

We Have Always Been Talking About Headscarves

By Melissa Schwartzberg

Review of *Rationalism, Pluralism, and Freedom* by Jacob T. Levy
Oxford University Press, 2015

Have we been debating headscarves forever? Technically, of course, we haven't. The French headscarf ban under *laïcité* is only ten years old. The Supreme Court this term considered the obligations of a potential employer to offer religious accommodations under Title VII of the Civil Rights Act, itself only 50 years old. And certainly debates over headscarves take many forms: the value of secularism and the importance of religious accommodations are different (if related) issues. Yet one might feel – not unreasonably – that the wider debate over whether religious associations constitute a threat to their members' freedom or provide an important bulwark against state overreach has been both interminable and unanswerable.

In his new book, Jacob Levy tells us that we are right to feel that way. Since “time immemorial” – at least since the Norman Conquest – intermediate bodies have seemed to constitute both sources of liberty and barriers to freedom. And since the inception of liberalism, some political theorists have argued that these associations protect their members' freedom against state incursions, whereas others have insisted that they constitute a locus of oppression. Levy points to two traditions: one “rationalist,” which urges congruence among associations and the liberal state, one “pluralist,” which emphasizes the freedom of members to associate and to live according to the traditional norms of their groups unencumbered by the state. The book, Levy emphasizes, “*studies* rather than *answers* questions” (p. 27) of the circumstances and mechanisms by which intermediate bodies impair or enable their members' freedom. There can be no partisan victory, and no synthesis: rather, the “liberal understanding of freedom is constitutively torn” between the rationalist distrust of local parochialism and the pluralistic defense of associative freedom.

In Levy's history of liberal thought, intermediate groups are not merely Montesquieu's or Tocqueville's *idée fixe*: liberal thought itself emerges in response to the challenge of intermediate bodies, both as a locus of individual liberation and as a site of parochialism and prejudice. Beginning in the Middle Ages, a set of intermediate groups arose (among them universities and cities, military orders, and guilds) and were capable of keeping absolute monarchs in check. Liberalism from its inception confronted vexatious group identities, seeking to eradicate them in the name of the freedom of the citizen, whereas members of the groups highlighted the voluntary nature of their association and the importance of their freedom from oppressive state intervention. (In other words, yes: we have always been talking about headscarves.)

Although these debates have for at least 25 years centered on the status of multicultural communities within liberal societies, Levy illuminates the long history of associational life even prior to the formation of the European state. Medieval corporate

pluralism became intermediate bodies in the states of early modern Europe. In an impressive reading of ancient constitutionalism, Levy convincingly demonstrates that the standard focus on Parliamentary power, for instance, overlooks arguments on behalf of the “*corps*” - including cities, *collegia*, estates or parliaments, and provinces – to self-government and to participation in the government, as well as their role as “natural friends of legality and liberty.” (p. 120)

The focus on intermediate bodies is virtually everywhere in the liberal tradition, but Anglo-American political theorists have been so focused on contracts and sovereignty that we have managed to overlook them. The argument is one of retrieval: when we argue about headscarves, we situate ourselves in a long and irresolvable debate over the role of cultural groups within the liberal state, and we should not hope for a conclusive answer. The rationalists want to protect individual members against the hierarchies of the group; the group wants to shield its members from the dominating force of the state. Liberal institutions, after all, “did not come into the world without navels”; they emerged from illiberalism, and can persist even in the context of incongruous intermediate bodies. Perhaps most importantly, neither is immune from the workings of power. The breathtakingly expansive scope of the work aims to teach us that the tension between rationalism and pluralism is ineliminable, and that adopting one perspective may blind us to domination. On the theoretical front, it is wildly successful. It presents a rereading of the liberal tradition that is at points truly revelatory.

For much of the work, the mechanisms by which these institutional bodies actually operate are of small concern: the heart of the book concerns itself with how Montesquieu and Voltaire, for instance, believed they worked. But the normative and explanatory claims, while circumscribed and provisional, do depend upon an account of mechanisms, which will vary depending on the particular body. The term “intermediate bodies” is ambiguous, in essence positional, and meant to encapsulate a range of institutions. On the microscopic end, families may count; in the concluding chapter, Levy turns to Rawls’ response to Susan Moller Okin concerning whether the principles of justice ought to regulate family life. What G. A. Cohen called Rawls’ “wobble” over whether to immunize the family as an intimate association demonstrates that Rawls too is torn between rationalism and pluralism. On the macroscopic side, Levy turns to Lord Acton’s support for constitutional federalism, which led him both to embrace the pluralism and check on governmental omnipotence of the states, while accepting (like Tocqueville) the role of the southern slave-owners in defending liberty.

The positional quality of the definition enables us to see continuity in the logic of liberalism across a millennium, but simultaneously may obscure the nature of the challenges and benefits that attend particular institutions. Levy argues, for instance, that the requirement that intermediate groups be “congruent” with liberal norms may hinder their capacity to be “purposive,” which might require illiberality. This argument is reasonable under some subset of intermediate bodies – such as religious communities – but likely does not hold for states under a federal system governed by a supremacy clause. Arguments on behalf of limited state autonomy must derive from a different, non-purposive source, perhaps the logic of experimentation. Likewise, the norms that govern a family are quite different in internal logic and kind from those governing the Freemasons, a mosque, or a state in a federal structure, because (for instance) the

secondary rules that mark the latter bodies are likely to be absent in the former. Levy suggests that the adoption of formal decision-making procedures constitutes “perhaps the key step that differentiates a group from an association or an organization” (p. 245), and while plausible, the language of intermediate bodies and the range of groups addressed throughout the work tend to blur these distinctions. At the limit, obscuring the distinctive logics among these associations courts functionalism. We can identify intermediate bodies by their positions between individuals and the state, and we know that by virtue of this liminal status they will defend themselves as loci of liberty and be criticized as domains of creeping coercion.

In the concluding chapters, though, Levy’s careful equivocation breaks down, and he provides an array of mechanisms by which liberalism can try, and fail, to cope with the risks of intermediate bodies, especially religious and cultural minorities. Efforts to dominate an insular religious or cultural community can paradoxically enhance the power of its elite. Hypocrisy can attend public concerns about gender equality within religious groups. And Québécois legislators insist that headscarves can threaten freedom, while defending a crucifix as a neutral indicator of “patrimony.” We cannot extract ourselves from these challenges; as Levy argues, “Liberal freedom is, in part, associational freedom.” (p. 277) The internal norms of groups, especially religious associations, may indeed spill over into political life. Yet, as Levy’s book teaches us, liberalism can and will endure.

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