THE UNIVERSITY OF HULL

Multicultural Citizenship in a Liberal Society

being a thesis submitted for the Degree of

Doctor of Philosophy

in the University of Hull

by

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March 2002

CONTENTS

Acknowledgements

During my years at Hull, many people have helped me in different ways to complete this thesis. Some of them have given me support and advice in matters related to the content of the research itself while others have gifted me with their friendship and companionship. I want to acknowledge all of them because they all, in one or another way, contributed to the completion of this work.

First of all I am very much indebted to Professor Paul Gilbert, who supervised entirely all the stages of the research. He has generously provided me with his advice and guidance. His comments and suggestions have been very valuable in improving my academic understanding of the subject.

I am also thankful to several other colleagues at the University of Hull. The Graduate Research Institute provided the atmosphere to interact with researchers of others disciplines. Abel Rivera Sanchez, Alex Bird, Ali Taghavi, Elisa Costa Villaverde, Agha Z. Hilali, Claudia Ruiz Capillas, Mapi Gea, discussed with me a variety of academic aspects of my research.

Finally, I would like to thank the Ministry of Education of Turkey for providing me with the financial support to carry out this research.

Introduction

Until the past few decades, national minorities, ethnic immigrants and religious groups, as well as indigenous peoples, were in varying degrees expected to assimilate into majority cultures.[1] This expectation has been dominant in traditional liberal thought.[2] Liberal theorists have formulated their views on the assumption that citizens of a state share the same national culture, and they have widely agreed on the value of moral pluralism rather than that of cultural pluralism. In so far as they were concerned with rights talks, they discussed the legal, civil and political rights of citizens as individuals, with the assumption that membership of different cultural and religious groups is irrelevant to securing individual freedom and equality. Consequently, the questions of cultural rights on the grounds of individuals' right to culture, and the rights of cultural communities as collective entities, have been out of their agenda.[3]

The assimilationist expectation has been challenged, and is now widely considered oppressive. The basic challenge is the fact of the multicultural structures of the relevant societies, which have become more visible than ever due to such factors as migration, global communications, the influence of human rights and post-colonial ideologies. These societies have been witnessing demands and challenges of minority national, ethnic, and religious groups for regional autonomy, language rights, political

[1] We shall, throughout this work, put aside some assimilationist regimes that display such brutal acts as genocide and forced mass-population transfers against their minority groups, which we reject without any discussion. By referring to assimilationist expectation or view, we mean a state which respects basic civil and political rights of individual members of minorities as citizens of a single political community, but fails to support or recognise the minority culture at the level of constitutional principle.

[2] Such an expectation has been dominant in socialist thought as well. With a strong commitment to internationalism, but at the same time, regarding the nation-state as a necessary and unavoidable historical stage, socialists conceived cultural or national membership as a temporary, and thus politically insignificant, historical stage on the way to achieving the final stage of the history where all people will be citizens of the world.

representation, educational curriculum and so on. The old Soviet Union and countries of Eastern Europe were shaken by different ethnic and national minorities claiming to have their own ethnic and national institutions; at the extreme, their own states. Liberal western democracies have been witnessing more or less the same demands made by their ethnic and national minorities, Catalans in Spain and Quebecois in Canada, for example. Moreover, these societies have been witnessing a large scale of individual and group migrations since the second half of the last century. Coming from various ethnic and religious backgrounds, these groups have been seeking to create a cultural space within the dominant culture to maintain their distinctive ways of life.[4]

The fact that national, ethnic and religious minority groups have been making demands upon the relevant states that their distinctive cultural identities be recognised at the level of constitutional principle, or be accommodated within the mainstream institutions, has suggested that the idea of assimilation of minority cultures with the compensation of common citizenship and liberal democracy, at least, *practically* does not work. The common outcomes of eliminating cultural differences have been mistrust, conflicts, violence and instability between the relevant groups.[5] Since those minorities regard any attempt to eliminate their cultural differences as threats to their very existence, they argue that their distinctive cultural and religious identities are not inferior to those of the dominant cultures, but rather, they should be viewed as a matter of basic respect to the

[3] For a brief discussion of how this neglect has given rise to different types of moral monism from Plato to Locke, Kant, Milll and Marx, see Bhikhu Parekh, 'Moral philosophy and its anti pluralist bias', *Philosophy and Pluralism*, in D. Archard ed., Cambridge: Cambridge University Press, 1996.

[4] We should mention some other situations that these societies has experienced; namely, starting with the blacks in the United States in the 1960s and then with the feminists, gays, and lesbians, they have been struck by the fact that their politics, which are based on common rights of citizenship, were unable to provide satisfactory responses to their demands for equal respect for their differences.
However, it should be noted we shall not focus on these groups. Although these groups and cultural and religious groups are experiencing the same problem, i.e., being mariginalized or oppressed because of their differences, we shall limit our discussion to a manageable proportion; namely, to the differences that stem from national, ethnic and religious differences, and to indigenous peoples.

[5] Here we draw our attention to some factual-negative outcomes of neglecting differences. We shall throughout this work emphasise the point that it is morally wrong to deny collective differences.

extent that a public, cultural or political space should be provided for these identities to be maintained. In other words, the main thrust of such demands is the public recognition of their collective identities.

These kinds of demands not only pose a challenge to the traditional liberal understanding of the ideal relationship between the state and the individual, which is based on such principles as individual freedom, political and social equality of individuals regardless of their cultural and religious differences, but also pose a challenge to the claim that some liberal principles, i.e. individual autonomy, are universal, or are universally applicable.

Limiting our discussion to some liberal views and to the practices of liberal states, the basic question we shall tackle in this thesis is the question of whether a liberal society as a political and cultural community, the main motto of which is individual freedom, equality and autonomy, and which protects the civil and political rights of individuals, can accommodate the demands of different national, ethnic and religious minority groups on the basis of group differentiated rights. How should a liberal society (or state) respond to the claims to different of cultural and religious identities that arise within it? What rights should be granted to these groups? Is it legitimate to demand specific group (cultural) rights that could require the state's protection? Are different forms of cultural groups, i.e. national, ethnic, immigrant, relevant to a liberal stance towards the allocation of cultural rights to these groups? In short, can a state deploy new policies that could be more sensitive to cultural differences, and accommodate conflicting demands that emerge from it?

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The rights referring to these groups are called "group rights", "differentiated citizenship", "multiculturalism", "minority rights". Each term, as Will Kymlicka and Wayne Norman note, has its own "drawbacks".[6] However, throughout this work, we shall use these terms interchangeably, to refer to the claims and rights of such groups as national minorities, language groups, immigrant ethno-religious groups, and indigenous peoples. By saying 'minority', we refer to groups whose members are citizens of the state, perceiving themselves as belonging to national, ethnic, religious or linguistic groups that are different from the dominant group, being in a non-dominant situation in the mainstream institutions (either due to existing arrangements or deliberately), and lacking the relevant political, social and economic powers to maintain securely their cultural practices and religious beliefs; thus, having a common aspiration to preserve and maintain their distinctive culture, religion or language. The rights that could be suggested for them would then enable them to protect and maintain their distinctive cultural and religious identities. By referring to a right, we follow Vernon Van Dyke's definition; namely, it is "an entitlement, a morally justified claim, a need, or an interest justifying a presumption that it ought to be satisfied or enjoyed unless there are compelling reasons to the contrary."[7]

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The structure of this work is as follows. In Chapter 1, we shall discuss the relevance of liberalism to cultural membership. Although the traditional liberal conception of the individual is inadequate for coping with the multicultural challenge, the main point we shall try to underline is that liberalism's commitment to individualism does not undermine individuals' right to live in accordance with their collective identities and

[6] Will Kymlicka and Wayne Norman, 'Introduction', in W. Kymlicka & W. Norman eds., *Citizenship in Diverse Societies*, Oxford University Press, 2000, p. 2.
[7] Vernon Van Dyke, 'The cultural rights of peoples', *Universal Human Rights*, vol. 2 (2), 1980, p. 3.

values, the implications of which can be ethnicity, nationality, language, and religion. That is, we shall present some contemporary liberals who reject culture-blind versions of liberalism on the grounds that culture provides a context of choice for individual members and is thus vital for the exercise of individual autonomy, that a respected culture is one of the significant sources of individual self-respect and dignity, and that choice of a culture is a logical extension of the liberal view that individuals should choose and pursue their own conception of the good. Of these justificatory grounds for the protection of a culture, we shall attack the autonomy-based justification on the ground that valuing a culture only for its autonomy fostering function would exclude non-liberal cultures which do not regard the liberal conception of individual autonomy as a general value. Since cultures do not consist of a single constituent element, but of countless elements having different effects on individual lives, since each culture has different conceptions of the individual to be nurtured in different ways, and since each culture has its own spirit and values to be promoted, we shall hold a wider understanding of culture: namely, culture as a context of meaning and identity as well as choice, which are significant conditions for individual well being. This account of culture would endorse the fact of cultural diversity and thus justify some rights for different cultures other than liberal ones to have collective power over their cultural matters.

Chapter 2 focuses on the nature of group rights in relation to individual rights. Acceptance that minority cultures should have a collective power over their cultural matters has been challenged by some liberals on the ground that cultural rights as group rights cannot be reconciled with the basic moral and political principles of liberalism which are derived from individual liberties and rights. Against this claim, we shall try to show that there are different forms of group-differentiated rights, most of which are

compatible with individual rights to the extent that the interests they protect are the shared interests of individuals. In this sense, group rights provide a public space for them to express and maintain their *shared* interests without being discriminated against. We shall therefore argue that group-differentiated rights are needed for the protection of a culture, for denying the public expression of individuals' cultural and religious identities (and interests) would undermine their social nature.

In Chapter 3, we shall present some specific forms of group differentiated rights for such minority groups as national, ethnic, and religious groups, and indigenous peoples. Having examined Will Kymlicka's three different forms of group rights, self-government rights, polyethnic rights and representation rights, we shall try to develop the argument that although these rights have a common function of protecting and maintaining the distinctive cultural and religious identities of minority groups, and of reforming or changing some rules and regulations of the mainstream society so that the cultural plurality of the relevant society is endorsed and enhanced, there cannot be an overall criterion through which we can determine which groups would always have what rights. Since various and different factors determine the contexts in which group formations and demands for group-differentiated rights are shaped, any classification of minority groups and their rights would have some limitations, in the sense that it would dismiss some unique factors determining group formation and the relevant rights. Thus, minority groups and their rights, we shall suggest, cannot be assessed in the abstract; rather, we need to consider them in their particular contexts in which they arise.

The second issue to be considered in Chapter 3 is the impacts of group differentiated rights on common citizenship, which requires some shared political and civic virtues to be displayed by citizens of the relevant society. That minority rights would have some

negative side effects on democratic common citizenship to the extent that they would give rise to lack of trust, communication and solidarity between different cultural groups, and thus they would undermine some shared political and civic virtues by which democratic common citizenship is defined, is a common concern of some liberals. This is a valid concern about the extent of minority rights. However, common citizenship in culturally diverse societies, we shall argue, cannot be established on the same grounds as it is established in culturally homogenous societies. Once we accept that assimilation of a culture is morally not desirable and practically not possible, then the conception of citizenship in culturally diverse societies would need to be evaluated on a basis that takes into account the cultural needs and demands of all relevant groups in the public domain. This would require that they do not generalise their cultural and religious prerequisites over other groups, but find a ground through which they could arrive at a *negotiable* conception of common citizenship.

To be sure, this may not be valid for some forms of self-government rights, secession for example. Chapter 4 will focus on the principle, the principle of self-determination, which is involved in varying degrees in self-government rights, to see whether there could be overweighing factors that justify the idea of secession. This will lead us to discuss the relevance of secession to some liberal views. We shall see that although it is not the first resort for the protection of a culture, it is justified when the relevant minority fulfils such criteria as being exposed to cultural assimilation against its wish, territorially concentrated, and large enough to run the basic functions of the state.

Chapter 5 aims at strengthening the case for group-differentiated rights by attacking the traditional liberal assumption that the state is neutral towards different cultures. The claim that separation of culture and the state is an untenable idea has been put by some

contemporary liberals as well as by some other thinkers. That is, the fact that the majority's institutions inevitably support the majority culture and undermine other cultures has rightly led many thinkers to hold the view that group differentiated rights are not unfair, contrary to the view that accommodating the rights of minority cultures would amount to unequal distribution of resources and, thus, unjust distribution of benefits. Since difference blind policies could very well be unfair in culturally diverse societies, intercultural equality and fairness, we shall argue, in addition to securing and promoting some civic, political and welfare rights on which traditional liberal difference-blind justice is built, call for some group differentiated rights that reduce the vulnerability of minority cultures to the majority's culture-affecting decisions, and thus promote equality and fairness between them.

Chapter 6 deals with the limits of cultural rights by focusing on the question of what a liberal state's (and society's) attitude should be towards some cultural and religious minority practices which seem to conflict with the values with which a liberal society identifies itself. Two different liberal answers, autonomy-based and toleration-based liberal views, will be tackled in relation to this question. We shall reject them on different grounds. That is, autonomy based liberalism will be rejected on the ground that since different cultures have different conceptions of the individual to be nurtured, and since the ideal of liberalism itself cannot be separable from a particular culture (a liberal culture), the establishment of a strong connection between the liberal understanding of individual autonomy and the justification of the right to culture inherently entails non-acceptance of the otherness of non liberal cultures, and thus is assimilationist, rather than multiculturalist. Toleration-based liberalism will also be rejected on the ground that unlimited toleration for some cultural and religious practices would undermine, not only some necessary conditions for individual welfare, but also the principle and

application of toleration itself. We shall therefore try to develop two views: first, accommodation of minority practices requires that a liberal society change some rules and regulations so that minority groups could have a public space for their practices to be maintained. This would require a liberal society have a critical outlook at its own values, accept that it could have some cultural prejudices towards other cultural and religious practices, and be ready to abandon them. Secondly, the right to cultural and religious practices should be constrained by some human interests and rights. Since they are fundamental conditions for individual self-development, are culturally neutral, and thus cannot be associated only with a particular culture (i.e., liberal culture), they cannot be violated in the name of culture or religion.

Chapter I

Liberalism and the Right to Culture

I

Liberalism is defended in many distinct forms and for various reasons. Although there is obviously not a single conception of liberalism, the core value unifying all liberals is their commitment to equal liberty of individuals in, for example, freedom of association, freedom of speech and civil liberties. In this sense, it has some distinctive features that have more or less been common to all liberal traditions. First, it is "*individualist*" in the sense that its moral ontology is based on the moral importance of the individual against "any social collectivity"; second, it is "*egalitarian*" on the ground that individuals have the same moral status and moral worth to be respected; third it is "*universalist*" in terms of "affirming the moral unity of the human species and according a secondary importance to specific historic associations and cultural forms."[1] Thus, such features as a certain conception of equality, an emphasis on individual freedom and autonomy, tolerance, respect for individual rights, a pluralistic conception of the good life for individuals, a cosmopolitan conception of the individual as carrying a universal moral nature regardless of her communal ties have in varying degrees been central to liberal moral thought. And the state, in liberal political thought, is seen as an entity accommodating individual freedom,

[1] John Gray, *Liberalism*, Milton Keynes: Open University Press, 1986, p. x. We are here presenting liberalism as an ethical theory. However, this does not mean that we do not regard it as a political theory as well. Jacob T. Levy, for example, argues that "the essence of liberalism" is that it is "a political doctrine [aiming] at preventing cruelty and the terror cruelty inspires, especially (though not only) political cruelty and political terror". (Jacob T. Levy, *The Multiculturalism of Fear*, Oxford: Oxford University Press, 2000, p. 12.) His main aim in his book is to establish a political theory of multiculturalism, through which "state violence toward cultural minorities, inter-ethnic warfare, and intra-communal attacks on those who try to alter or leave their cultural communities" can be prevented. pp. 12-13.) For a detailed account of his claim that liberalism is a political doctrine that must be "responsive to the realities of where cruelty comes from and what form it takes", see especially, Ibid., pp. 23-39.

justice and democracy on the grounds that each individual should have an equal sphere in forming her conception of the good, and it should not interfere in her sphere of autonomy which is defined as her own self directed behavior. Thus, the basic idea that has been dominant in liberal political thought is that "the state should not impose a preferred way of life, but should leave its citizens as free as possible to choose their own values and ends, consistent with a similar liberty for others."[2] Individuals therefore are seen as separate autonomous entities with their separate conceptions of the good, and thus they have separate aims and interests that are protected through *equal* individual rights.

