete assimilation or complete exclusion. By mobilizing Islamic identity, the Muslim community expresses a communal will to cultural self-determination, not "mobilization for an Islamic government in Germany."<sup>47</sup>

(b) Most immigrants are interested in social security, hence gaining citizenship that entails this along with legal rights, freedom to circulate, dual-nationality, and eligibility to vote. Few if any Muslim immigrants can be accepted as having the European host country's national ethnic identity (though a national ethnic identity may be more imagined than real). Yet in Germany, as in most European countries, cultural presumptions control access to rights of citizenship, reserved as they are to ethnic groups popularly and culturally regarded as more "authentic" and "culturally legitimate" than Turkish immigrants, defined by German political culture as *Ausländer* (foreigners) rather than *Aussiedler* (ethnic German nationals from Poland, Russia, and other parts of Eastern Europe) or *Übersiedler* (citizens of the former East Germany).

Here cultural presumptions deny to these immigrants equal rights to participation in the host society's institutional order, thereby implying, in Honneth's terms, that the immigrants do not "possess the same degree of moral accountability as other members of society."<sup>48</sup> Here a group-based form of proceduralist democracy might balance the interests of one sub-group with those of other sub-groups, defined in ways that would allow for weighing, comparing, and making trade-offs. It might balance competing arguments against each other (critically examining cultural and legal assumptions underlying the current hierarchical relationship among *Übersiedler*, *Aussiedler*, and *Ausländer*, and the compatibility of that hierarchy with constitutional commitments to equality and fairness for individuals and for groups). From a procedural point of view concerned with norms of participation, if certain foreign nationals have a right to citizenship, citizenship should also be extended to others who do not have German national ethnic identity but who possess other claims to a special relationship with Germany, such as long years of residence and employment.

(5) The thinness of normatively thin proceduralism means that the use of procedure entails no normative consequences for the procedure's outcome, beyond its acceptance by those persons properly subject to it. Where it functions properly, proceduralism accomplishes important tasks of making agreement possible. Of course it may well malfunction. In the Supreme Court decision concerning the American presidential election of 2000, *Bush v. Gore*,<sup>49</sup> the proceduralism of legal adjudication failed in four ways among others: it was not properly procedural where it engaged a question political not legal<sup>50</sup>; where it was partisan<sup>51</sup>; where the outcome predictably generated legitimate fundamental disagreement not agreement<sup>52</sup>; and where the procedure was merely a vessel for deeply flawed reasoning.<sup>53</sup> The popular acceptance of the outcome of this faulty exercise indicates that procedurally correct outcomes are not the only outcomes a democratic polity may be willing to accept. But it does not detract from the merits of procedurally correct outcomes.

The thinness of thin proceduralism also entails that, for procedure reasonably to serve participants' democratic ends, not much normative identity need be presupposed on the part of the participants, and certainly no "unified we" or macro-subject. In this sense, thin proceduralism addresses the political problem of foundations as that problem poses itself for modern, secular, pluralist, scientific-technologically based societies, where political legitimacy can no longer be based on

some ultimate, or external, or otherworldly foundation. Thin proceduralism offers the alternative of *self*-foundation, of political *self*-legitimation, where politics derives validity through its procedural aspects and achieves legitimacy by procedural means. Thin proceduralism can “organize its own institutionalization so that it can generate decisions that are collectively binding, but whose application is not at the mercy of the [narrowly self-regarding or wholly partisan or religiously sectarian] impulses of its subjects.”<sup>54</sup> It needn’t presuppose some end or value prior to, or independent of, the goals in the instant case.

Self-grounding procedural democracy also has the capacity to change majoritarian categories of thought and action, so as to reconfigure the very terms of debate. For example, the question of whether a particular category of thought or action is fair arises with the struggle for recognition of new facts (a significant increase in single parent households eventually challenges traditional conceptions of the family, for instance) or of marginalized needs (until recently, most medical research focused on the male body despite significant differences in health needs specific to women). And new facts or newly recognized needs may provide grounds for new criteria for negotiating (or re-negotiating) matters of public policy and legal regulation. Such criteria may urge changes in existing categories of thought and action. Practices once thought to be politically or legally neutral are subsequently understood to favor males over females in contexts now expected to reject sexism. In this sense we learn from the history of various social movements that struggles for recognition often are struggles over interpretations of fundamental categories of social construction; in the case of the women’s movement, over the implications of sex-dependent differences for social roles, indeed the entire question of gender-specific roles, as well as traditional understandings of sexual identity.