This is exactly what communitarians reject; that is, liberalism's focus on the individual and her rights independent from society, it is argued, reflects "an atomistic, materialistic, instrumental or conflictual view of human relationships."[3] The outcome of such a view, Ephraim Nimni argues, is "the erosion of ethnic solidarities in the public domain and the promotion of a more 'rational' state based on equal individual rights."[4] Indeed, the core thesis that has been dominant in a liberal understanding of society is, as Michael Sandel observes, "not the *telos* or purpose or end to which it aims, but precisely its refusal to choose in advance amongst competing purposes and ends." Such a society, Sandel maintains, "seeks to provide a framework within which its citizen can pursue their own values and ends."[5] Thus, the liberal conception of society, it is argued, is the one in which "forms of life are dislocated, roots unsettled, traditions undone. [Individuals are] atomized, dislocated, frustrated selves at sea in a world where common meanings have lost their

[2] Michael J. Sandel, *Liberalism and Its Critics,* New York: New York University Press, 1984, p. 1.
[3] Bill Bowring, 'Multicultural citizenship: a more viable framework for minority rights?' in Deidre Fottrell and Bill Bowring eds., *Minority Rights in the New Milennium*, The Netherlands: Kluwer Law International, 1999, p. 9.
[4] Ephraim Nimni, Nationalist multiculturalism in late imperial Austria as a critique of contemporary liberalism: the case of Bauer and Renner, *Journal of Political Ideologies*, 1999, vol. 4 (3), p. 290.

force."[6] Liberalism's individual, Alasdair MacIntyre argues, is the one who is "precisely to be able to stand back from any and every situation in which one is involved, from any and every characteristic that one may possess, and to pass judgment on it from a purely universal and abstract point of view that is totally detached from all social particularity."[7] Such a conception of the self, MacIntyre maintains, conceived "utterly distinct on the one hand from its social embodiments and lacking on the other any rational history of its own, may seem to have a certain abstract and ghostly character."[8]

Communitarianism can be best characterized by its emphasis on the values derived from collective life rather than those derived from that of individuals; namely, its accusation against liberalism is based on the view that individual interests and thus rights cannot be prior to the good or interests of community. Our main focus however is not a discussion of the credibility of communitarianism, but the credibility of its accusation against liberalism. Before discussing the different stances of liberal views towards cultures and their protection, we would like to present briefly some liberal responses to that accusation.

Virtually all liberals[9] do accept that "no one has ever existed completely free of other persons. From the moment of birth, every individual is highly dependent on others, [and that] everyone is interdependent ... [no] individual has uniquely personal aims, interests,

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[5] Michael J. Sandel, 'The procedural republic and unencumbered self', *Political Theory*, vol. 12 (1), 1984, p. 82.
[6] Sandel, *Liberalism and Its Critics*, p. 7.
[7] Alastair MacIntyre, *After Virtue*, London: Duckworth, 1981, p. 30.
[8] Ibid., p. 31.
[9] Few liberals, Jeremy Bentham for example, argued that "the community is a fictitious *body*, composed of the individual persons who are considered as constituting as it were its *members*." Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation: The Collected Works of Jeremy Bentham*, ed by. J. H. Burns and H. L. A. Hart, Oxford: Clarendon Press, 1970, p. 12; Likewise, Robert Nozick argued that "there is no *social entity* with a good that undergoes some sacrifice for its own good. There are only

conceptions of the good ..."[10] Individuality, as Jack Crittenden puts it, is crucial to liberals "not as a self-contained, independent, and unique "I" but, rather, as an embedded part of a social matrix in which both self and sodality are constituted by and known through membership and kinship relations that leave no doubt as to the self's form, boundaries and nature."[11] Thus, liberalism does accept that individuality can only be achieved with the company and recognition of others through a social and cultural nexus. And liberals do agree with communitarians that individual identity is shaped through social relationships and not a product of self-creation, but they, unlike communitarians, maintain that the construction of that identity is not *determined* by the community they are a part of, but *shaped* through individuals' critical self reflection on the given values. That is, they accept that "the *contents* of the individual's aims, preferences, interests, and the like are inescapably social", but they reject the communitarian idea "that the *self* is constituted by communal ends"[12], since, it is argued, "*no end or goal is exempt from possible re-examination.*"[13] Thus what underlies the liberal rejection is the communitarian conception of the individual which denies the possibility of individual autonomy, since its conception of individual regards her, Margaret Moore observes, "as a recipient of communally held beliefs, conceptions, and values."[14]

The liberal view, then, like the communitarian one, can accept that the individual is "socially embedded", but that the individual is one "who understands his intellectual and

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individual people, different individual people, with their own individual lives." Robert Nozick, *Anarchy, State and Utopia*, Oxford: Basil Blackwell, 1974, pp. 32-33.

[10] Derek L. Phillips, *Looking Backward: A Critical Appraisal of Communitarian Thought*, Princeton: Princeton University Press, 1993, p. 177.

[11] Jack Crittenden, *Beyond Individualism: Reconstructing the Liberal Self*, Oxford: Oxford University Press, 1992, p. 178.

[12] Phillips, *Looking Backward*, p. 179.

[13] Will Kymlicka, *Liberalism, Community and Culture*, Oxford: Clarendon Press, 1989, p. 52.

[14] Margaret Moore, *Foundations of Liberalism*, Oxford: Clarendon Press, 1993, p. 183.

cultural inheritance [and] is determined to make that inheritance his own by fashioning an individual character and lifeplan, and by turning his participation in social practices into performances expressive of his individuality."[15] There is obviously an interrelated relationship between the social productions of culture including social roles and rational and psychological individual capacity in the construction of individual identity. "Persons cannot be persons outside their social nexus or outside their community, and the community cannot exist, develop, thrive, and grow without the unique contributions of the individuals within it."[16] Thus, the "individualism that underlines liberalism is not valued at the expense of our social nature or our shared community. It is an individualism that accords with, rather than opposes, the undeniable importance to us of our social world."[17]

Such a liberal compromise on the relationship between community and the individual could be valid for communitarianism as well. That is, the communitarian view on the relationships between community and the individual may involve a significant compromise with that of the liberal view. As Moore notes, "once communitarians acknowledge that the person can make choices about which communal ends or values she will pursue, their theories become indistinguishable from liberal theories."[18]

The difference, therefore, between communitarian and liberal views on individual and society is not to discard one altogether at the expense of the other, but to prioritize one over another. That is, "the liberal 'difference'," as Zygmunt Bauman observes, "stands for individual freedom, while the communitarian 'difference' stands for the group's power to

[15] Stephen Macedo, *Liberal Virtues: Citizenship, Virtue, and Community in Liberal Constitutionalism*, Oxford: Clarendon Press, 1990, p. 219.
[16] Amitai Etzioni, 'A moderate communitarian proposal', *Political Theory*,vol. 24 (2), 1996, p. 156.
[17] Kymlicka, *Liberalism, Community and Culture*, pp. 2-3.

limit individual freedom."[19] The matter is, then, which entity, community or individual, we should take as morally prior. Although we shall not prioritize one over the other, since, as we shall see, there is a dialectical relationship between the two, our main concern is the individual. There could be some potential dangers in prioritizing the good of the community over that of the individual – supposing that they are independent from each other-. In this sense, the concerns of liberals are right on the ground that, as Phillips observes, "racism, sexism, exclusion, forced emigration, deportation and even eradication ... are often involved in attempts to achieve community."[20] Community or culture would matter in relation to individual *well-being* which, as we shall argue later in this chapter, may not necessarily be accompanied by a liberal understanding of culture on the grounds that it only fosters individual autonomy, but with a wider understanding of culture as a context of meaning as well as choice for individuals through which they locate and perceive themselves and others meaningfully. That is, although we shall not make a strong emphasis on the idea that "one's character, values, core convictions, and deepest loyalties are often heavily influenced by social and cultural factors"[21], they are, we shall argue, shaped partly through individuals' social bonds, cultural practices and beliefs to which they attach themselves. Their culture as a context of meaning and choice is not a causally determinative but a constitutive context in shaping their identities. In other words, they do not choose and shape their identities in isolation, but in a concrete cultural context, within which they are not subjected to the so-called absolute determinative effect of community or

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[18] Moore, *Foundations of Liberalism*, p. 183.
[19] Zygmunt Bauman, 'On communitarians and human freedom: or how to square the circle', *Theory, Culture and Society*, vol. 13 (2), 1996, p. 81.
[20] Phillips, *Looking Backward*, p. 176.
[21] Michael J. Sandel, *Liberalism and the Limits of Justice*, Cambridge: Cambridge University Press, 1982, p. 74.

culture, but a which is necessary for them to be able to perceive themselves and others meaningfully, and is thus necessary for their well being.

II

How far can the liberal acceptance that individuals are socially embedded take us in the protection and recognition of cultures, which require some group differentiated rights? Accepting that individuals are socially embedded does not necessarily call for the need for the state to support the flourishing of minority cultures, which could be based on rejection of the *procedural neutrality* of liberalism. Indeed, some liberals, without rejecting the significance of community for individuals, have been quite critical of the protection of cultures via group differentiated rights.[22] This kind of liberalism, what Michael Walzer calls "Liberalism 1", is, as we said, "committed in the strongest possible way to individual rights and, ... to a rigorously neutral state, that is, a state without cultural or religious projects ..."[23]

However, some other contemporary liberals have rejected culture-blind versions of liberalism.[24] They have argued that respect for individuals also requires respect for their

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[22] See, for example, Nathan Glazer, 'Individual rights against group rights' in Will Kymlicka ed., *The Rights of Minority Cultures*, Oxford: Oxford University Press, 1995; Michael Hartney, 'Some confusions concerning collective rights', in Kymlicka ed., Ibid.; Jeremy Waldron, 'Minority cultures and the cosmopolitan alternative', in Kymlicka ed., Ibid.; Chandran Kukathas, 'Are there any cultural rights', *Political Theory*, vol. 20 (1), 1992; 'Liberalism and multiculturalism', *Political Theory*, vol. 26 (5), 1998; Jurgen Habermas, 'Struggles for recognition in the democratic constitutional state', in Amy Gutman ed., *Multiculturalism and the Politics of Recogniton*, Princeton: Princeton University Press, 1994.

[23] Michael Walzer, 'Comment', in Gutmann ed., *Multiculturalism and the Politics of Recognition*, Princeton: Princeton University Press, 1992, p. 99.

[24] See, for example, Kymlicka, *Liberalism, Community and Culture*; and, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford: Clarendon Press, 1995; Yael Tamir, *Liberal Nationalism*, Princeton: Princeton University Press, 1993; Allen Buchanan, *Secession: The Morality of Political Divorce form Fort Summer to Lithuania and Quebec*, Westview Press, 1991; Joseph Raz, 'Multiculturalism: a liberal perspective', in his *Ethics in the Public Domain*, Clarendon Press, 1994; 'Multiculturalism', *Ratio-Juris*, vol. 11(3), 1998; Charles Taylor, 'The politics of recognition', in Gutmann ed., *Multiculturalism and the Politics of Recognition*, 1992; Neil MacCormick, 'Liberalism, nationalism and the post-sovereign state', *Political*

cultural community and criticized Liberalism 1's state neutrality on cultural matters as an untenable project. (We shall discuss it in Chapter 5) Liberal orthodoxy or Liberalism 1, they argue, cannot "explain or accommodate the political exercise of difference and that the liberal tradition must be reworked to accommodate the political expression of minority cultures."[25] Moreover, some of these liberals, like Raz for example, have rejected Liberalism 1's or classical liberalism's universalistic conception of the self. Emphasising the "contextual nature of political theory" which endorses "value pluralism", Raz argues that contemporary liberalism differs from its classical predecessors in terms of acknowledging the value of community for individual well-being.[26] Thus, these liberals have rejected culture-blind version of liberalism on such different grounds as, that culture provides a context of choice for individual members and is thus vital for the exercise of individual autonomy (Kymlicka and Raz), that a respected culture is one of the significant sources for individual self-respect' and 'dignity' (Taylor and Raz), and that choice of a culture (i.e. no individual should be exposed to a (majority) culture against her will) is a logical extension of the liberal view that individuals should choose and pursue their own conception of the good (Tamir).

III

If we need to specify the stance of different views of liberalism regarding cultures and their protection, we find two different views of liberalism which can be labeled as "Reformation" (or classical) liberalism and "Enlightenment" (or revisionist) liberalism. Although they have some overlapping features, some of their distinctive features could

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Studies, vol. 44 (Special Issue), 1996; Avishai Margalit and Joseph Raz, 'National self-determination', in Kymlicka ed., *The Rights of Minority Cultures*.

[25] Nimni, 'Nationalist multiculturalism ...', p. 302.

[26] Raz, 'Multiculturalism: a liberal perspective', pp. 155, 156, 159.

have quite different political and moral implications regarding the protection of cultures. Here, to state some underlying distinctive features will be enough for us, though we shall, where needed in this thesis, emphasize their distinctive attitudes towards the issue. Reformation liberalism, which can be derived from a Lockian understanding of liberalism, is based on valuing "freedom of political association and toleration." But valuing freedom of political association does not endorse any special group rights derived from group identity. Reformation liberalism rejects such rights on the ground that since group membership is "voluntary", what is needed is to secure individual freedom "so that", as Paul Gilbert observes, "people are not constrained to act contrary to their consciences."[27] As can be seen this understanding of group membership reduces individuals' social bonds, roles and cultural identities to mere individual *preferences*, through which they are able to pick up their own cultural preferences. But, cultural communities cannot be regarded as merely voluntary associations like social clubs and political parties.[28] As Sandel, attacking Rawls' instrumental conception of community, argues, "for [individuals], community describes not just what they *have* as fellow citizens but also what they *are*, not a relationship they choose (as in a voluntary association) but an attachment they discover, not merely an attribute but a constituent of their identity."[29]

However, it is exactly the idea of voluntary association that endorses cultural groups' demands for the protection of their cultures including those of illiberal groups to maintain

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[27] Paul Gilbert, *Peoples, Cultures and Nations in Political Philosophy*, Edinburgh: Edinburgh University Press, 2000, p. 90.

[28] Bhikhu Parekh, for example, rightly argues that "unlike voluntary associations we are ... shaped by our cultural communities and derive our values and ideals from them". Even if it is possible for individuals to divorce themselves from participating in their cultural beliefs, values and practices, they continue to retain some aspects of their culture such as "its language, collective memories, ways of carrying ourselves, and at least some attachment to its rituals, music, food and so forth." Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, Macmillan Press, 2000, p. 162.

[29] Sandel, *Liberalism and the Limits of Justice*, p. 150.

themselves as distinct cultures as long as they secure the right of individuals to *exit* the relevant group. Chandran Kukathas, for example, argues, "from a liberal point of view the Indians' wish to live according to the practices of their own cultural communities has to be respected not because the culture has the right to be preserved but because individuals should be free to associate: to form communities and to live by the terms of those associations."[30] This view, as can be seen, gives an inalienable right to individuals: the right to leave the community when they do not wish to live with its terms. It also, as we shall see in Chapter 6, gives a considerable power to the cultural community in the sense that it does not suggest that they become some specified sort of society. Rather, it provides a license for any form of society, a society that can be quite illiberal. Thus, reformation liberalism does not seek the maximization of individual freedom through the state or any public support, but, as Gilbert notes, "it seeks only that people should not be unwillingly constrained without necessity", which is the mark of "what is known as *negative liberty*."[31]

As can be seen, the Reformation Liberalism endorses the particularity of cultures, and thus is cautious about injecting the universality of a rational nature on them. In this sense, it does have an implication of endorsing unlimited diversity and difference, though its main concern is to protect individual freedom. That is, the outcome of regarding cultural groups as voluntary associations and of endorsing individuals' right to exit the community when they do not wish to live with its terms does endorse the particularity of any kind of cultural community, even illiberal groups.

[30] Kukathas, 'Are there any cultural rights', p.116.
[31] Gilbert, *Peoples, Cultures and Nations*, pp. 89 and 88.

Unlike the *cultural particularity* of reformation liberalism, Enlightenment Liberalism's roots go back to Kant who argued for an *unchanged* and *universal* rational nature of individuals that enables them to be autonomous moral agents. This emphasizes individual *autonomy* through the maximization of individual freedom. It is the task of the state to ensure its "neutrality" towards different conceptions of the good life so that the needed "opportunities and resources ... be made accessible to all [as members of the state] on an equitable basis" regardless of their "racial, ethnic, cultural or national identities."[32] This liberal conception of membership in society is based on the assumption that individuals as bearers of *rational* capacities can create a shared or public identity on the basis of their common needs, which is irrelevant to their being members of different cultures. Here, Rawls' view in his *A Theory of Justice* should be mentioned. His theory, as Moore observes, "attempts to derive liberal rights and rules of justice from an original position or contract among people denied full knowledge of their identities."[33] Thus, in his account "the *political* significance of cultural ... identity is ignored, because the argument appeals to a conception of fundamental *human* interests and then erects liberal rights and rules on that basis."[34]

However, as we shall see soon, Kymlicka, within this line of liberalism, has argued that "Rawls's own argument for the importance of liberty as a primary good is also [implicitly] an argument for the importance of cultural membership as a primary good."[35] Cultural membership, in Kymlicka's view, is a primary good, since cultures have the *function* of providing a "context of choice" for individuals through which they construct and develop

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[32] Ibid., pp. 92-93.
[33] Moore, *Foundations of Liberalism*, p. 2.
[34] Margaret Moore, 'National self-determination', *Political Studies*, 1997, 45, p. 903.
[35] Kymlicka, *Liberalism, Community and Culture*, p. 166.

their *autonomy*. Thus, individual autonomy and freedom in his account do require some specific group-differentiated rights for minority cultures.

IV

Having had a brief outline of these different views of liberalism towards the issue, we would like to present the multicultural views of Kymlicka and Raz.[36] We take especially Kymlicka's to develop our discussion on the question of how liberalism can successfully bring cultural protection and the individual together. We focus especially on Kymlicka's view since it is his works, *Liberalism Community and Culture* and *Multicultural Citizenship*, aiming to reconcile the individualist moral ontology of liberalism with special minority cultural rights that have occupied the agenda, attracting both liberals and non-liberals.

Kymlicka's liberalism consists of three propositions; first, individuals have an interest in leading a good life; second, this life should be lived from "the inside", rather than from "the outside", since the creator or author of forming a good life is the individual; third, saying that individuals should have authority over the value that shapes their conceptions of the good life does not mean that any form or way of life they choose is good. Since they may

[36] It may be argued that there is no big difference between the multicultural view of Kymlicka and that of Raz in the sense that both emphasize individual autonomy, and thus both value a culture in terms of its autonomy fostering function. Bhikhu Parekh, for example, argues that as long as Raz's multicultural view involves "a basically liberal view of human well being and autonomy", it would be far from endorsing "cultural diversity".(Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, London: Macmillan, 2000, pp. 98 and 97) Against this, however, we shall argue that although Raz's view involves a liberal understanding of individual autonomy, it does have a room for non-liberal cultures, which do not have individual autonomy as a general value. That is, we shall regard the multicultural view of Raz as a melting point of the two liberal views *as long as* the protection of minority cultures is concerned. His multiculturalism can be seen in this way, since he argues that "one of the *theoretical* – rather than merely political – *challenges* multiculturalism gives rise to is to combine the truth of universalism with the truth in particularism." "The universal must find expression in the particular and the particular can only get its meaning from the fact that it is subsumed under the universal" (Raz, 'Multiculturalism', *Ratio-Juris*, vol. 11(3), 1998, pp. 194 and 204.

be mistaken about the good life they choose, they should be able to revise and change their conception of the good about how they should live.

In formulating his liberal theory about the rights of minority cultures, Kymlicka bases his arguments on the common liberal morality that individuals have vital interests in leading a good life. The argument that individuals have interests in leading a good life has two important implications; first, it is important to accept that individuals would never improve their conception of the good life if they were forced to maintain or accept certain practices or beliefs imposed by their community. Liberal morality requires that individuals maintain their own conception of the good in shaping their lives. Secondly, since individuals' judgements are not perfect, they may be mistaken about what constitutes a good life. However, this does not mean that our lives should be determined from "the outside". It is wrong to decide on the values that individuals should pursue if they do not want them. According to Kymlicka's liberalism then, there cannot be a good form of life, determined by the community, by the state, by a certain politics, or by any ideology. Kymlicka writes,

> "while we may be mistaken in our beliefs about value, it does not follow that someone else, who has reason to believe a mistake has been made, can come along and improve my life by leading it for me, in accordance with the correct account of value. On the contrary, no life goes better by being led from the outside according to values the person does not endorse."[37]

[37] Kymlicka, *Liberalism, Community and Culture*, p. 12.

Kymlicka basically draws these arguments from the Rawlsian framework. "Rawls believes", he writes, "that the freedom to form and revise our beliefs about value is a crucial precondition for pursuing our essential interest in leading a good life. The individual is viewed by Rawls as a conscious and purposive agent- she acts so as to achieve certain goals or purposes, based on beliefs she has about what is worth having, doing or achieving"[38] Thus, according to Kymlicka, there are, as we said, two necessary preconditions for individuals to be able to lead a good life. "One is that we lead our life from the inside, in accordance with our beliefs about what gives value to life; the other is that we be free to question those beliefs, to examine them in light of whatever information and examples and arguments our culture can provide."[39] These two values, namely the value of our own beliefs which give meaning to our lives, and the value of being able to change them are necessary preconditions of leading a good life. And culture is seen as a context in which these values are realized.

Kymlicka's Account of Culture:

The sort of culture on which Kymlicka focuses is what he calls 'societal culture'; "that is, a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres."[40] Although the term culture, as we shall see, has wide implications, Kymlicka's use of societal culture refers to a 'nation' or a 'people'; a culture, which refers to "an intergenerational community, more or less

[38] Ibid., p.163.
[39] Ibid., p. 13.
[40] Kymlicka, *Multicultural Citizenship*, p. 76.

institutionally complete, occupying a given territory or homeland, sharing a distinct language and history"[41]

According to him, our societal culture does not only provide various options, but also gives a "meaningful context" to a chosen way of life. Thus, in deciding what kinds of forms of life we should pursue, we do not create belief systems; on the contrary, we choose our ways of life from the ranges of options "that have been developed and tested by innumerable individuals, sometimes for generations."[42] What follows from this is that our societal culture presents the range of options available to us for determining, forming, revising and changing our conception of the good.

Deriving his argument from the Rawlsian idea that self-respect is a primary good because our life plan is worth pursuing insofar as it is based on our own choices, Kymlicka argues that cultural membership is, in addition to the Rawlsian list[43], also a primary good, since it is also a precondition of self-respect. It is a precondition of self-respect, since meaningful individual choice can be possible only in a cultural context. Kymlicka says, "we decide how to lead our lives by situating ourselves in ... cultural narratives, by adopting roles that have struck us as worthwhile ones, as ones worth living..."[44]

However, in this liberal account of culture, what matters is individual rather than community. Culture is not valuable *per se*. In his view, culture, as a context of choice, is

[41] Ibid., p.18.
[42] John. Rawls, *A Theory of Justice*, Oxford: Oxford University Press, 1971, pp. 563-64, cited from Kymlicka, *Liberalism Community and Culture*, p. 164.
[43] These primary goods are "rights and liberties, opportunities and powers, income and wealth" and "self-respect". Rawls, *A Theory of Justice*, pp. 92 and 440.
[44] Kymlicka, *Liberalism, Community and Culture*, p. 165.

not valuable in itself; it is not intrinsically good, but good insofar as it provides a context of choice for its members, since it is individuals who are the basic moral units, and thus they are the only right holders and subjects of obligation. In this sense, cultures have no independent moral status. The value of cultural belonging therefore is derivative; that is, its value is based on its contribution on individual well being. Secure cultural structure, he argues, is needed not because "cultures are valuable, ... in and of themselves, but because it is only through having access to a societal culture that people have access to a range of meaningful options."[45]

Kymlicka strengthens the argument that cultures are not valuable in themselves with the distinction between the "character of a historical community" and a "cultural community". The sort of culture Kymlicka defends is the latter. The particular character of a culture such as membership in churches, political parties, etc. can and should change when individuals do not value pursuing it; but what matters is the existence of the cultural structure itself. A cultural community will continue existing and providing its members with a context of choice even if its character changes over time. [46]

In sum, the value of culture is based on whether it provides its members with a variety of options through which meaningful individual choices can be possible, which is, in turn, a precondition of leading a good life. Culture matters when it provides its individual members with choice and critical self-reflection. Through choice and critical self-reflection, individuals build their "autonomy". Thus, in Kymlicka's liberal view, culture has the function of fostering *individual autonomy*. The connection between the value of culture and

[45] Kymlicka, *Multicultural Citizenship*, p. 83.
[46] Kymlicka *Liberalism*, ... pp. 166-167.

its autonomy fostering function lies at the heart of Kymlicka's liberal project for the rights of minority cultures on the ground that respect for the autonomy of the members of minority cultures requires respect for their cultures, and this in turn may require some special group rights for them. The emphasis on individual autonomy, from which endorsement of individual choices is derived, also occupies a significant place in liberal thought, especially, as we saw, in Enlightenment Liberalism. So, we need to say what it means to be autonomous beings.

Individual Autonomy

The connection between individual autonomy and individual choice and thus individual well-being has on different grounds attracted many thinkers.[47] Here, however, our main concern is to present a general picture of the idea of individual autonomy, rather than a detailed one, while we present some more views about it later in this chapter.

Individual autonomy, as we said, is one of the core values in liberal thought on the ground that "it is an essential ingredient of the good life so that anyone's well being suffers if his autonomy is incomplete."[48] In such an account individual autonomy becomes a crucial component of individual well being. What can be understood of individual autonomy is that it is the capacity or ability of individuals to make their own choices in forming their life plans about how to lead their life. "The ruling idea behind the ideal of personal autonomy", Raz argues, "is that people should make their own lives. The autonomous person is a (part) author of his own life. The ideal of personal autonomy is the vision of people controlling,

[47] See, for example, Onora O'Neil, 'Autonomy, coherence and independence' in David Milligan and William Watts Miller eds., *Liberalism, Citizenship and Autonomy*, Aldershot: Avebury, 1992; Robert Young, *Personal Autonomy: Beyond Positive and Negative Liberty*, London: Croom Helm, 1986; Andrew D. Mason, 'Autonomy, liberalism and state neutrality', *The Philosophical Quarterly*, vol. 40, 1990.

to some degree, their own destiny..."[49] "Autonomy, writes Raz, is exercised through choice, and choice requires a variety of options to choose from and "a person lives autonomously if he conducts himself in a certain way (does not drift through life, is aware of his options, etc.) and lives in a certain environment, an environment which respects the condition of independence, and furnishes him with an adequate range of options."[50]

Autonomous life not only requires a variety of options, but also a "rational", and "self-reflective" capacity through which an individual should be able to question the "range" of options. Thus, as Crittenden notes, "more than a kind of choice, [part of individual autonomy] is a process of choosing ... [through which] one must have some critical distance from the range offered."[51] Individual autonomy, then, requires individuals, first, to be aware of their own individual beliefs and (intellectual) capacities; and second, to be aware of their cultural traditions, practices and values. However, being aware of these is a necessary but not sufficient condition for individual autonomy. It also requires, first, the individual has a *critical self-reflection* on her own beliefs; and second, as Moore says, can "reflectively ... criticize the practices, beliefs and conceptions of her community."[52]

V

Returning to Kymlicka. Does Kymlicka's view provide a viable framework for the protection of cultures? It can be said that although it has some considerable points, they are not enough for accommodating the demands of dispersed and non liberal cultural groups.

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[48] Joseph Raz, *The Morality of Freedom*, Oxford: Clarendon Press, 1986, p. 390.
[49] Ibid, p. 369.
[50] Ibid., pp. 398 and 391.
[51] Crittenden, *Beyond Individualism*, p. 75.
[52] Moore, *Foundations of Liberalism*, p. 185. It should, however, be noted that Moore does not discard communal values for the exercise of individual autonomy. Rather, she rightly finds it necessary that "the

We limit our criticism to three considerations[53]; that Kymlicka's formulation of "societal culture" can only meet the demands of territorially concentrated national minorities, but not those of other scattered ethnic and national groups; and that his argument that respect for individual autonomy requires respect for one's own cultural structure disregards the demands of non liberal cultures for whom a liberal understanding of individual autonomy has no relevance to the protection of their cultures.

Before tackling specific difficulties in Kymlicka's use of culture, it could be useful to present a brief account of culture, though we try to present a more detailed one throughout

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acceptance of at least some of the tradition's conceptions" is required for individual autonomy. We tackle this view later in this chapter.