Thin proceduralism functions in part to filter out objectionable self-understandings and repugnant interpretations. Such filtering need not be paternalistic; beliefs and viewpoints can be transformed by becoming more informed and more rational, so that a person’s political or social viewpoint is not simply his or her unreflected preferences but his or her informed and considered judgment.<sup>55</sup> Thin proceduralism can be a process that “de-traditionalizes” certain norms, by stripping them for example of their hierarchical character, toward social solidarity *across* sexual or racial differences. And thin proceduralism can generalize the legal recognition of immigrants in two dimensions: where “individual differences in the opportunities for realizing intersubjec-

tively guaranteed freedoms are increasingly taken into legal account,” and where a “growing circle of hitherto excluded or disadvantaged groups has the same rights extended to it as are enjoyed by all other members of the community.”<sup>56</sup>

At the same time, immigrants always have cause to practice forms of *self*-foundation and *self*-legitimation. Earlier immigrants to France – from Poland, Italy, and Spain – negotiated their integration in terms of trade unions and political parties (the Communist Party in particular). Today immigrants from the Maghreb (Tunisia, Algeria, and Morocco) are negotiating integration into French society more through religion, yet in ways “clearly different from the use of the religious factor by the old, settled minority groups, including the Jewish immigrants at the end of the nineteenth century or between the two World Wars.”<sup>57</sup> Even as it deploys Islam as an alternative means of political mobilization, Maghrebian immigrants do not subscribe to a uniform traditional political culture. Islam assumes a transitional identity as immigrants *provide themselves* political legitimation by means of an Islam re-invented for, and calibrated to, the political ecology of contemporary France. Immigrants discard Islam’s national point of reference in the Maghreb for an Islam defined in nation-independent cultural terms: a membership that is cultural, not national. In this way, they provide their own political foundation, equally for persons who advocate a special status in French society for Muslims (for example, with respect to Shari’ah family law) and for persons (particularly the young and educated progeny of the first generation immigrants) for whom becoming French entails rejecting Islam and embracing secularism, who want to be seen more for what they *do* (in terms of profession, for example) than what they *are* (culturally Muslim). Islamic cultural markers such as Muslim private schools, or female pupils at public schools wearing the Islamic headscarf, or the construction of mosques with minarets, can be quite unconnected with the person’s belonging to his or her Islamic country of origin. This process of an immigrant community redefining itself to advance its interests in a new environment does not presuppose some “unified we”; does not appeal to otherworldly foundations; can change majoritarian categories of thought and action within the community; and filters out self-understandings (religiously based subordination of women, for example) that cannot be viable in the host society. If this process is procedural, it is normatively thin in the sense that it need not compromise the participants’ Islamic faith, even as it modifies its expression.

(6) A normatively self-justifying outcome (in the sense of the preceding rubric) offers a legitimate form of mutual accommodation and, more precisely, mutual accommodation rather than agreement on substantive matters. Shared by several groups, a *modus vivendi* of this sort need not privilege one group's way of life at the expense of another's. It may expand by identifying excluded groups and revealing the injustice of such exclusions. The general accommodation marked by a *modus vivendi* need not be dogmatic, parochial, or self-indulgent if the procedural standard for adjudicating issues figuring in the accommodation is not immutable but always provisional; if it is tested repeatedly against the actual realization of desired ends; if it is fallibilistic and always open to challenge and possible revision. A procedurally generated *modus vivendi* will not become stabilized to the point of ossification in itself as long as it grants only this temporary status to its results. Of course, procedures are often used under contingent limitations, such as voting procedures and time constraints, or the state of knowledge at the time of action. These constraints generate additional reasons for making outcomes something like promissory notes to be redeemed at later times, rendering all outcomes "outcomes for-the-time-being." And a procedural *modus vivendi* will not become stabilized in itself as long as it doesn't purport to issue in universal truths, single right answers, or interpretations possessing exclusive validity. It needn't be stabilized in itself to contribute to social order.

If it doesn't become unduly stabilized, accommodation of this sort is open to internal and external critique and evaluation. In just this sense, James Fishkin defends the *modus vivendi* of a freely self-examining political culture that could "provide the foundations for its own legitimacy" and engage in a "continuing, collective process of self-criticism."<sup>58</sup> Even if the process results in "merely a procedural consensus on political practices," it will be rationally legitimate because it will have "survived unmanipulated critical scrutiny."<sup>59</sup> Scrutiny should cleanse, say, a procedural norm that allowed equal voice only to men.<sup>60</sup>

Members of the Muslim immigrant community in Europe today might generate a procedural *modus vivendi* at the levels of both (a) culture and (b) formal associations that seek, on the immigrants' behalf, political accommodation with the host society.

(a) Muslim immigrants can best ensure their freedom of religious expression and practice through a *modus vivendi* with the non-Muslim environment. Arrangements reached by the host and immigrant



communities would be provisional because negotiable, mutually tolerant because conditioned by mutual forbearance. For example, the host society could reach out to the immigrant community by allowing Islamic religious education, public observance of Friday and *Eid* prayers, and public call to prayer. The immigrant community could reach out to the host society in its reinterpretation of Islamic values and Muslim identity, for example by holding religious convictions rather than being held by them,<sup>61</sup> in other words, being flexible toward the host society with respect, not to the content of belief, but to the forms of its expression. In Britain today, for example, young South Asian Muslim women are “establishing a firm distinction between ‘religion’ and ‘culture’, which were realms largely indistinguishable for their parents,” “rejecting their parents’ conformity to ethnic traditions which are considered as emblematic of religiosity (such as manner of dress) while wholly embracing a Muslim identity in and of itself.”<sup>62</sup> They “spend hours every week analyzing the kind of Islam that would help to empower them instead of limiting their capacities,” discussing “contraception, abortion, adoption, rape, the education of their children, how men can be better fathers and husbands, geopolitical changes and ecological problems,” and in the process “reclaiming the concept of *jihād* – ‘interpretation’ or ‘independent judgment’ – not as a special right of scholars but of all Muslims.”<sup>63</sup> These procedures for reconstructing cultural identity, including the procedure of participatory interpretation of guiding ideals and beliefs, is itself a *modus vivendi* between South Asian Muslim origins and the liberal, secular, Western host environment.