[53] Kymlicka's liberal theory of multiculturalism has received some other criticisms; for the claim, for example, that Kymlicka's understanding of individual autonomy is not compatible with liberal understanding of autonomy in the sense that it views individual autonomy as an *instrumental* good for individual well being rather than viewing it as an *intrinsic* good independent whether individuals' life go better or not; see Don Lenihan, 'Liberalism and the problem of cultural membership: A critical study of Kymlicka', *Canadian Journal of Law and Jurisprudence*, vol. 4 (2), 1991, pp. 403-405; For the same claim that Kymlicka's instrumentalist view of individual autonomy should be abandoned for the Kantian understanding of "moral autonomy", which "suffices to rule out internal restrictions as illegitimate on moral, not specifically 'liberal', grounds", see Rainer Forst, 'Foundations of a theory of multicultural justice', *Constellations*, vol. 4 (1), 1997, pp. 65-71; For the claim that cultural belonging is not a primary good in the sense that it cannot be "only path for most individuals to achieve a secure self identity", and that it can in some cases be a source of "persisting feeling of inferiority", of "shame", see Markus Haller, 'Doing justice to multiculturalism', *Acta Analytica* vol. 18, 1997, pp. 132 and 131; For a similar view that secure cultural structure may not be a source of self-respect for individuals "who are held in low esteem by their cultural group", see Andrea T. Baumeister, *Liberalism and the Politics of Difference*, Edinburgh: Edinburgh University Press, 2000, p. 114; For the claim that "context of choice argument does not presume that nations constitute the relevant sort of cultural framework", since "an individual is related to and has allegiances to many sorts of group identity, including family, occupation, region, neighbourhood, religion", one of which "may be more important to an individual's framework for choice than national identity", see Matthew Festenstein, 'New worlds for old: Kymlicka, cultural identity, and liberal nationalism', *Acta Politica*, vol. 33 (4), 1998, p. 369; For the claim that Kymlicka's argument for secure cultural context which has no relevance to a present character of a culture, but has relevance to its stable cultural structure cannot explain individual critical thinking on a given cultural value, and thus "a certain degree of cultural instability – including an instability that affects the deep sources of people's beliefs about value" is needed for individual critical thinking, see John Tomasi, 'Kymlicka, liberalism and respect for cultural minorities', *Ethics*, vol. 105 (3), 1995, p. 591; For the claim that Kymlicka's distinction between the structure of a culture and its character is untenable in the sense that changes in one causes changes in the other, and that ruling out character of a culture for its secure (unchanged) structure is not compatible with his "liberal" concerns regarding individual autonomy, since this distinction "has produced an illiberal result." see David C. Bricker, 'Autonomy and culture: Will Kymlicka on cultural minority rights', *The Southern Journal of Philosophy*, vol 36 (1), 1998, pp.52-53; For a similar view that his distinction between the structure and the character of a culture for the "effective exercise of autonomy" is untenable, see Baumeister, Ibid., pp. 113-114.

our discussion. There are a variety of uses of the notion.[54] However, the culture we focus on in this work is the kind that can be regarded as "a system of beliefs and practices [or meaning and significance] in terms of which a group of human beings understand, regulate and structure their individual and collective lives."[55] That is, culture refers to "the way of life of a people, including their attitudes, values, beliefs, arts, sciences, modes of perception, and habits of thought and activity."[56] Defining culture in this way suggests two primary senses of culture; "first, that of culture in relation to literature, art, music and the sciences as the best that has been thought and known - so-called high culture - and secondly, the notion of popular culture in the sense that involves the features of a common life, such as entertainment, food, life styles, customs and habits, which mark out the distinctive way of life of a community."[57] High culture requires educational attainments for its exercise and understanding, while popular or folk culture requires no more than membership of community.[58] In this sense, high culture is "not a determinative body of ideas that marks one group off from another, for it is universal in its geographical scope and in its possible application."[59] It is popular culture, with its "proverbs, maxims, myths, rituals, symbols, collective memories, jokes, body language, modes of non-linguistic

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[54] For a brief explanation of some different usages of culture such as business culture, drug culture, and moral, political, academic or sexual culture; and such as gay, youth, mass and working class culture on which we do not focus in this work, see Parekh, *Rethinking Multiculturalism*, p. 143.
[55] Parekh, *Rethinking Multiculturalism*, p. 143.
[56] Simon Blackburn, *The Oxford Dictionary of Philosophy*, Oxford: Oxford University Press, 1994, p. 90.
[57] Brenda Almond, *Exploring Ethics*, Oxford: Blackwell,1998, p.179.
[58] Roger Scruton, *A Dictionary of Political Thought*, London: Macmillan Press, 1982, p.110.
[59] Gilbert, *Peoples, Cultures and Nations*, p. 34.

communication, customs, traditions, institutions, manners of greeting"[60], language[61] and religion[62], that makes people "the particular people that they are."[63]

Considering these wide implications of culture, Kymlicka's account of culture becomes too narrow to provide a comprehensive ground for accommodating the demands of *different* cultural groups. We can firstly say that a characterization of societal culture that Kymlicka equates with national cultures is problematic in the sense that it does not provide a justificatory ground for the cultural demands of immigrant, dispersed ethnic and religious groups as well as even the demands of some national minority groups. Nations or peoples, in Kymlicka's view, possess societal culture. A societal culture as a context of choice fostering individual autonomy refers to national and indigenous groups. This account of culture, to a great extent, becomes irrelevant to the cultural claims of immigrant ethnic and religious groups to whom Kymlicka himself thinks that some cultural rights should be granted. As we shall see in Chapter 3, he does suggest some rights for immigrant ethnic and religious groups but with one condition; that these groups are expected to accept the societal culture of the host society. That is, they are, on the one hand, expected to integrate into societal culture of their new country and abandon the societal culture of their country

[60] Parekh, *Rethinking Multiculturalism*, p. 143.

[61] A language group, as Gilbert argues, is not necessarily a cultural group. However, language can be a significant cultural marker and determine the scope of cultural demands of some minority groups. In such a context fulfillment of the right to linguistic security can be vital for well being of relevant individuals as well as survival of the relevant culture.

[62] Religion may not be regarded as a cultural marker. Indeed, aspects of great religions, like Islam and Christian religions, and their effects in shaping and regulating their believers' practices and perspectives cannot be assessed within a concept of culture attributable to national and ethnic groups. However, religious differences and their accommodation in liberal societies have been going alongside with, sometimes at the centre of, the discussion of multiculturalism, especially in Europe. For this practical reason, we include demands of religious groups and the rights they may have into our discussion, even if they are not cultural groups in the sense that national and ethnic groups are.

[63] Gilbert, *Peoples, Cultures and Nations*, p. 33.

of origin; but also, on the other hand, they should be allowed and assisted to have an access to some cultural aspects of their original culture and religious beliefs.

Kymlicka points out a number of reasons why immigrant groups should (or are expected to) integrate into the societal culture of the host society. First, since they are too small and dispersed, they cannot recreate their own societal culture. Second, although it is in theory possible to say that if they are provided with adequate resources, then they can recreate their own societal cultures, it is in practice not possible, since immigrant states accept them only as long as they are willing to integrate into their mainstream institutions.[64] Third, since they cannot recreate their own societal culture, they would have two options; either they refuse to integrate into the mainstream institutions of their host society, but "have a shadowy existence at the margins of society"[65] and thus become mariginalised, have diminished economic, educational and political life chances; or they accept some cultural variables, language for instance, of the host society and thus participate in its mainstream public institutions, and become free and equal members of society. Their integration, in Kymlick's view, does not call for a total cultural assimilation. Rather, he argues, "it involves reforming [some common institutions] so as to accommodate the distinctive ethnocultural practices of immigrants, so that linguistic and institutional integration does not require denial of their ethnocultural identities."[66]

Indeed, Kymlicka raises valid points for the integration of ethnic immigrant groups to mainstream institutions of the host society. Although his arguments are practically valid

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[64] Will Kymlicka and Ruth Rubio Marin, 'Liberalism and minority rights: an interview', *Ratio Juris*, vol. 12 (2), 1999, p 146.
[65] Kymlicka, 'Do we need a liberal theory of minority rights', *Constellations*, vol. 4 (1), 1997, p. 76.
[66] Ibid., p. 76.

and reasonably acceptable, membership of a societal culture does not explain why these groups should be granted some additional cultural rights, given that it is *only one single* societal culture that provides a meaningful context of choice for individuals. The main difficulty in his formulation of societal culture stems basically from the understanding that people belong only to one *single* societal culture that shapes and determines their choices. Such a formulation can be valid for some national minorities. That is, the concept of societal culture as a basis for cultural rights can only, perhaps as Kymlicka wishes, work for some national minority groups, but cannot work for ethnic and religious immigrant groups. When they enter their host society, they do not abandon entirely the cultural and religious values of their country of origin. Rather, some, at least, bring these values with strong commitments, which in turn determine their conception of the good in a *unique* way, neither in accordance with their native culture nor with the culture of their host society. This fact proves the point that their entire context of choice and thus the meaningfulness of their life is not determined by values involved in only one single societal culture, but from different sources of different cultures. Remaining within Kymlicka's conception of membership of a culture, we can, at best, as Carens puts it, argue that immigrants can "belong to a societal culture in a thin sense (shared language and liberal rights) but it is not plausible to characterise such a thin societal culture as providing people with the context that makes choices meaningful or that makes it possible for them to form and revise conceptions of the good."[67]

This indicates the fact that societal culture does not *necessarily* require territorial concentration. The millet system of the Ottomans, for example, was based on the

[67] Joseph H. Carens, *Culture, Citizenship and Community: A Contextual Exploration of Justice as Evenhandedness*, Oxford: Oxford University Press, 2000, p. 57.

recognition of non-territorial different societal cultures. In this sense, there are two more related difficulties in Kymlicka's formulation of societal culture. Besides immigrants, the concept of societal culture does not take consideration of smaller and dispersed minority groups given that having societal culture requires territorial concentration. As Marcus Haller puts it, "if geographical concentration is to be the hallmark [for societal cultures], it rules out the possibility of dispersed societal cultures, for example the Jewish Diaspora culture, gypsies and other nomadic cultures."[68] Perhaps this difficulty stems from equating societal culture with nation. Such a definition does not include diaspora cultures as well as ethnic nomadic cultures, and it weakens their claims for establishing their own societal cultures. However, Kymlicka would not agree with this criticism. Rather, he would, insisting on territorial concentration, argue that immigrant, ethnic or national minorities could establish and maintain their societal cultures as long as they are territorially concentrated.[69]

The second difficulty in Kymlicka's formulation of societal culture is his claim that a societal culture is "more or less institutionally complete."[70] Describing societal culture in this way implies that those groups having societal culture already have the required political, economic and cultural power to sustain their distinctive societal cultures. That a societal culture requires institutional completeness misses the very situation of minority cultures. Arguing that national minorities and indigenous peoples have their own societal cultures would implicitly mean that they are institutionally complete; namely, they have enough political, economic and cultural power to live in accordance with their cultural

[68] Markus Haller, 'Doing justice to multiculturalism', *Acta Analytica*, vol. 18, 1997, p. 128.
[69] In an interview for example, he says "Hispanics in Texas and California could, with appropriate language rights and educational policies, form a Spanish-speaking societal culture in the United States." Kymlicka and Rubio Marin, 'Liberalism and minority rights: an interview', p. 146.

values and practices; and since they are institutionally complete, they do not need any special group differentiated rights to maintain themselves as distinct societal cultures. This logic, as can be seen, is incompatible with the situation of these groups, since it is exactly being in a situation of institutional incompleteness which is one of the main thrust of their demands for cultural rights that could help them establish their own institutions.[71] Moreover, the fact that some national minorities and indigenous peoples still keep their cultural distinctiveness even if they have lack of, or absence of, required institutional resources to maintain themselves as distinct communities points out the truth that having a (societal) culture does not *necessarily* require institutional completeness.[72]

The third major difficulty in Kymlicka's account of culture is his strong emphasis on individual autonomy, which neither leaves room for consideration of non-liberal minority groups' demands for cultural protection nor takes into account the multiple sources of culture in an individual life. One serious outcome of such a strong emphasis on individual autonomy is that it implicitly suggests monoculturalism rather than affirmation of the culturally diverse structure of a given society. That is, given that culture is valuable insofar as it furthers individual autonomy and that individual autonomy requires a *certain* culture that provides an *adequate* range of options, then it can be said that Kymlicka's account of culture has an implication which discards cultures that do not, more or less, promote cultural values for the exercise of individual autonomy. To connect the value of culture to the options it provides and thus to the individual autonomy it fosters implicitly either

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[70] Kymlicka, *Multicultural Citizenship*, p. 18.

[71] For a similar criticism see Festenstein, 'New worlds for old: Kymlicka, cultural identity, and liberal nationalism, p. 370.

[72] Carens raises another criticism from a different angle. He says, "what is characteristic of states with national minorities is precisely the institutional incompleteness of all of the nations that compose it, because

discards the values of non liberal cultures, or does not value them at all. This understanding of culture as valuable on account of its autonomy fostering function implicitly suggests that such a culture is a superior culture. Once protection of culture is linked to whether it fosters individual autonomy, self-reflection, and self-criticism, the outcome of such a protection would be conditional, on the requirement that every culture *should* foster individual autonomy. And such a condition inevitably suggests a liberal culture.[73] In this sense, Kymlicka's theory has no relevance to non-liberal cultures, and therefore it is, as Parekh notes, unable to show why liberal societies should respect the minority rights of these groups."[74]

According to Parekh, western societies include not only liberal groups but also non-liberal groups such as religious communities, indigenous peoples, long-established ethnic communities and newly arrived immigrants, and to regard them as liberal societies would mean that we "rule out" non liberals for the sake of our liberal view. These non-liberal groups are very much part of western societies and have a constant "struggle" with liberals. The main difficulty in Kymlicka's definition of culture, as Parekh notes, is that it is based on the assumption that every society involves a single "societal culture", and this assumption leads him to tackle "the problem of multicultural societies in monocultural liberal terms."[75]

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no nation, not even the majority, can claim all of the economic, social, and political institutions as its own." Carens, *Culture, Citizenship and Community*, p. 53.

[73] Nimni, for example, argues that "a liberal view of culture is by definition grounded in liberal theory and cannot avoid seeing every culture from a liberal angle." Nimni, 'Nationalist multiculturalism in late Austria...', pp. 299-300.

[74] Bhikhu Parekh, 'Dilemmas of a multicultural theory of citizenship', *Constellations*, vol. 4 (1), 1997, p. 58

[75] Ibid., p. 59.

Kymlicka, on the other hand, rejects this claim that minority groups in Western societies do not share basic liberal values. Their conflicts with the majority, he argues, are not about the legitimacy of liberal principles. Minority nations like the Catalans, Scots, and Flemish in Europe; and immigrant groups of Canada and of Australia which have integrated into the political system do not have any dispute with the majority over "basic political values".[76] Majorities and minorities in these societies agree on liberal-democratic values, but they, he maintains, disagree over the interpretation and applications of these principles to the concrete cases like "questions about the distribution of power between federal and regional governments, or about the legitimacy of affirmative action, or about naturalization rules, or about the designation or public holidays, or about the scope of minority language rights."[77] Thus, in Kymlicka's view, the main problem of multicultural societies in the west is not about "basic" political values, but about their applications and interpretations.