(b) The immigrant community can generate a procedural *modus vivendi* also at the level of political accommodation through formal associations, but only where the immigrants enjoy citizenship and the right to vote. These can organize, mobilize, and articulate frameworks for liaisons between community and governmental authorities, as the community pursues religious and cultural expression (ranging from requests that Muslim students, especially girls, be allowed more modest forms of school uniform and required dress for swimming and other physical education; to the provision of *halal* food in school cafeterias; to accommodation of Muslim prayer times and religious holidays in the school timetable and calendar, such as a right to time off for Muslim teachers to attend Friday noon prayer, and release of Muslim teachers and students on Muslim holidays; to Qur’anic schools for the young; to Muslim chaplains in the military). Formal associations are successful where they garner support within their own communities and then lobby the government and its agencies.

### **Limits of the model: What to do about fundamentalists**

Someone who can freely identify with a community's thin norms will be more inclined to observe its ways. Yet normatively thin proceduralism cannot accommodate all persons; it will fail to speak to some members of society, for three reasons at least.

First, someone who believes himself or herself to be guided by an otherworldly authority on normative matters – someone, say, who would be guided politically by religious faith in revealed truth – will reject normatively thin proceduralism. Someone who claims to do what is commanded by God, and who believes that success is in God's hands, rejects compromise with the world of mundane politics and community. And anyone beholden to an authoritarian ideology – such as political or philosophical fundamentalisms that reject any critical discussion of themselves, that spurn argument and counter-argument and other burdens of deliberation in the public political arena – will dismiss thin proceduralism.

Further, groups that deny rights to individual members, by promoting exclusively collective self-understandings over individual self-understandings, will refuse thin proceduralism. Issues such as abortion, homosexuality, gambling, the sale and consumption of controlled substances, and physician-assisted suicide are controversial enough in European societies today that individuals within the same group may well disagree on how best to approach these issues. Thus, communities that reject the very possibility of disagreement among their members will refuse participation in a social order organized along thin proceduralism. Thin proceduralism can work for groups in contention, but only if they are not fanatic or absolutist. Not fanatic or absolutist is the concession, for example, that means and ends can stand in normatively problematic relation to each other. In other words, because ethically acceptable behavior may sometimes lead to normatively disastrous results (and because ethically doubtful behavior sometimes generates morally laudable consequences), thin proceduralism requires participants to take responsibility for their actions rather than (as the fundamentalist might) believing in divine providence.

Second, some people will not be able to identify their needs and articulate their aspirations except in thick terms. People who cannot subordinate their thick norms to thin ones will reject thin proceduralism because it confines to thin norms the bases on which public policy

can be made. Persons who “see destiny, intention, or design in their inheritance, and from their ancestry ... infer a very specific mission, a specific set of duties, and a clear plan for their lives,”<sup>64</sup> are not open to normatively thin proceduralism. But fundamentalism can also be principled in abstract ways, and derive from Enlightenment goals rather than non-Western cultures. Some of the opposition in France to the wearing of the Islamic headscarf in state schools is based on the principle of *laïcité*, a notion of religious neutrality in public life (particularly in educational institutions). Article 2 of the Constitution of 1958 identifies France as an “indivisible, *laïque*, democratic and social Republic.” *Laïcité* is a thin norm only when it means respect for cultural and religious differences, and the guarantee of neutrality of teachers. It is thin only when it does not proffer thick norms disguised as culturally or politically neutral, or when it does not become a form of secularist extremism, in the sense of rejecting all cultural diversity. *Laïcité* is normatively thin where it protects children from religious proselytism or political indoctrination, and where it protects students’ freedom of religious expression.<sup>65</sup> But it turns into a fundamentalism where it becomes in effect the suppression of whatever religious expression the dominant culture regards as deviant.

Third, thin proceduralism will never integrate all persons and all groups because it simply cannot do away with all social conflict. Sources of conflict that are “inextricably interwoven with individual self-descriptions of persons and groups, and thus with their identities and life projects,”<sup>66</sup> challenge the co-existence of competing worldviews and ways of life, and will not yield to normatively thin proceduralism. Those persons or groups whose political armory includes violence or its threat cannot be integrated into a proceduralist order. Muslim immigrants to Europe who interpret *jihād* not simply as a basic commitment to Islam incumbent on all Muslims, regardless of nationality and country of residence, but specifically as active service in armed struggle abroad or the provision of material and moral support to those engaged in such struggle anywhere in the world, employ norms that cannot be vindicated through normatively thin proceduralism.<sup>67</sup> Proceduralism reaches its limit where people insist on such norms, and where they tolerate no deviance from those norms or their traditional understandings.

I have argued that thin proceduralism will not work for citizens with authoritarian or fundamentalist ideologies, or persons who cannot bracket their own norms, or groups that deploy violence as a political

means. Yet contemporary cosmopolitan societies include just such persons and groups, and to these people thin proceduralism must also address itself. It can be more than simply self-referentially descriptive of persons already inclined to the thinly normative social order only to the extent that it can bring into a proceduralist polity members of the community now disinclined to participate in it. The viability of thin proceduralism depends on its capacity to discourage, or at least to mitigate, fundamentalism. Fundamentalism within immigrant communities is best approached in multiple and differentiated ways. I see four in particular: host societies committed to thin proceduralism can (a) pursue immigrant education, (b) avoid disappointing reasonable expectations of fairness, (c) avoid demanding too much assimilation, and (d) factor the issue of immigration into formulations of foreign policy and strategies of development in the third world.

(a) Certainly some immigrants to Europe are “generally satisfied finding security within their parents’ cultural domain, while making the necessary minimal adaptation to be able to function in the European economic sphere.”<sup>68</sup> To encourage immigrants to commit to the host society’s procedural order, the host society needs to embrace Muslim immigrants as full and equal partners in a multicultural society; groups that perceive society’s commitment to them are more likely to feel commitment to the wider society. The immigrants for their part need to accept multiculturalism and the compromises it demands in the self-understandings of all its participants (such as the relativity of cultural forms and political convictions, and the viability of religious faiths other than one’s own).

Other immigrants to Europe, particularly young, educated ones, are able to function successfully in both cultures and inevitably generate certain syntheses of both. Their education in the host country may be the single most important aspect of persuading them of the merits of a normatively thin procedural order. But they also become integrated into the host society’s culture through domestic political processes, in particular in the socialist and social democratic parties of France, Britain, and Germany; through reasonably paid employment and housing; and through educational opportunities for their children. These factors give them a stake in the host society (which persons under material pressures or without hope for their children’s future are unlikely to share). Through public education many immigrants may come to reject certain aspects of their parents’ particular ethnic, cultural, and religious backgrounds.

On this modern, Western conception of social integration, religion for example is “voluntary or affiliational, an act of faith. As a delayed result of the Reformation and a direct result of the Enlightenment and the French Revolution, the right to choose one’s religion was recognized. Religion passed into the realm of affiliation one could enter or leave at will, even when most people identified with the religion given them at birth. Outside the West, religion remained an ascriptive affiliation. For many groups, religion is not a matter of faith but a given and integral part of their identity and for some an inextricable component of their sense of peoplehood.”<sup>69</sup> But non-Western immigrants need not abandon their religion tout court to mobilize themselves for its defense, through procedural means, in the host society, for example through negotiations based on collective interests of representative organizations, and by forming pressure groups whose leaders would promote collective concerns in discussions with state agencies and elected representatives. Immigrants and other minorities who are the most involved politically tend to be the most integrated socially. Level of education may often be positively related to level of political interest and, potentially, political participation.

(b) Within disaffected immigrant communities, fundamentalism most easily recruits among groups and individuals whose reasonable expectations of the host society have been disappointed. Turkish immigrants in Germany who have lived and worked in the country for two generations are disappointed in reasonable expectations of citizenship – and of fair treatment in the political system generally, as well as in the employment market – when they are still regarded as *Gastarbeiter* while “ethnic” Germans from Poland or Romania or the Ukraine, who have never lived in Germany, and do not speak the language, enter the country to become automatic citizens under the “law of return.” When French public schools permit Jewish students to wear yarmulkes and Christian students to wear crosses or baptismal medals, yet forbid immigrant Muslim students to wear the Islamic headscarf, reasonable expectations of the consistent and equitable application of *laïcité* are disappointed.

The British experience demonstrates that the Islamic identity of Muslim children can be accommodated within the education system in normatively thin ways. In Britain, the “wearing of the Islamic headscarf was permitted only if it did not pose a safety problem (during science and physical education classes) and if it was not accompanied by proselytism or regular unauthorized absences,” and if the headscarves “satisfied the

color requirements of school uniform regulations.”<sup>70</sup> In the same normatively thin spirit, the compulsory wearing of knee-length skirts as part of the school uniform was amended to accommodate the cultural sensitivities of Muslim families who preferred their daughters to wear long trousers.

Perhaps some members of the first generation of Muslim immigrants to Europe expected to remain socially, economically, and politically disadvantaged, but their children born and socialized in Europe, and whose future lies in Europe, reasonably have much higher expectations. Whatever their current rates of success or failure in education and training – and more broadly in becoming political, cultural, and economic participants in the host society – policies that perpetuate or even increase disadvantage feed anti-proceduralist fundamentalism. By contrast, policies of religious tolerance, anti-racism, and anti-discrimination in the distribution of social goods, legal rights, as well as social burdens, discourage fundamentalisms that reject a normatively thin procedural order.