Kymlicka does ignore the fact that some religious groups, at least some Muslim groups for example, do hold a considerable doubt about the political values of liberal democracy. Even if we accept his argument that minority groups in the west share some "basic" political values, it would not lead us to provide a justificatory ground for the existence of non-liberal cultures as long as we make a strong connection between culture and individual autonomy. The point is that some traditions, practices and values involved in some cultures, probably in non-liberal cultures, may not be reconciled with individual autonomy, and that emphasizing individual autonomy for the justification of cultural protection may undermine these cultures' demands for protection. Considering these groups, the liberal conception of autonomy that Kymlicka suggests would not meet their demands for the recognition of their

[76] Kymlicka, 'Do we need a liberal theory of minority rights?', p. 81.
[77] Ibid., p. 82.

culture. Although many Western societies have endorsed a liberal conception of autonomy, it is not a universal value shared by all cultures. Some communities like Hindus, orthodox Jews, Catholics, Muslims do not view their cultures as entities which provide individual members with a variety of options through which they can construct their own conception of the good and their autonomy. On the contrary, they regard their culture as an "ancestral inheritance" or "sacred trust" which individual members are expected to protect and maintain.[78] Likewise, some groups such as the Amish in the mid-western United States and the Russian Old Believers in northern Alberta, as Moore observes, "find the liberal emphasis on individual autonomy and critical reflection threatening to their more communally oriented and simple religious existence."[79] Traditions, some practices and the values involved in such cultures may give rise to tension when individual autonomy is *privileged*. The protection and survival of these non-liberal cultures requires the rejection of a liberal valuation of individual autonomy. We tackle the question of what a liberal society's attitude should be like towards illiberal cultural practices and values in Chapter 6. Here, however, we try, by mentioning such groups, to strengthen the argument that the concerns with fostering individual autonomy does not provide enough justification for the protection of illiberal, non-liberal and perhaps even some liberal cultures. It may not provide a sound justification for even some liberal cultures, since, as Parekh notes, "even when people in the west value autonomy, they do not do so in all areas of life or do so equally. They might value it in matters relating to marriage and occupation but not their moral values, religion or politics, in one or all of which they might be happy to continue

[78] Parekh, 'Dilemmas of ...', p. 59.
[79] Moore, *Foundations of Liberalism*, p. 178.

with what they have inherited from their parents or derived from their ethnic or other communities."[80]

Hence, Kymlicka's sharp distinction between individual autonomy and cultural values and beliefs is untenable. That is, given that individual autonomy requires individuals to engage in critical reflection on their cultural practices and values, it can be said that Kymlicka situates individual autonomy in such a way that there should always be a sharp distinction between the good of individual and that of the culture in order for individuals to exercise their autonomy. The strong connection between individual autonomy and the good life is, in Kymlicka's view, basically derived, as we said, from the assumption that the good life is the one which is lived "from the inside", and locates that life against "the outside", which could be cultural practices, values and tradition. It is not clear what is the governing principle for drawing such a distinction. To be more precise, we can say that there cannot be comprehensive overall guidance defining the *sources* of the good life. There are not only countless of sources including different individual capacities affecting what individuals understand about the good life, but also different cultures provide different sources defining the spheres of the good life and individual well being. Indeed, it is, as Lenihan notes, not difficult to consider a community, say a tribe, the core values of which are wholeheartedly endorsed by its members, and thus there would be nothing worrying us about their well being.[81] This argument is valid for liberal cultures as well. In these cultures, Kymlicka's sharp distinction between the good of community and that of the individual, as Parekh notes, "gets blurred in some of the most intimate areas of interpersonal relations."[82] Remaining within Kymlicka's understanding of individual autonomy, we can at best say

[80] Parekh, *Rethinking Multiculturalism*, p. 93.
[81] Lenihan, 'Liberalism and problem of cultural membership...', p. 404.

that the value of individual autonomy, the good life and individual well being should be evaluated through an acceptance of the interdependency of the individual and culture. Thus, such an acceptance would have two implications; namely, as Moore puts it, "the person both (a) embodies communal values and beliefs and (b) has the ability to stand back from (communal) values as an independent centre of consciousness"[83]. In some cultures individual well being may require only the first implication while in some other cultures it may require both implications. Whatever the degree of an individual's embodiment of communal values and criticisms of these values is, we should respect the right of cultures to maintain themselves as distinct entities as long as they ensure the well being of their individual members. In this sense Kymlicka's account of culture is not enough, since, as we saw, his commitment to individual autonomy leads him to fail to develop a pluralistic understanding of culture and thus a comprehensive sense of cultural diversity. Putting a strong emphasis on the liberal understanding of individual autonomy as a *single* or ultimate value for assessing and valuing cultures is not enough. It is not enough because it requires to a great extent a *liberal* moral code for the flourishing of the individual and thus fails when we take into account the cultural practices and values of non-liberal cultures. In this sense, as long as Kymlicka equates culture *only* with a context fostering individual autonomy, his account of the value of culture will hold only of a *liberal culture*.[84]

But, there is obviously no single conception of culture and autonomy. A liberal conception of culture as a context of choice and individual autonomy is just one understanding of it amongst many others. Here, however, we do not jettison these elements in our discussion. On the contrary we take them as significant features of culture and conditions for individual

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[82] Bhikhu Parekh, *Rethinking Multiculturalism*, p. 106.
[83] Moore, *Foundations of Liberalism*, p. 187.

well being. What is needed is a plural understanding of culture that could have enough room for different cultures. Such an understanding of culture, first of all, avoids any reductionism. Elements constituting culture cannot be reduced to a single element, to its autonomy fostering function for example; and no single value of culture can be prioritized over other values. Constitutive elements of culture cannot be reduced to a single element, because culture, with its constituting elements such as beliefs, traditions, history, practices, spirits, language, religion and so on, is a constellation of beliefs and practices that shape individual life. These constituting elements have a *dialectical* relationship with each other, and with elements of other cultures. The ways these elements come together in a given culture can neither be static nor can be the same for all cultures. In this sense, constituting elements of culture, as Gilbert argues, do not "necessarily hang together in coherent and cognitively satisfying wholes."[85] That is why we shall say later in this chapter that culture can neither provide all the conditions for individual well being, nor provide the same advantages and disadvantages for all individuals.

Second, no constituting element is prior to other elements. As Parekh puts it, culture "both opens up and closes options, both stabilizes and circumscribes the moral and social world, creates the conditions of choice but also demands conformity."[86] Although it does, in varying degrees, provide a context of choice for individuals, culture has, again in varying degrees, some constraints disciplining relevant choices. A cultural community has a balance of "restraints and choices", "authority and freedom", and regarding one of them as prior to others would destroy its integrity.[87] Giving precedence to autonomy and choice

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[84] For the same view, see Baumeister, *Liberalism and the Politics of Recognition*, pp., 118-119.
[85] Gilbert, *Peoples, Cultures and Nations*, p. 51.
[86] Parekh, *Rethinking Multiculturalism*, p. 156.
[87] Parekh, 'Dilemmas of multicultural citizenship', p. 60.

over other constructive elements of community would undermine its stability as well as its capacity for providing its individuals with autonomy and choice.

Raz's Multiculturalism

Having argued that Kymlicka's account of culture is unable to provide a comprehensive ground for the affirmation of cultural diversity and individual well being, we would like to present another liberal view; namely Raz's view, which could provide enough room for non liberal cultures. Although Raz's understanding of culture has some common features with Kymlicka's, it does have an explicit consideration of non-liberal cultures. He, like Kymlicka, does not say that cultural practices and values *determine* individual choices, but *provides* a context for choices. He too argues that "individual freedom and prosperity [and thus individual autonomy] depend on full and unimpeded membership in a respected and flourishing cultural group."[88] But what distinguishes his multiculturalism from Kymlicka's is that the criteria for a flourishing cultural group does not *only* depend on whether it provides "viable options", but also depend on whether these options "presuppose shared meanings and common practices."[89] As can be seen, this account of culture is quite a liberal one. Although "cultural, and other, groups", he argues, "have a life of their own, ... their moral claim to respect and to prosperity rests entirely on their vital importance to the prosperity of individual human beings."[90] In Raz's view, a culture fosters prosperity of individuals in three ways: first, it provides "the options which give life a meaning; second, "sameness of culture facilitates social relations, and is a condition of rich and comprehensive personal relationships"; and the third way in which a culture affects

[88] Raz, 'Multiculturalism: a liberal perspective', p. 159.
[89] Ibid., p. 161.
[90] Ibid., p. 163.

individual well-being is that "it provides a strong focus of identification; it contributes to what we have come to call [people's] sense of their own identity."[91]

As can be seen Raz's multiculturalism is genuinely liberal because it establishes a strong link between the value of a culture and individual well being. In this account, individual well being does not necessarily require individual freedom and autonomy, though they are significant conditions for it. That culture provides "a focus of identification" and "facilitates social relationships" are another two important conditions for individual well being. Since different cultures, liberal and non-liberal, do in varying degrees enjoy these two implications which promote individual well being, they deserve to be protected and promoted. It is that point which distinguishes Raz's account of culture from Kymlicka's. Although it is also based on the value of autonomy, it could have enough room to embrace non-liberal cultures, since, he argues, "belief in value pluralism is the view that many different activities and forms of life which are incompatible are valuable."[92]

One may debate how Raz's perfectionism, formulated in his *The Morality of Freedom,* that the state should support valuable forms of life could provide enough room for the existence of non liberal cultures, given that a liberal state commits itself to the belief in individual freedom and autonomy and thus cultures which do not *prioritize* these values deserve to be subject to some liberal impositions for the health of individual freedom and autonomy. Indeed, Raz's perfectionism involves this outcome. However, as he himself accepts, he has revised his earlier view, and now argues that cultures involving different values are valuable. "Each of them is valuable. Each of them can be improved in a way consistent

[91] Ibid., pp. 162-163.
[92] Ibid., p. 164.

with its own spirit and out of its own resources. But none of them can be judged superior to the others."[93] Thus, no culture is superior to other cultures, since they involve a variety of constituent elements each of which has unique contributions on individual lives in different ways. In this sense, even cultures that do not endorse a liberal understanding of individual autonomy as a general value have a rationale, since each culture has a different conception of how individuals can flourish in different ways. This understanding of culture would have an implication that rejects the idea of situating the exercise of individual autonomy in a way that always requires critical self-reflection on the given values, since, as we noted, "the acceptance of at least some of the tradition's conceptions" is required for individual autonomy.[94]

VI

Having stated that the value of culture cannot be derived only from individual choices and individual autonomy, we argue that the value of culture is also, at the most fundamental level, including these two elements of culture, derived from individual well being.[95] Thus, we do not wholly reject the instrumentalist view of culture on the ground that it is one of the significant contributors to individual well being. Having a sense of belonging and a sense of a certain location from within which individuals shape their conception of the good; and perceiving, assessing and making in varying degrees critical judgement about themselves and others through their cultural nexus; all these indicate the interconnected features of culture and individual interests, and thus well being. Culture in this sense does not only provide choices, but also meaning through which individuals locate themselves in

[93] Ibid., p. 168.
[94] Moore, *The Foundations of Liberalism*, p. 185.

a certain context in perceiving and assessing themselves and others and, reciprocally, construct their individual identities. That is, individual well being depends on maintaining meaningful goals and relationships, which are to a great extent products of culture. Products of culture such as social relations, friendship, kinship, the arts, science, careers determine the boundaries of expectations for individuals about what is worthwhile to pursue in their life and about how to achieve their goals.[96] Thus, culture, in addition to providing a context for choice, is also a context of meaning and identity, which are significant conditions for individual well being.

To be sure, individual well being depends on the satisfaction of countless factors. Two interconnected points, however, need to be emphasized to show that culture cannot provide all the conditions needed for individual well being. The first one is the inherent nature of culture: it cannot, like any human enterprise, cover and fulfill all individual needs and expectations. Given that individual well being does not only require that individuals live in accordance with their cultural nexus, but also requires the satisfaction of common needs shared by all human beings and the satisfaction of individual needs which emerge from individuals' unique physical and mental capacities, it can be said that no culture, as Parekh notes, could be neutral towards the different interests of its individuals and its groups, and thus cannot provide uniform advantages and disadvantages.[97] It may, for example, facilitate the interests of men at the expense of those of women; while it may emphasize respect for family, it cannot, with the same strength of emphasis, encourage divorce; while it may

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[95] Alan Gewirth describes well-being as "substantive generic feature of action; it consists in having the general abilities and conditions needed for achieving one's purposes, ..." Alan Gewirth, 'Is cultural pluralism relevant to moral knowledge?', *Social Philosophy and Policy*, vol. 1 (1), 1994, p. 27.
[96] Margalit and Raz, 'National self determination', pp. 82-83.
[97] Parekh, *Rethinking Multiculturalism*, p. 157.

place a strong role on girls as future housewives and child bearing entities, it cannot at the same time suggest a full democratic education for them.

The second point related to the first one is about the availability of social, economic and political activities of a culture to its individual members. The role of social, political and economic conditions on individual well being obviously cannot be denied. Some writers have rightly argued that secure access to one's culture cannot independently be assessed from other "primary goods like income, wealth, opportunities, and power."[98] Nancy Fraser, too, in her evaluation of Taylor's *The Politics of Recognition*, argues that recognition of cultures should go along side with a fair *redistribution* of resources which are the very conditions of social equality.[99] Likewise, as Yoav Peled and Jose Brunner put it "when culture is checked for its effects on individual autonomy [and individual well being], it has to be examined in terms of the social, economic and political capabilities it provides for individuals and thus in terms of the social, economic and political practices it enables, furthers or prevents."[100]

The availability for individuals of economic, social and political activities produced by a culture raises a valid case for assessing the value of culture for individual well being, and cultural rights debates cannot be isolated from these conditions. However, throughout this work, we limit our focus to a manageable portion; namely, although economic, social and political conditions play an important role in individual well being, and sometimes where

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[98] Joseph Carens, 'Liberalism and culture', *Constellations*, vol. 4 (1), 1997, pp. 42-43.
[99] Nancy Fraser, 'From redistribution to recognition? Dilemmas of justice in a 'post-socialist age', *New Left Review*, 212, 1995, pp. 71-72.
[100] Yoav Peled and Jose Brunner, 'Culture is not enough: a democratic critique of liberal multiculturalism', in Shlomo Ben-Ami, Yoav Peled and Alberto Spektrowski eds., *Ethnic Challenges to the Modern Nation-State*, London: Macmillan, 2000, p. 83.

necessary we draw attention to these conditions as well, we would like to focus on culture, accepting that it is only one significant *context* for individual well being.

It is a significant context for individual well being, since individuals, as Ronald Dworkin says, "depend on community in ways that go beyond ... economic and security benefits"[101] Whatever advantages and disadvantages it provides for its individuals, it remains as, in varying degrees, a context of meaning for them in the sense that it, as we said, provides a certain *location* from within which they perceive and assess themselves and others.[102] Culture as a context of meaning to some extent shapes the degree and scope of individual belonging and identity, since cultural belonging "has a high social profile", affecting how others perceive and respond to us, which in turn shapes our self-identity."[103] Individual identity therefore is shaped at two levels: individual and cultural. That individual identity is shaped by cultural narratives is a matter of degree; namely while some individuals construct and develop their personal identities wholly *within* a given social role and communal identity, some other can develop their identities *through* a critical self-reflection upon it. Thus individual identity has two significant sources: On the one hand, it is influenced by a system of values shared by others, and others' respect for these shared values would provide a context within which individuals would have self-respect; on the other hand, that identity develops and flourishes through individual critical self-reflection on the given values. This points out the "dialogical" or *dialectic* relationship of individual and cultural identity. As Taylor puts it, "we define our identity always in dialogue with,

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[101] Ronald Dworkin, 'Liberal community', *California Law Review*, vol. 77 (3), 1989, p. 488.

[102] This, however, does not mean that cultures cannot be assessed and criticized in terms of their constituent elements. While some, for example, place a higher value on individual choices than other values, some others endorse values that expect individuals to follow some certain cultural beliefs and practices without critical thinking. Some other cultures, on the other hand, may favor interests of one group, i.e. men, over those of

sometimes in struggle against, the things our significant others, [who matter to us], want to see in us."[104] Our identity "is not something we can sustain on our own, ... [it] is always partly defined in conversation with others or through the common understanding which underlies the practices of our society."[105] Thus, the construction of individual identity requires dialogue through which individuals recognize each others' worth and thus they come to see themselves as dignified identity bearing existences.

According to Taylor, this 'dialogical character' of individual identity becomes possible through language.[106] Taking the language in a broad sense, i.e. "the languages of art, of gesture, of love, and the like", he argues that we become full human agents, capable of understanding ourselves, and hence defining our identity, through our possession of rich human languages of expression."[107] However, although language is not the whole content of culture and of individual identity, it is a significant marker of cultural identity in the sense that it provides individuals with a public space through which they locate themselves and others in a meaningful context.

The construction of individual identity is, as Stuart Hall notes, "a process never completed – always in process."[108] Accepting that the construction of individual identity is "a process never completed", and that the effects of cultural products on the construction of individual identity takes place in varying degrees, cultural identity remains a slippery notion. As long as individuals retain their capacity for critical thinking; as long as there are conflicting

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other groups, i.e. women. Even if we do not dismiss or reject these cultures wholly, we may rightly criticize and expect them to respect some fundamental values that have much to do with individual well being.