(c) Host societies that demand Muslim immigrants’ complete assimilation, that insist that immigrants discard everything they brought with them to the host society, demean human beings and their cultural self-understandings. This experience generates strategies of self-defense among the devalued, and articulate young Muslims in Europe may well find the best defense in this or that form of fundamentalism. Host societies can mitigate fundamentalism by recognizing and indeed facilitating Muslim self-assertion as an assertion of that community’s right to recognition by the host society, to dignity and respect within that society, to tolerance, and to participation in its procedures for democratic self-determination. Host societies can discourage fundamentalism by encouraging immigrants to avail themselves of normatively thin approaches to defending their cultural integrity and to gaining a public hearing for their particular concerns, needs, and demands. More broadly, national cultures resist generating defensive, fundamentalist maneuvers on the part of immigrants when they view themselves as changing, as open to other cultural influences, and as adaptable and flexible in the interests of all residents and citizens, including immigrants.

(d) Host societies can bring into their proceduralist social orders persons now disinclined to participate. They can do so where they can protect citizens’ freedom of choice and where they can provide immi-

grants some measure of cultural autonomy (for example, in regard to religious practice), but also where they clearly specify what forms of behavior can be tolerated in the host society, and what forms cannot. But in light of the possible domestic repercussions of events in the immigrants' countries or origin, and in light of activities of foreign intelligence agencies among émigré communities, inclusion in the host society cannot be solely a domestic matter; it is always also an international one. Fundamentalism within immigrant communities needs to be addressed in global perspective, quite beyond domestic politics and national culture; it needs to be addressed at the levels of foreign policy and strategies for third-world development. To counter the radicalization and "fundamentalization" of Muslim immigrant communities in Europe, host societies must formulate in international terms their social policies on immigration and ethnic minorities – and not simply in the narrow terms of national security policy. Responsibility for the defense of the host society's democratic order extends to the formulation of the host society's foreign policy, especially with respect to the countries or regions sending the immigrants. For example: do not support repressive governments in the Muslim world; recognize the right of people to self-determination and representative government; encourage governmental responsiveness to popular demands for political liberalization and greater popular participation; encourage governmental toleration of nonviolent opposition movements; balance selective, discreet cooperation with Muslim allies, on the one hand, with contact with alternative political actors and authentic, populist, opposition movements, on the other; evaluate Islamically oriented political actors by the criteria applied to other potential leaders or opposition parties, rather than rejecting them out of hand, seeking to work with those who operate on the basis of national interests and who accept the realities of a globally interdependent world; do not oppose those state-initiated Islamization programs that reflect the popular will and that do not directly threaten Western interests; and, in the promotion of human rights, practice consistency among countries and regions.<sup>71</sup>

## **Conclusion**

Normative difference is an integral aspect therefore of complex modern societies, and conflict over differences is a permanent feature of these societies. Even within a relatively homogeneous society, members may not expect consensus on matters of social custom, ritual practices, or aesthetic preferences, nor do they expect universally valid criteria of

evaluation. On the other hand, difference and conflict do not preclude shared political techniques within one society. I have argued for thin proceduralism as one technique that might well be shared among persons with normatively thick differences. Proceduralism is not foreign to human populations, inasmuch as societies, traditional and modern alike, both Western and non-Western, require mechanisms to deal with inevitable disagreements over competing moral claims. And all humans, both as individuals and as members of groups, are familiar with techniques of weighing competing options or preferences or claims against each other; all individuals know something about making trade-offs in the pursuit of private and public goals. From these common experiences the step toward more formal proceduralisms – like considering the claims of both accused and accuser in legal proceedings, or in taking account of conflicting evidence in the evaluation of a scientific hypothesis – is not large. Or at least: not so large as to discourage all prospects for wide participation in political and social procedures in contemporary societies, even the most diverse. Here thin proceduralism offers more much promise than thick, but neither will end all conflict in civil society. But normatively *thin* proceduralism in particular offers scope for civil order in the face of individuals and groups living together even as they struggle, “wittingly or unwittingly, to preserve their individual character and their distinctive qualities against the encroachment and absorption of other self-assertive things in their environment.”<sup>72</sup>

## Notes

1. This claim is not necessarily to support a proceduralism conducted with no regard to any concerns (such as outcome) other than the formal procedure itself. I develop this point in later pages.
2. Benjamin Gregg, *Coping in Politics with Indeterminate Norms: A Theory of Enlightened Localism* (Albany: SUNY Press, 2003), chapter 2.
3. As procedures by which conflicts may be settled, Brian Barry, *Political Argument* (London: Routledge and Kegan Paul, 1970), 85–91, distinguishes combat, bargaining, discussion on merits, voting, chance, contest, and authoritative determination.
4. David Estlund, “Beyond Fairness and Deliberation: The Epistemic Dimension of Democratic Authority,” in James Bohman and William Rehg, editors, *Deliberative Democracy: Essays on Reason and Politics* (Cambridge: MIT Press, 1997); Allan Gibbard, “Morality as Consistency in Living: Korsgaard’s Kantian Lectures,” *Ethics* 110 (1999); Alex Honneth, “Democracy as Reflexive Cooperation: John Dewey and the Theory of Democracy Today,” *Political Theory* 26 (1998); Lenore Langsdorf and Darrin Hicks, “Regulating Disagreement, Constituting Participants: A Critique of Proceduralist Theories of Democracy,” *Argumentation* 13 (1999); Michel Rosenfeld, “A Pluralist Critique of Contractarian Proceduralism,” *Ratio Juris* 11 (1998).