[103] Margalit and Raz, 'National self-determination, p. 84.

[104] Taylor, 'The politics of recognition', p. 33.

[105] Charles Taylor, 'Atomism', in his *Philosophical Papers*, Cambridge: Cambridge University Press, 1985, vol. 2, p. 209.

[106] We shall discuss effects of language on individuals and the rights related to it in Chapter 5.

[107] Taylor, 'The politics of recognition', p. 32.

individual interests inherent in any culture; as long as culture has a system for favoring some interests at the expense of other interests, and as long as there are interactions between different cultures, it will remain as a slippery notion and cannot be a causally determinative entity over individual identities. Some cultures shape individual identity only partly while some others affect it very deeply, depending on how much room they provide individuals for critical thinking. The scope of an individual's critical thinking on cultural beliefs and practices would determine the scope of the changes in the relevant beliefs and practices. Whatever the scope for the construction of individual identity and change in cultural beliefs and practices, culture remains a significant source, amongst many others, for providing a context of meaning, identity and choice.

VII

Accepting the claim that individual well being requires a cultural context, the question arises of whether this context can be found in just any cultural community or only in their own culture. This is an important question in terms of considering some potential or actual objections against defending the rights of cultural minority groups. These objections could be in two forms: the first one would be based on the acceptance of the value of belonging to some particular culture, but not necessarily to one's own native culture. The second one would be based on a rejection of the value of belonging to any particular culture at all.

Arguments regarding the first kind of objection go like this: In order for individuals to construct their self-identity and self-respect, they do need to have access to a cultural context. But it does not necessarily follow that persons need their very own cultural

[108] Stuart Hall, 'Introduction: who needs identity?' in Stuart Hall and Paul Du Gay eds., *Questions of Cultural Identity*, London: Sage Publications, 1996, p. 2.

structure. Thus, one implication of such a claim would be sympathetic to the idea of assimilating a minority culture into the majority culture as long as the members of minority culture have an equal access to the political, economic and social institutions of the majority culture. On the basis of equal citizenship[109], it is argued, every member of minority group can enjoy the majority culture via, for example, being taught its language and history as long as governments agree to subsidize the cost. Considering members of minority groups suffering from lack of institutional access to their own culture, or, as a result of lack of institutional access, suffering from lack of a high culture, it will be reasonable to provide them with a successful assimilation into the majority culture which is rich and strong in terms of its social, economic and political institutions. In such a case, "we would be fulfilling our legitimate duties, in terms of respecting the primary good of cultural membership, if we facilitated their assimilation into another culture."[110]

Indeed, some cultural minorities have already lost their cultural integrity or their cultural pervasiveness among some of their individuals, since they have historically been denied the opportunity to establish and maintain their own institutions. So, are we to suggest assimilation of them into mainstream cultures which are institutionally richer? Such a suggestion would be possible if and only if culture is valued in terms only of providing a context for choice, which we rejected. As Lenihan puts it, "if the culture is really a context of choice in Kymlicka's sense, that is, a marketplace of options, then any cultural group which wants to make a claim to special protection (rights) against assimilation by another group must demonstrate that the move will better promote the well-being of its members

[109] We shall discuss the scope of multicultural equality in Chapter 5.
[110] B. Schwartz, *First Principles, Second Thought: Aboriginal Peoples, Constitutional Reform and Canadian Statecraft*, The Institute for Research on Public Policy, 1986, cited in Kymlicka, *Liberalism, Community and Culture* p. 73.

than assimilation." [111] But, neither would Kymlicka accept such an outcome, nor does it seem to be moral. It is not moral especially when cultural integration takes place against people's wishes. First, we need, as a principle, to reject any advantage the majority group can gain from its historical and present injustices which stem from the denial of institutional recognition to the relevant minority cultures. Second, there is no visible evidence that these cultures cannot rebuild, nourish and maintain their cultures when they are provided with adequate resources.

It may however be argued that if our main concern is about *existing* individuals whose well being may be irrelevant to maintaining the cultural beliefs and practices of their own culture, then there would not be any significance in providing resources for them to rebuild and nourish their culture. Such an argument could be valid for some individuals. Some can integrate into another culture very successfully; some others can, up to a certain limit, participate or make a life in another culture. But a significant number of individuals do need their own cultural nexus to make a meaningful life, since they are, as Kymlicka notes, "bound, in an important way, to their own cultural community" and "we can't just transplant [them] from one culture to another."[112] The fact that a significant number of people cannot integrate into another culture points out the truth that "their social and other skills to engage in activities and pursue relationships derive from their own cultures, and their sense of their own dignity is bound up with their sense of themselves as members of certain cultures."[113]

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[111] Lenihan, 'Liberalism and the problem of cultural membership...', p. 415.
[112] Kymlicka, *Liberalism, Community and Culture*, p. 175.
[113] Raz, 'Multiculturalism', *Ratio Juris*, vol. 11 (3), 1998, p. 200.

The connection between individual well being and respect for their cultural structure has been supported by many considerations. Margalit and Raz, for example, argue that in a "pervasive culture" the well being of persons depends on the well-being of their cultural structure. "If the culture is decaying or if it is persecuted or discriminated against, the options and opportunities open to its members will shrink, become less attractive, and their pursuit less likely to be successful. .... Individual dignity and self respect require that the groups, membership of which contributes to one's sense of identity, be generally respected and not be made a subject of ridicule, hatred, discrimination, or persecution."[114] When a culture is not respected, it would be very likely for its individuals to lose their self-respect and dignity. Likewise, Owen Fiss, too, argues that "the identity and well-being of the members of the group and the identity and well-being of the group are linked. Members of the group identify themselves -explain who they are- by reference to their membership in the group; and their well-being or status is in part determined by the well-being or status of the group."[115] Thus, "we should respect a community's right to its culture for a variety of reasons, such as that human beings should be free to decide how to live, that their culture is bound up with their history and identity, that it means much to them, and so forth. Every community has as good a right to its culture as any other, and there is no basis for inequality."[116]

James Nickel, on the other hand, evaluating Kymlicka's account of culture as providing meaningful context for individual choices, argues that "secure cultural belonging" is not a necessary condition for having meaningful options for choice. According to him, considering immigrants, the premise that secure cultural belonging is the condition of

[114] Margalit and .Raz, 'National self-determination', pp. 86-87.
[115] Owen M. Fiss, 'Groups and the equal protection clause', *Philosophy and Public Affairs*, 1976, p.148.

making meaningful choices does not alter the fact that "many immigrants survive and flourish as autonomous beings after an almost total cultural transplant."[117] The situation of these people, he argues, not only shows that they do not need to belong to their native culture, but also not to belong to any particular culture. This is the second kind of objection which is based on the claim that without having a sense of belonging to any particular culture, individuals will still be able to form and revise their own beliefs about the conception of the good. "One's own experience and imagination, plus one's memory of one's native culture, plus whatever knowledge of other cultures and ways of life one has acquired, will generally provide one with an adequate stock of options to make meaningful choice possible."[118]

Jeremy Waldron, for example, argues that talking about "separate" or "distinct" cultures does not make sense in the modern world, since such an approach assumes that there are clear lines between cultures, and thus they are isolated from each other. In fact, we cannot say where one culture starts and another one ends. He agrees with Kymlicka on the grounds that choices, which are culturally defined meanings, take places in a cultural context, and thus every option and choice has cultural meaning. But it does not follow, he argues, "that there must be one cultural framework in which each available option is assigned a meaning. Meaningful options may come to us as items or fragments from a variety of cultural sources."[119] People, he maintains, need cultural materials, but this does not imply "the importance of something called *membership* in a culture."[120]

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[116] Parekh, *Rethinking Multiculturalism*, p. 176.
[117] James Nickel, 'The value of cultural belonging: Expanding Kymlicka's theory', *Dialogue*, vol. 33 (4), 1994, p. 637.
[118] Ibid., p. 637.
[119] Jeremy Waldron, 'The cosmopolitan alternative', in Kymlicka ed., *The Rights of Minority Cultures*, p. 106.
[120] Ibid., p. 107.

Thus, suggesting the term "cosmopolitan self", Waldron argues that our ways of lives do not depend on a particular cultural structure. People, without having a sense of belonging to any particular culture, can be involved in a variety of ethnocultural ways of lives. He writes,

> "the cosmopolitan may live all his life in one city and maintain the same citizenship throughout. But he refuses to think of himself as *defined* by his location or his ancestry or his citizenship or his language. Though he may live in San Francisco and be of Irish ancestry, he does not take his identity to be compromised when he learns Spanish, eats Chinese, wears clothes made in Korea, listens to arias by Verdi sung by a Maori princess on Japanese equipment. ..... He is a creature of modernity, conscious of living in a mixed-up world and having a mixed-up self."[121]

Indeed, individuals relate themselves to their own and other cultures in various degrees, and there is no overall criterion for measuring and assessing how much they commit themselves to cultural beliefs and practices of their own and to those of other cultures. Neither is there a clear-cut distinction between many cultures in a modern world where interactions of different cultures are inevitable. In the modern world, "each of us", as J. Weeks notes, "live with a variety of potentially contradictory identities, ... as men or women, black or white, straight or gay, able-bodied or disabled, British or European..."[122] Moreover, as we saw in our discussion of Kymlicka's societal culture, not only one particular culture but many

[121] Ibid., p. 95.

cultures provide sources through which individuals can maintain their different conceptions of the good. Considering all these points, it may be possible to argue that some individuals do not feel any sense of belonging and thus commitment to the beliefs and practices of any single culture; moving between different cultures, picking up beliefs, practices and lifestyles of different cultures, and having a sense of belonging to none of them. Indeed, "cultural melange" as Gilbert argues, "hotchpotch, a bit of this and of that ... no doubt captures an aspect of the cultural experience of many in the contemporary world."[123] Yet, it is an individual achievement, rather than the achievement of cultural and religious groups as whole entities.

A culture of melange does not rule out the fact that a considerable number of individuals do attach themselves to their own cultural values and practices, and that their sense of belonging to their own culture is crucial to their well being. "Beyond liking or disliking, loving or hating; [they] can", writes Judith Lichtenberg, "recognize the superior virtues of other cultures, but still feel the attachment bred of familiarity [their] own culture affords."[124] Of course their attachments to their culture take place in varying degrees; while some attach themselves to their cultural beliefs and practices in a very strong way, having no critical reflection on the core values of their cultures; some others have critical reflection on them. Without uprooting themselves from their cultures they may find elements of their critical stance against some beliefs and practices of their cultures *from* other cultures as well as *within* their own cultures. Moreover, it cannot be denied that some other individuals of an oppressed culture would take their cultural identity very seriously even if they have a

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[122] Jeffrey Weeks, 'The value of difference', in Jonathan Rutherford ed., *Identity*, London: Lawrence & Wishart, 1990, p. 88.
[123] Gilbert, *Peoples, Cultures and Nations*, p. 52.

capacity of developing a cosmopolitan identity illustrated by Waldron. At least for those attaching themselves to their own cultural values and beliefs in relatively strong ways, their individual identity seems, in varying degrees, to be a matter of "belonging" rather than "achievement." As Margalit and Raz argues, "although accomplishments play their role in people's sense of their own identity, it would seem that at the most fundamental level our sense of our own identity depends on criteria of belonging rather than on those of accomplishment. Secure identification at that level is particularly important to one's well-being."[125] The fact that most individuals attach themselves in a significant way to their cultural values and that that attachment, which is not a matter of achievement, is a significant source for the construction of their identity calls for the protection of their culture.

Does such an argument have the consequence of endorsing purity for cultures? The inevitable fact that cultures are permeable, and that the more modern technology they use the more permeable they become rules out the possibility of their purity. So, any argument for the purity of cultures would be untenable. The argument that protection of cultures is needed for those attaching themselves to their own cultures can at best suggest maintaining their *distinctiveness*, as long as the relevant distinctive features of these cultures contribute to individual well being. Although there are, as we said, different cultural sources that shape individual identities in different ways, protection of some features of culture, for example religion, language or dress codes, could be quite vital for individuals of the relevant culture. Some would take their religious commitments seriously, rather than the language they speak; some other cultural groups would take language to matter as the

[124] Judith Lichtenberg, 'How liberal can nationalism be?', in Ronald Beiner ed., *Theorizing Nationalism*, Albany: State University of New York Press, 1999, p. 173.

center of their cultural claims, rather than dress codes; some could find a great significance in maintaining their distinctive dress codes, and so on. Ignoring their demands in the name of cultural melange will dismiss their very existence. As W. Kymlicka, in a letter to J. Waldron, puts it, "in the face of the majority's refusal [of] minority practices ... the minority says, 'We refuse to accept the status quo, in which the majority ignores the reasons for our practices. We need to show the majority that we are deadly serious in our cultural commitments – that it is not just a game we are playing or a costume we are wearing – and that we find their obstinacy on this point intolerable.'"[126] Given that their cultural identity is "something like a person's understanding of who they are, of their fundamental defining characteristics as a human being", "nonrecognition or misrecognition [of that identity] can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being."[127] Thus, the need for the protection of culture should be assessed on the question of whether the features of culture to be protected are vital for its individuals or not. If so, the argument derived from a culture of melange is refutable, since their commitment to their own culture does require them to have a collective "power" over their culture "if it is indeed to be their own and to confer upon them identities they can properly acknowledge."[128]

VIII

Summary

In this chapter, we have tried to show that contemporary liberalism, especially, accepts that individuals are culturally and socially embedded. Its emphasis on individuality does not

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[125] Margalit and Raz, 'National self-determination, p. 85.
[126] Jeremy Waldron, 'Cultural identity and civic responsibility', in Will Kymlicka and Wayne Norman eds., *Citizenship in Diverse Societies*, Oxford: Oxford University Press, 2000, p. 172.
[127] Taylor, 'The politics of recognition', p. 25.

imply that such individuality can be achieved independently of an individual's cultural and social nexus. Rather, it is shaped, but not causally determined, both through cultural values and preferences, and through the individual's critical self-reflection on these values and preferences. In this sense, we emphasized the relationship between the social productions of culture and individual capacity in the construction of individual identity, and thus individual well-being. Community or culture would, we suggested, matter in relation to individual well-being. Yet, the acceptance of the value of culture for individual well-being does not lead us to hold the view that such a value is derived only from individual choices and the autonomy that a culture could provide for its individuals. That is to say, individual choice and autonomy-based liberal arguments as a basis for the value of culture do not provide enough justification for the protection of cultures which do not regard a liberal understanding of individual autonomy as a general value. Since there are many conceptions of culture and autonomy, and since a liberal conception of culture as a context of choice and of individual autonomy is just one of them, we advocated a wider understanding of culture: culture as a context of meaning and identity as well as choice for individuals, which are, among such other conditions as economic, social and political, significant conditions for individual well being. In this sense, different cultures provide different ways of defining the spheres of the good life and individual well-being. Thus, no culture is superior to other cultures, since they involve a variety of constituent elements, each of which has a unique contribution to individuals. Since most individuals attach themselves in a significant way to their cultures, they would be very likely to lose their self-respect and dignity when their cultures are not respected. We should, therefore, respect the right of cultures to maintain themselves as distinct entities.

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[128] Gilbert, *Peoples, Cultures and Nations*, p. 52.

Chapter II

The Place of Group Rights within a General Understanding of Rights

I

In the previous chapter we argued that since cultural attachment is one of the significant sources for individual well being, the right of cultures to maintain themselves as distinct entities should be respected. This would require that minority cultures should, in varying degrees, have group rights to protect their distinctive cultural features that are of significant importance for their individual members. As we noted in the previous chapter, such liberals as Allen Buchanan, Will Kymlicka, Joseph Raz, Charles Taylor, and Yael Tamir, on different grounds, endorsed such an argument.[1] Some group rights could broadly involve a variety of different groups such as women, the poor, the disabled and so on. Here, by saying group rights, we refer to the cultural rights of national, ethnic and religious minority groups. That is, the groups on which we focus are as such that are "distinguished by relatively fixed qualities such as race and language or by a set of fundamental beliefs and attitudes of comprehensive importance such as religion and nationalism. These groups commonly share a tradition and culture that set them apart, and members tend to have a consciousness of kind."[2]

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[1] Will Kymlicka, *Liberalism, Community and Culture*, Oxford: Clarendon Press, 1989; and, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford: Clarendon Press, 1995; Yael Tamir, *Liberal Nationalism*, Princeton: Princeton University Press, 1993; Allen Buchanan, *Secession: The Morality of Political Divorce form Fort Summer to Lithuania and Quebec*, Westview Press, 1991; Joseph Raz, 'Multiculturalism: a liberal perspective', in his *Ethics in the Public Domain*, Clarendon Press, 1994; 'Multiculturalism', *Ratio-Juris*, 11(3), 1998; Charles Taylor, 'The politics of recognition', in Amy Gutmann ed., *Multiculturalism and the Politics of Recognition*, 1992.

[2] Vernon Van Dyke, 'Justice as fairness: for groups?', *American Political Science Review*, vol. 69 (2), 1975, p. 607.

Minority cultural groups' demands (and needs) and the rights claimed for protection of their cultural practices and values vary in degree and kind. As we shall see them in the next two chapters in some depth, they can be self-government rights ranging from right to local political autonomy to different federal arrangements, at the most extreme form, to secession; the right to reserved representation in parliamentary seats; the right to have minority language recognised as instruction language in schools and public administration where they constitute the majority; the right to prevent land alienation, in the case of indigenous peoples for example; exemptions from dress codes in schools and public institutions, in the cases of Muslim girls and women; exemption from wearing headgear, in the case of Sikhs; exemption from working day regulations, in the cases of Muslims and orthodox Jews; and demands for some public funding for some cultural festivals, practices and state funding for religious schools.

However, acceptance that minority cultures should have group rights to protect themselves has given rise to some serious challenges from within liberalism. The political theory of liberalism is based on an individualist moral ontology that regards individuals as equal and ultimate rights bearers, and that the state in liberal political thought is, as we stated in the previous chapter, conceived as an entity protecting such civil and political individual rights as the right to freedom of speech, freedom of association and assembly and freedom of religious belief and practice. Given this, the question of what is the relevance of group rights to individual rights is an inevitable question to be tackled. To be more precise, the question of whether group rights are compatible with individual rights goes to the heart of any liberal attempt that seeks to find a valid ground for group rights within individualistic terms. This question is the main task of the chapter to be focused on.

Although liberal opponents of group rights have rejected the idea of group rights on different grounds, the core objection unifying all of them is based on the claim that cultural rights as group rights cannot be reconciled with the basic moral and political principles of liberalism which are derived from individual liberties and rights. This objection can be in three related forms: first, to hold a right, it is argued, requires some fundamental interests to be protected. Only individuals can have fundamental interests, rather than groups. Second, the group should not be conceived as having a moral title. In this sense, it should not be the bearer of rights, since only individuals can be conceived as having moral titles in the sense that only they can be *owed* duties rather than groups. Therefore, only individuals can be *wronged* if the relevant duties are not fulfilled. Thirdly, empowering groups with rights, it is argued, can be harmful to some fundamental individual interests and rights. That is, the exercise of them could come at the expense of the individual rights on which political and moral ontology of liberalism is based. In what follows, we shall discuss these arguments in turn.

II

The first objection that group interests cannot be fundamental and thus they cannot be subjects of right-based protections has explicitly been raised by Chandran Kukathas. He considers Will Kymlicka's argument that demands for recognition of the rights of minority cultures require liberals to reinterpret the liberal tradition so that they can show that liberal understandings of equality and individual liberty are compatible with recognition of group rights for minority cultures.[3] He claims that such arguments do not provide us with a sufficient reason to abandon or reinterpret liberalism whose moral

[3] Kymlicka, *Liberalism Community and Culture*, Chs., 8 and 9.

ontology is based on "individual rights and liberty."[4] Taking this view, for him, does not mean that minority cultural groups do not have interests to be protected and furthered. On the contrary, they do have some interests; and these interests could matter, but "there is no need to depart from the liberal language of individual rights to do justice to them"[5], since fundamental moral and political claims cannot be based on the claims of the group.

He presents two related reasons for this claim. First, quoting Donald L. Horowitz[6], he argues that "group formation", "ethnic identity" and thus "group interests" are not static. Since they are "the product of environmental influences", they are not in a constant state and change over time.[7] In this sense, fundamental rights cannot be derived from group interests that remain in the "abstract". Secondly, different individual interests, for Kukathas, show the divided nature of cultural community at any given time; that is, all cultural communities have a heterogeneous nature. Different interests between "subgroups and the larger community" and between "elites and masses" prove the divided nature of cultural communities, and this "strengthens the case for not thinking in terms of cultural rights."[8] Of course, disadvantaged circumstances and inequalities among people do exist; but they cannot be correlated to cultural membership, since those who are in disadvantaged circumstances are not only members of minority cultures, but also members of the majority.[9] It is not correct, he maintains, that all members of the minority face "the same inequality", and that all of them are not well off. In supporting

[4] Chandran Kukathas., 'Are there any cultural rights', *Political Theory*, vol. 20 (1), 1992.
[5] Ibid., p. 107.
[6] Donald L. Horowitz, *Ethnic Groups in Conflict*, Berkeley: University of California press, 1985, p. 73.
[7] Kukathas, 'Are there any cultural rights', pp. 110-111.
[8] Ibid., p. 114.
[9] The argument that the disadvantaged circumstances and inequalities cannot only be correlated to cultural membership has been endorsed by some other authors. See, for example, Brian Walker, 'Plural cultures, contested territories: a critique of Kymlicka, *Canadian Jornal of Political Science*, 30(2), 1997, pp. 211-234; Yoav Peled and Jose Brunner, 'Culture is not enough: a democratic critique of liberal multiculturalism', in Shlomo Ben-Ami, Yoav Peled and Alberto Spektrowski eds., *Ethnic Challenges to the Modern Nation States*, London: Macmillan Press, 2000.

this argument, he considers Aboriginal Australians and Australians. Although there are many disadvantaged Aboriginal Australians, there are, he maintains, also disadvantaged white Australians whose situations are different from a few well-off Aborigines. He therefore concludes that instead of granting special rights to Aborigines, we need to grant "the same rights" to all disadvantaged Australians who are suffering from "the same inequalities."[10]

In sum, Kukathas does not deny the value of a culture and its protection. "There may be sometimes good reason" he argues "to design political institutions to take into account the ethnic or cultural composition of the society."[11] However, the main concern for taking the ethnic and cultural composition of the society into account is to protect individual rights. Jan Narveson, too, conceiving groups as associations, shares the same view with Kukathas. For him liberal rights are best held through negative individual rights, and there cannot be a case for a group to have a "positive" "right to exist", since groups, if they need protection at all, can be protected through a system of negative individual rights in the sense that they "have the right not to be interfered" with.[12]

We shall in some depth discuss the validity of the argument that equal rights of individuals protect interests of members of different cultural groups, and thus there is no need for specific group differentiated rights in chapter 5. Here a brief response to the arguments we presented above will be enough. Kukathas is right in arguing that advocating group rights should not assume that all members of the minority group share the same political ideas and interests. Indeed, individual members of a cultural group may

[10] Kukathas, 'Are there...', p. 123.
[11] Ibid., p. 131.
[12] Jan Narveson, 'Collective rights?', *Canadian Journal of Law and Jurisprudence*, 1991, vol. 4 (2), pp. 344-345.

not share the same political ideas, have different economic interests, and group identity may change over time and remain in the abstract. Although all these may be true, the *language* of a group, for example, has a *continuity*, and individuals speaking their native language have a *shared* and *concrete* interest that may provide a justificatory ground for them to demand that their language be provided enough public sphere to be used effectively. As we shall see later in this chapter, when such an interest is *sufficiently* shared by a *sufficient* numbers of individuals, then there will be a case for the relevant group rights to protect that interest. Group rights will be needed in such a case, for if we did not recognise special rights for the members of minority cultures, they would not be able to have the same ability to live in their own culture, which the members of the majority take for granted. In this sense, as Kymlicka puts it, there is no case for granting "the same rights" to those who suffer from "different kinds of disadvantage", and they need to be matched with different kinds of rights. "We match the rights to the kinds of disadvantage being compensated for. Providing subsidised transportation to Aborigines will not help them achieve equality, just as providing veto power over language policy would not help a disabled white Australian achieve equality."[13]

Regarding the claim that group rights can best be conceived within negative individual rights, indeed, such individual rights as freedom of speech, freedom of association and freedom of religion are best explained as negative individual rights. Negative rights are those that impose a kind of *disability* on others not to prevent the right holder from doing or having the object of the right in question. That is, they are secured when there is an absence of interference or coercion. Having a negative right means that individuals are entitled to have some private spheres, and nobody, including the state, has a right to

[13] Will Kymlicka, 'The rights of minority cultures'; reply to Kukathas, *Political Theory*, vol. 20 (1) 1992, pp. 140-141.

interfere with these private spheres. Positive rights, on the other hand, are those that impose *duties* on others to *do* or *provide* the necessary conditions in order the right in question to be carried out. The argument that group rights should not involve *positive claims* is based on the understanding that those rights associated with state funding do impose a cost on non-members, which is not fair; and that they are not as urgent as negative rights for if the absence of negative rights directly threat individuals' well-being. Thus, with this distinction, it is argued that fundamental individual rights are those that require non-interference, and they should be prior to positive claims that put an extra burden on others.

Such a *sharp* distinction between negative and positive rights is untenable, though it refers to the very nature of some rights. It does not provide us with a sound criterion by which we could assess the credibility of group rights in relation to individual rights. That is, the exercise of some individual rights also requires positive action while some group rights call for non-interference. Thus, group rights could be regarded as positive rights as well as negative rights. While some group rights, exemption rights for example, can be conceived as rights to non-interference, some others, self-government and some forms of language rights, involve positive claims on others. However, not only do some group rights involve positive claims on others, but some individual rights, such as the right to adequate subsistence, education and health services, can also be regarded as positive claims on others. It would not be wrong, then, to say that even securing many negative individual rights also requires some positive actions. Security rights, for example, may require an enormous amount of expense, i.e. police training schools, courts, lawyers and so on.[14]

[14] Xiarong Li, 'Making sense of the right to food', *World Hunger and Morality*, in William Aiken and Hugh LaFolette eds., Upper Saddle River: Prentice-Hall, 1996, p. 158.

Thus, the claims that members of cultural groups do not share common interests to be protected through a system of group rights, and that groups should be conceived within the individualistic conception of negative rights are untenable. As will be made more clear later in this chapter, a cultural group does have interests that are *common* or *shared* interests of significant number of individual members. In this sense, as long as protection of these interests calls for group rights, there will, to a great extent, be a justificatory ground for that. Secondly, the distinction between negative and positive rights, though it may be useful for defining the spheres of a given right, cannot be conclusive in rejecting or endorsing it; rather, our attitude towards right claims should be directed by the question of which rights can *further* fairness in the relevant society. To be sure, the answer to this question would also involve the two considerations previously mentioned: the consideration of fundamental individual interests and rights in relation to group rights, and the consideration of reasonable costs in accommodating them.

III

The second objection that groups should not be the bearers of rights is related to the first one. That is, this objection is basically derived from the argument that since individual liberty is extremely important, the preservation of a culture is *morally* not important enough to give rise to a group right. However, the question of whether we should ascribe moral standing to groups is open to argument. As Carol C. Gould puts it, "the values and rights recognized are partly dependent on how one characterizes the existence of individuals, social relations, and groups."[15] When the group is conceived as a single

[15] Carol C. Gould, "Group rights and social ontology", *The Philosophical Forum*, vol. 28 (1-2), 1996-97, p. 75.

integral entity, having a separate existence from individuals who compose it, and thus interests and rights that are not reducible to the interests and rights of its individuals, it can then be seen as a moral entity. According to such a view, like individual rights that are derived from individual interests, group rights are derived from the interests of the group, which are not necessarily attributable to the interests of individuals.

Alternatively, we may not conceive a group as a separate entity from its individuals; but as an entity whose values and interests are derived from individual values and interests. In this sense, its existence in itself would not be morally prior to the existence of the individuals who compose it. The outcome of such a view would be that the interests and values of the group would matter where they are compatible with those of individuals. Thus, a group in this view does not have a moral standing that can be conceived independently from the moral standing of its individuals.

Although we shall develop the second view that the value of groups and their interests and rights are derived from the values and interests of the relevant individuals, the question of whether groups can be the bearer of moral rights cannot be conclusive in the debate on whether the group should have rights. As Wellman argues, "an entity need not be intrinsically valuable in order to enjoy rights."[16] Scepticism about the question of whether the group should be the bearer of moral rights has, for example, the same logic when such scepticism arises about whether such entities as the environment, infants or foetuses, animals and future generations have rights or not. We may not ascribe moral standing to these entities either. But this does not mean that we should not have *valid moral reasons* to ascribe rights to them. In other words, the criterion of whether an

[16] Christopher H. Wellman, 'Liberalism, communitarianism and group rights', *Law and Philosophy*, vol. 18 (1), 1999, p. 16.

entity is the bearer of a right cannot be based on whether that entity has a moral title or not. Rather, it should be based on whether we have some *morally* compelling reasons to ascribe rights to that entity. In this sense, "rights", as Wellman says, "must be constituted of [moral] reasons rather than deduced from [moral] rules."[17]

Thus, we can argue, as Vernon Van Dyke does, that "only individual human beings have moral claims, in which case the corollary is that some of the claims are satisfied by recognizing the rights of individuals as such, that others are satisfied by recognizing the rights of individuals in their capacity as members of a group, and that still others are satisfied by granting status and rights to the group as a collective whole."[18] The criterion for group rights would then be based on the questions of whether a group has morally significant interests to be protected; i.e., whether it has values, derivative or primary, which have much to do with individual well being; whether these values call for a right-required protection; whether they create sufficient reason for claiming rights and so on.

[17] Ibid., p. 35.

[18] Vernon Van Dyke, 'Justice as fairness: for groups?', p. 610. Indeed, some related charters, covenants and declarations have formulated their statements not only in connection with the right of group, but also in connection with the rights of individuals belonging ethnic, religious and linguistic minority groups. *International Covenant on Economic, Social and Cultural Rights*, (1966), article 1/1 states that "all peoples have the right of self-determination. By virtue of that right they freely determine their political status..." On the other hand, Article 27 of the same document states that "... persons belonging to [ethnic, religious or linguistic] minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion , or to use their own language." *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities*, adopted in Res. 1992/16, by the UN Commission on Human Rights, combines these two views by stating that "persons belonging to minorities may exercise their rights ... individually as well as in community with other members of their group..." Article 3/1. For other similar statements see, UNESCO Convention Against Discrimination in Education, 1962, 429 UNTS 93, Article 5/1; UNESCO The Declaration of the Principles of International Cultural Co-operation, 1966, Article 1/1-3; Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe, 1990, Articles 31 and 32/1-2; Proposal for a European Convention for the protection of Minorities, 1991, Council of Europe Doc. CDL (91) (7) (1991), 'General Principles' section.