5. Joshua Cohen, "Pluralism and Proceduralism," *Chicago-Kent Law Review* 69 (1994): 610.
6. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 159.
7. Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge: MIT Press, 1996), 296.
8. Thomas Hobbes, *Leviathan* (London: Penguin Books, 1985 [1651]), chapter 14.
9. Stuart Hampshire, *Justice is Conflict* (Princeton: Princeton University Press, 2000), 23–24.
10. Immanuel Kant, *Critique of Practical Reason*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1997 [1788]).
11. In *Thick Morality, Thin Politics: Social Integration Across Communities of Belief and Identity* (Durham: Duke University Press, 2003), I develop into a general social theory this distinction between thick and thin normativity.
12. Jane Mansbridge, "Feminism and Democratic Community," in John Chapman and Ian Shapiro, editors, *Democratic Community* (New York: New York University Press, 1993), 340.
13. Amitai Etzioni, *The New Golden Rule* (New York: Basic Books, 1996), 127.
14. Cohen, "Pluralism and Proceduralism," 603.
15. Michel Rosenfeld, "Can Rights, Democracy, and Justice Be Reconciled Through Discourse Theory?" *Cardozo Law Review* 17 (1996): 812.
16. Jürgen Habermas, *Moral Consciousness and Communicative Action* (Cambridge: MIT Press, 1990), 211.
17. John Rawls, "Justice as Fairness," in Peter Laslett and W. G. Runciman, editors, *Philosophy, Politics, and Society*, second series (Oxford: Blackwell, 1962), 148.
18. *Ibid.*, 139.
19. *Ibid.*
20. *Ibid.*
21. In *Coping in Politics with Indeterminate Norms*, I develop a general social theory of coping in politics with indeterminate norms by resort to an "enlightened" (rather than parochial) form of localism.
22. David Hume, *A Treatise of Human Nature* (Oxford: Clarendon Press, 1975 [1737]).
23. Hampshire, *Justice is Conflict*, 37.
24. Anthony Wallace, *Culture and Personality*, second edition (New York: Random House, 1970), 35.
25. Jorgen Nielsen, *Towards a European Islam* (London: Macmillan, 1999), 88. According to Steven Vertovec and Ceri Peach, "Introduction: Islam in Europe and the Politics of Religion and Community," in Steven Vertovec and Ceri Peach, editors, *Islam in Europe: The Politics of Religion and Community* (London: Macmillan, 1997), 37–38, something like 60 percent of Muslims in Europe identify as Muslims without being particularly observant; roughly 20 percent practice their religion privately; and only the remainder engage in collective forms of observance as well as in proselytizing.
26. Nielsen, *Towards a European Islam*, 82.
27. Phnina Werbner, "Gender, Feminism and Aspects of British Muslim Participation in the Public Sphere," in W. A. R. Shadid and P. S. Van Koningsveld, editors, *Political Participation and Identities of Muslims in Non-Muslim States* (Kampen, NL: Kok Pharos Publishing House, 1996), 64.
28. Yet even here protesters might break from proceduralism only temporarily, as they ask the majority to reconsider an issue of principle – such as which constraints should apply to the procedure or to any of its possible outcomes – and perhaps

- then return to proceduralism. In this sense, Martin Luther King, "Letter from Birmingham City Jail," in *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.*, ed. James Washington (New York: Harper-Collins, 1986), 294, wrote from the Birmingham City Jail that "an individual who breaks a law that conscience tells him is unjust, and willingly accepts the penalty by staying in jail to arouse the conscience of the community over its injustice, is in reality expressing the very highest respect for law." As examples of unjust laws, King mentions a "code that a majority inflicts on a minority that is not binding on itself" and one "inflicted upon a minority which that minority had no part in enacting or creating because [it] did not have the unhampered right to vote" (ibid.).
29. Sometimes there may be tradeoffs between increasing the deliberativeness of a procedure and minimizing divisive controversy. If people voted without much prior public discussion about the grounds for everyone's votes, the losers might accept the results, but once deliberation revealed that the majority was voting for rule X because rule X would hurt no one's interests except those of the adherents of a worldview too "absurd" to be credible, the losers might balk at the rule. But minimizing divisive controversy in this spirit of "ignorance is bliss" is counter-democratic in the sense of manipulating parts of the populace by maintaining their ignorance.
  30. By comparison, Brian Barry, "Is Democracy Special?" in Peter Laslett and James Fishkin, editors, *Philosophy, Politics and Society*, fifth series (New Haven: Yale University Press, 1979), 156-157, proposes a proceduralism too thin: "I reject the notion that one should build into 'democracy' any constraints on the content of the outcomes produced, such as substantive equality, respect for human rights, concern for the general welfare, personal liberty or the rule of law. The only exceptions ... are those required by democracy itself as a procedure. Thus, some degree of freedom of communication and organization is a necessary condition of the formation, expression and aggregation of political preferences. And in a state (as against a small commune, say) the only preferences people can have are preferences for general lines of policy."
  31. Vertovec and Peach, "Introduction: Islam in Europe and the Politics of Religion and Community," 26.
  32. Ahmed Andrews, "Muslim Attitudes Towards Political Activity in the United Kingdom: A Case Study of Leicester," in W. A. R. Shadid and P. S. Van Koningsveld, editors, *Political Participation and Identities of Muslims in Non-Muslim States* (Kampen, NL: Kok Pharos Publishing House, 1996), 128.
  33. Yet without proportional representation, Muslims and Hindus in Britain today are not electable to the "national parliament on the basis of attachment to a purely religious party," and "although the major parties encourage Hindus and Muslims to come forward as candidates in local government elections," neither the Labour nor the Conservative Party is inclined to "encourage candidates from these communities to come forward as prospective members of parliament" (Andrews, "Muslim Attitudes Towards Political Activity in the United Kingdom," 128).
  34. Although residual institutionalized racism persists: the "Labour Party leadership does not want to be seen to have too many Muslim members. This relates more generally to a view of Muslims as an electoral liability and the fear that Labour will lose white votes" (Kingsley Purdam, "Settler Political Participation: Muslim Local Councillors," in W. A. R. Shadid and P. S. Van Koningsveld, editors, *Political Participation and Identities of Muslims in Non-Muslim States* (Kampen, NL: Kok Pharos Publishing House, 1996), 139).

35. A collective identity is not an individual identity writ large but a fabric into which the individual's identity is woven (unevenly, to be sure). By "fabric" I refer to the contexts in which people were socialized, where they formed their basic identities. In liberal democracies these contexts are connected with the public, political context in which they have legal rights to equal treatment. A. Honneth, *The Fragmented World of the Social: Essays in Social and Political Philosophy* (Albany: SUNY Press, 1995), 254, identifies the role of recognition in collective identity, a form of recognition "invested with a primarily cognitive character: ego and alter mutually recognize each other as legal persons in that they share a knowledge of those norms by which their particular community secures the rights and responsibilities to which they are equally entitled," such that the individual can consider him- or herself a person who shares with all other members of [the] community the qualities of a morally accountable active subject."
36. See *Goldman v. Weinberger* (475 U.S. 503 (1986)).
37. See *O'Lone v. Estate of Shabazz* (482 U.S. 3342 (1987)).
38. Honneth, *Fragmented World of the Social*, 226.
39. See *Wisconsin v. Yoder* (406 U.S. 205 (1972)).
40. See *Reynolds v. United States* (98 U.S. 145 (1878)).
41. Although such a curriculum may well perpetuate a sexual division of the kind of skills learned, such that, unlike the women's education, the education men receive may still make them employable outside the Amish community, should a man decide to leave.
42. See, for example, Muhammad Salim, "Muslime in Deutschland. Geschichte und Herausforderungen," in Tilman Hannemann and Peter Meier-Hüsing, editors, *Deutscher Islam—Islam in Deutschland* (Marburg: Diagonal-Verlag, 2000), 52, who lists some of the main reasons.
43. Valérie Amiraux, "Turkish Islam in Germany. Between Political Overdetermination and Cultural Affirmation," in W. A. R. Shadid and P. S. Van Koningsveld, editors, *Political Participation and Identities of Muslims in Non-Muslim States* (Kampen, NL: Kok Pharos Publishing House, 1996), 50.
44. Nielsen, *Towards a European Islam*, 34.
45. There are also limits to what might properly be bracketed. Of course, one would not "bracket" within one's normatively "thick" community, for instance, within a religious faith, a political party, or within intimate relationships such as the family. These are areas where agreement must often be found without proceduralism. Someone in significant disagreement with the community in question (including, poignantly, the family) likely would separate himself or herself from it, unless the membership were coerced or pathological. Further, one would not bracket outcomes that make impossible the satisfaction of the individual's basic needs of daily life (such as sustenance, hygiene, and protection from the elements and from other human beings), or that injures the participant in his or her humanity or dignity. Nor should "substantive" political rights be bracketed, rights such as freedom of speech and assembly, but above all: the citizen's right, individually and collectively, to political self-determination.
46. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), 87.
47. Valérie Amiraux, "Turkish Islamic Associations in Germany and the Issue of European Citizenship," in Steven Vertovec and Ceri Peach, editors, *Islam in Europe: The Politics of Religion and Community* (London: Macmillan, 1997), 254.
48. Honneth, *Fragmented World of the Social*, 251.
49. 121 S.Ct. 525.

50. The “majority in *Bush v. Gore* ... confused and improperly mingled the special and constrained form of politics called constitutional law with the more general and unconstrained forms of politics in partisan political struggle” (Jack Balkin, “*Bush v. Gore and the Boundary Between Law and Politics*,” *Yale Law Journal* 110 (2001): 1548). “Given the opportunity to decide who would be President, the conservative Justices ... in the face of society’s most pressing concerns and their own strongly held preferences ... might have passed” (Gary Rosen, “Reconsidering ‘*Bush v. Gore*,’” *Commentary* 112 (2001): 42).
51. A process is partisan when the authoritative “rule deciders decide the rules after matters have proceeded so far that the decision obviously determines an outcome to which the deciders are perceived to be not indifferent.... That majority intervened aggressively, decisively, and knowingly to resolve a presidential election in favor of the contestant who had named two of them as the judicial models by which he would select future justices” (Frank Michelman, “*Bush v. Gore: Suspicion, or the New Prince*,” *University of Chicago Law Review* 68 (2001): 686–687).
52. The Court “effectively resolved the presidential election not unanimously, but by a 5–4 vote, with the majority consisting entirely of the Court’s most conservative justices” (Cass Sunstein, “*Bush v. Gore: Order Without Law*,” *University of Chicago Law Review* 68 (2001): 758). Beyond the Court, “some Republicans acknowledge (especially in private) that the Court’s decision was bad law, but generally they are not unhappy with the result” (Michael Klarman, “*Bush v. Gore Through the Lens of Constitutional History*,” *California Law Review* 89 (2001): 1761).
53. The majority opinion announced an “hitherto undeclared and unsuspected doctrine of constitutional law, which it drew with a remarkable precision expressly meant to leave its authors unfettered in any future case” (Michelman, “*Bush v. Gore: Suspicion, or the New Prince*,” 687).
54. Jacques Lenoble, “*Law and Undecidability: A New Vision of the Proceduralization of Law*,” *Cardozo Law Review* 17 (1996): 943.
55. For the related but different proceduralism of deliberative polling, see James Fishkin, *The Voice of the People: Public Opinion and Democracy* (New Haven: Yale University Press, 1995).
56. Honneth, *Fragmented World of the Social*, 254–255.
57. Rémy Leveau, “The Political Culture of the ‘*Beurs*,’” in Steven Vertovec and Ceri Peach, editors, *Islam in Europe: The Politics of Religion and Community* (London: Macmillan, 1997), 149.
58. James Fishkin, *The Dialogue of Justice: Toward a Self-Reflective Society* (New Haven: Yale University Press, 1992), 201–202.
59. *Ibid.*
60. Of course, the notion of “unmanipulated” may itself be contested, but it is rationally contestable only from a standpoint itself claiming to be unmanipulated (which standpoint then provides the standard by which to identify manipulation).
61. Compare Clifford Geertz, *Islam Observed: Religious Developments in Morocco and Indonesia* (Chicago: University of Chicago Press, 1968), 61.
62. Vertovec and Peach, “Introduction: Islam in Europe and the Politics of Religion and Community,” 40.
63. *Ibid.*
64. Hampshire, *Justice is Conflict*, 25.
65. *Laïcité* is not a secular fundamentalism where it is open to various accommodations of religious expression in public schools, such as dietary practices, leave for religious reasons, or the wearing of religious symbols: “la *laïcité* française apparaît

comme un espace de négociation et de transaction et non un principe intangible, a-historique, comme le conçoivent certains militants laïques” (Bérengère Massignon, “Laïcité et gestion de la diversité religieuse à l’école publique en France,” *Social Compass* 47 (2000): 362).

66. Jürgen Habermas, *Justification and Application* (Cambridge: MIT Press, 1993), 59.
67. The word *jihād* is the verbal noun of the Arabic verb *jāhada*, meaning to endeavor toward a praiseworthy aim. Its wide semantic spectrum reaches from the individual’s moral struggle with himself or herself (in the sense of resisting one’s moral weaknesses and the more wicked aspects of one’s environment); to efforts directed at the moral betterment of the Islamic community (the meaning I invoked earlier, in the context of interpretation or independent judgment); to efforts directed at the spread of Islam (the meaning I employ now, in the sense of attempts to convert unbelievers). Struggle against self is the “greater jihād,” whereas struggle against others is the “lesser jihād” and is itself further differentiated. Surah 16 : 125 of the Qur’ān (“Call thou to the way of the Lord with wisdom and admonition, and dispute with them in the better way”) suggests a “jihād of the tongue or pen,” whereas surah 2 : 93 (“Fight them until there is no persecution and the religion is God’s; then if they give over, there shall be no enmity save for evildoers”) implies a “jihād of the sword.” These distinctions become more complicated still in contemporary debates among Islamic modernists (who interpret the “lesser jihād” as defensive warfare), Islamic conservatives (who support the position of the classical legal texts), and fundamentalists or revivalists (for whom the “lesser jihād” entails islamizing all of state and society and, beyond that, bringing the entire world into line with Islamic principles). Compare Rudolph Peters, *Islam and Colonialism: The Doctrine of Jihad in Modern History* (The Hague, NL: Mouton, 1979), chapter 4; and Rudolph Peters, *Jihad in Classical and Modern Islam* (Princeton: Markus Wiener Publishers, 1996), chapter 8.
68. Nielsen, *Towards a European Islam*, 31–32.
69. Donald Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985), 50.
70. Lina Molokotos Liederman, “Religious Diversity in Schools: the Muslim Headscarf Controversy and Beyond,” *Social Compass* 47 (2000): 368.
71. Compare John Esposito, *The Islamic Threat: Myth or Reality?* (New York: Oxford University Press, 1999), chapter 6.
72. Hampshire, *Justice is Conflict*, 38–39.