IV

The third objection, which is the practical concern of the criticisms we presented above, is based on the view that group rights could *trump* the rights of individual members, non-members and some other minority groups within the minority group.[19]. That is, group rights, it is argued, provide the group with a *power* that may restrict or limit individuals' rights to have a control over their own choices; and in the extreme case, empowering groups with rights could end up with the violation of some fundamental individual rights. "Critics of community rights in this sense" as Kymlicka notes "often invoke the image of theocratic and patriarchal cultures where women are oppressed and religious orthodoxy enforced as an example of what can happen when the alleged rights of the community are given precedence over those of the individuals."[20] Indeed, the fact that "the language of minority rights has been used and abused not only by Nazis, but also by apologists for racial segregation and apartheid ... by intolerant and belligerent nationalists and fundamentalists throughout the world to justify the domination of people outside their group, and the suppression of dissenters within the group"[21] has given such concerns validity.

The term group rights or collective rights[22], by definition, raises this problem in terms of suggesting that they are exercised only by the group as a whole entity, and in this way, it

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[19] This concern is expressed for individual members, non-members and minority groups within minority; for the concern for example that "emphasis on group rights" will "hamper individual choices", see Nathan Glazer, 'Individual rights against group rights' in Kymlicka ed., *The Rights of Minority Cultures*, p. 134; for the concern for non-members see Narveson, 'Collective rights?, *Canadian Journal of Law and Jurispuridence* vol.4 (2), 1991, pp. 336-7; for the concern for "internal minorities" and for the claim that "if minority groups do have rights, ... so must internal minorities" see Leslie Green, 'Internal minorities and their rights' in Judith Baker ed., *Group Rights*; The liberal proponents of group rights also to some extent share such concerns. Denise G. Reaume, for example, argues that "the right to [cultural] survival could impose obligations on other individuals to stay or become members of the group, thus conflicting with personal liberty" 'The group right to linguistic security', in Judith Baker ed., *Group Rights*, Toronto: University of Toronto Press, 1994, p. 128.

[20] Will Kymlicka, 'Individual and community rights', in Baker ed., Ibid., p. 19.

[21] Kymlicka, *Multicultural Citizenship*, p. 6.

[22] We use these two terms synonymously although some authors use them in different senses.

seems to be dichotomous with individual rights. Although there are many controversies in the debate on group rights, it is widely accepted that, as Jones notes, "a right is a group right only if it is a right held by a group rather than by its members severally."[23] Critics of group rights basically derive their arguments from such an assumption that group rights are possessed and exercised by the group qua group, which has a separate existence and interests from its constituting individuals, and thus conflict with individual interests and rights.

We shall say more about the nature of group rights in section VI. Here, to present a brief explanation about some features associated with them will be enough to show that group rights do not necessarily conflict with individual rights and interests. The rejection of group rights which is derived from the argument that they conflict with individual interests and rights is, as Darlene M. Johnston notes, based on the false assumption that "collective interests and individual interests" and thus "group rights and individual rights" are "inherently" "antagonistic."[24] Although the popular definition of group right, that a right is a group right if it is held and exercised by the relevant group, refers to the very nature of some group rights, not all group rights are exercised collectively. Some forms of them can be accorded to, and exercised by, individual members of the relevant group. Some group rights, i.e. some forms of language rights and exemption rights, can be exercised by individuals as members of the relevant group. In this sense, they are reducible to individual rights, and hence compatible with them. On the other hand, some other group rights, self-government rights for example, are not reducible to the rights of individuals. Even if they are not reducible to individual rights, it does not follow that they

[23] Peter Jones, 'Group rights and group oppression' *The Journal of Political Philosophy*, 7(4), 1999, p. 354.

[24] Darlene M. Johnston, 'Native rights as collective rights: a question of group self-preservation', Kymlicka ed., *The Rights of Minority Cultures*, p. 179.

should be discarded out of hand, since the interests they protect, as we shall see, are and can be reducible to the interests of sufficient numbers of individual members of the group. Once we, as Johonston notes, accept the point that "the well-being of the individual and the group may be harmonized", then there will be a case for such group rights, even if they are not reducible to the rights of individuals.[25]

To be sure, the arguments we presented in favour of group rights do not mean that they may not conflict with individual rights.[26] That some group rights in some cases conflict with individual rights does not, however, require that we should discard the concept of group rights from rights talk, since we should remember that conflict is *inherently* involved in any rights case. "The very concept of a right", as Carl Wellman notes, "presupposes some possible confrontation between the possessor of a right and one or more second parties."[27] When we consider abortion, for example, we are considering two dimensions of rights: the right to life and the right of a woman to control her own body; favouring environmental concerns would clash with the interest of polluters. Having sympathy with one would clash with the other; the interest of future generations would clash with those of the present generation; the interests of the rich would conflict with those of the poor.[28] Similarly, compulsory education favouring the rights of children in the sense that it will efficiently equip them for adult life would, for example in the case of the Amish, clash with the right of parents to control their children's upbringing. Having sympathy with one would-be right holder would clash with the other. Conflicts in

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[25] Ibid., p. 181.

[26] Indeed, in the case of illiberal cultural and religious groups, some group rights that may be ascribed to them can thwart some fundamental individual rights. We tackle this problem in Chapter 6; namely, the problem that group differentiated rights for illiberal groups would give rise to violation of some fundamental individual rights in terms of leaving individuals' destiny to the group's mercy will be the discussion subject of Chapter 6.

[27] Carl Wellman, *A Theory of Right*, Totowa: Rowman & Allanheld, 1985, p. 194.

[28] For the claim that conflicts are inevitable in all areas of human relationships and thus in any right claim see, L. W. Sumner, *The Moral Foundation of Rights*, Oxford: Clarendon Press, 1987, pp. 1-3.

rights are inevitable then. Given that rights are exercised against something or someone, there cannot be a right theory in which all relevant parties' interests, needs, and claims can be met fully and equally. But, accepting that that all relevant would-be right holder's interests, needs and claims cannot be satisfied fully does not lead us to hold the view that one would-be right holder's interests and claims should be discarded out of hand. That is, a fair accommodation of any given right requires consideration of other potential or actual right holder's conflicting interests and claims. This is what the functions of most rights are; namely, to establish a balance in the conflicts. The matter then would not only be about whether a given right conflicts with other interests and rights, but also, and most importantly how we justify it against other competing interests and rights.

Regarding group rights in relation to conflicting individual rights. When the group rights are at stake we face three possible or actual right holders: the minority group, the individual (members and non-members) and the state, as Van Dyke notes. When we talk about group rights and their justification we need to aim at a fair balance of the interests and the burdens that arise at the group, the individual and the state level. Thus, any arrangement for a particular group right, as Van Dyke argues, "must not always be in favor of the individual, or always in favor of a people, or always in favor of the state."[29] To be sure, not all individual rights can be overridden. Although, the outcome of a particular case depends on weighing these rights against each other, "the case for each group right" as Wellman argues, "must severally be weighed against the importance of the individual liberty it would restrict."[30] In this sense, it can, *in principle*, be said that individual rights should be prior to group rights, but without discharging group rights out of hand. That is, we may argue that "the state" in Allen Buchanan's words, "is to enforce

[29] Vernon Van Dyke, 'The cultural rights of people', *Universal Human Rights*, vol. 2 (2), 1980, p. 21.
[30] Wellman, 'Liberalism, communitarianism and group rights', p. 14.

the basic individual civil and political rights", which are "the rights to freedom of religion, expression, thought, and association, the right of political participation (including the right to vote and to run for office), and the right of legal due process."[31] But we may in some cases accept the view that "the priority of individual civil and political rights ... sometimes can be justifiably overridden in order to protect the goods of community or to serve community values."[32]

V

Before illustrating the arguments we presented above with some concrete examples of group rights, it could be useful to say something about the constituting normative elements of rights, and to present a brief comparison of individual and group rights; so that we shall, by doing this, have tackled the question of whether a general understanding of rights can conceptually be valid for group rights as well.

There is a wide agreement on Wesley N. Hohfeld's analysis of legal rights that suggests four different uses of the notion of right. These uses, which are at the same time conceived as normative elements of rights, are "claim right", "liberty or privilege", "power" and "immunity", any of which can be fundamental to a given right.[33] Each particular element involved in a right has its second-party correlative. When we, for example, say A has a right to X, we may, firstly, mean that A has a claim against B who has a "duty" to let A do X, and, at the same time, to refrain from taking any action which may thwart A's doing X. Thus, the correlative of a claim-right is a duty of some second party. The phrase A has a right to X may, secondly, mean that there is an absence of a duty for A not to do X. This "liberty" right would generate an absence of any duty not to

[31] Allen Buchanan, 'Assessing the communitarian critique of liberalism', *Ethics*, vol. 99, 1989, p. 854.
[32] Ibid., p. 855.

do X. Thirdly, the phrase A has a right to X may mean that A is in a position in which she is holding a "power" to change or affect the status of some other second party. In this case, the correlative of a power right is "liability."[34] For example, "if I have a legal power, someone (or everyone) is liable to have his legal position changed by an exercise of my will."[35] Finally, we can speak of A's immunity from X which would mean that A is protected from the actions of others. "Constitutionally guaranteed privileges and claim-rights often also involve an immunity: not only do I have no duty not to do x or not only do others have a duty to let me do x, but also no one -not even the legislature- has a power to alter that situation."[36]

Although some right theorists have accepted the Hohfeldian formulation with a slight modification[37], others have only regarded one of these elements as a normative basis of a given right, of which we would like to focus particularly on claim-rights. Joel Feinberg, for example, regards "claim-rights" as necessary elements involved in rights talk.[38] That

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[33] Wesley N. Hohfeld, *Fundamental Legal Conceptions*, New Haven: Yale University Press, 1923.

[34] Walter W. Cook, 'Introduction' to Wesley N. Hohfeld, *Fundamental Legal Conceptions*, New Haven: Yale University Press, 1923, pp. 5-10; and Jeremy Waldron, 'Introduction' in Waldron ed., *Theories of Rights*, Oxford: Oxford University Press, 1995, pp. 6-8.

[35] Waldron, Ibid., p. 7.

[36] Ibid., p. 7.

[37] Carl Wellman, for example, with a similar formulation defined by Hohfeld, suggests that a given right contains many of these elements, "liberties, claims, powers, and immunities". However, not all these elements can at the same time be the core elements of a given right. That is, when we describe a right in terms of liberty, claim, power or immunity, we refer to its defining core rather than saying that it consists only of one element. He explains this point thus; " the core of my legal right to repayment is my legal claim to repayment, that is, the legal duty of my debtor to repay me. ...I can legally control performance of this duty only if the law also gives me the legal power to enforce repayment ... the law also gives me the legal liberty to accept repayment when offered by my debtor. Finally, it is hardly up to me whether or not I get repaid if I am not legally immune to having the debt rendered." Carl Wellman, 'Upholding legal rights', *Ethics*, vol. 86, 1975, pp. 51-53; Carl Wellman, *A Theory of Rights*, p. 16; For the same view see, L. W. Sumner, *The Moral Foundation of Rights*, p 45; Christopher H. Wellman, 'Liberalism, communitarianism and group rights', *Law and Philosophy*, vol. 18, 1999, p. 19.

[38] He quite forcefully explains the value and nature of rights in connection with claim-rights. "Claim rights", he argues, "are indispensably valuable possessions. A world without claim rights, no matter how full of benevolence and devotion to duty, would suffer an immense moral impoverishment. Persons would no longer hope for decent treatment from others on the ground of desert or rightful claim ... whenever even minimally decent treatment is forthcoming they would think themselves lucky rather than inherently deserving, ... A claim-right, on the other hand, can be urged, pressed or rightly demanded against other persons. In appropriate circumstances, the right holder can 'urgently.

is, having a right would put the actual or potential right-holder in two positions: to have a claim *to* something and to have a claim *against* someone. Not every claim to something or against someone can provide a reason for talking about rights. A claim should be a *valid* one. What makes a claim valid is not the activity of claiming itself, but some governing legal and moral principles.[39]

This correlative relation of rights and duties, that a claim-against someone or something generates a correlative second party duty, has led some authors to hold the view that there is no right without a corresponding duty, and no duty without a corresponding right.[40] Although many rights can be connected to the second party duties, viewing rights as correlatives of duties may be rejected on the ground that there are duties without correlative rights; namely, "rights", as Wellman argues, "involve a relational element that mere duties lack."[41] "Duties of charity", as Feinberg's example shows, "require us to contribute to one or another of a large number of eligible recipients, no one of whom can claim our contribution from us as his due. Charitable contributions are more like gratuitous services, favours, and gifts than like repayments of debts or reparations; and yet we do have duties to be charitable."[42]

Thus, the view that rights can be best explained by a correlated duty is more plausible than the view that every duty has a correlated right. However, it has also some

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peremptorily, or insistently' call for his rights, or assert them authoritatively, confidently, unabashedly. Rights are not mere gifts or favours, motivated by love or pity, for which gratitude is the sole fitting response. A right is something that can be demanded or insisted upon without embarrassment or shame. ... A world with claim rights is one in which all persons, as actual or potential claimants, are dignified objects of respect, both in their own eyes and in the view of others." Joel Feinberg, *Social Philosophy*, Englewood Cliffs (N. J.): Prentice-Hall, 1973, pp. 58-59.

[39] Joel Feinberg, *Rights,Justice, and the Bounds of Liberty: Essays in Social Philosophy*, Princeton: Princeton University Press, 1980, p. 154.

[40] Richard B. Brandt, *Ethical Theory*, Englewood Cliffs (N.J.): Prentice-Hall, 1959, p. 434.

[41] Wellman, 'Liberalism, communitarianism and group rights', p. 17.

[42] Feinberg, *Rights,Justice, and the Bounds of Liberty*, p. 144.

limitations in the sense that not every right has a correlated duty. That rights entail a second party correlated duty is more valid for positive rights, rather than negative rights. There is a tight correlation between rights and duties for positive rights. When we, however, consider negative rights (or *liberty* rights), requiring others to refrain from taking any action that thwarts the right holder's exercising the relevant right, this tight correlation may be weakened. As David Lyons, focusing on the right to free speech as a constitutional right, argues, a person's constitutional right to free speech has a conceptual correlative: "but it is not an obligation; it is a legislative disability..."[43] Likewise, my liberty right, for example, to tidy up my room does not call for any second party duty; rather, it calls for second party disability. Thus, particularly liberty rights can have their correlatives within the sphere of immunities, and therefore, they can, instead of being correlated with second party duties, be correlated with second party disabilities, as one of Hohfeld's four combinations of rights suggests.

Let us apply this to group rights. As can be understood, many group rights such as self government rights, many forms of language rights, rights to state funding for some cultural and religious practices can also be explained with the second party correlative duties. However, the scope of these duties is rather wide and various. Depending on the particular form of a right, a positive group right imposes duties on the state, individual non-members and even members. Many forms of self-government rights impose duties on the state; when we, for example, say that a particular group has a right to a certain form of "federal autonomy", then the relevant state would have "corresponding duties to grant these rights."[44] Likewise, right claims to public funds for some cultural practices

[43] David Lyons, 'The correlativity of rights and duties', *Nous*, vol. 4, 1970, p. 51.
[44] Rainer Baubock, 'Why stay together? A pluralistic approach to secession and federation, in Will Kymlicka and Wayne Norman eds., *Citizenship in Diverse Societies*, Oxford: Oxford University Press, 2000, p. 371.

and many forms of language claims, too, may impose a corresponding duty on the state. On the other hand, the exercise of some group rights, like some individual rights, depends on the right holder's wish in the sense that they are at *liberty* in performing the right in question. Exemption from dress codes, for example, does not place a duty on the right holder to follow her cultural or religious dress codes.

On the other hand, one important difference between group and individual rights is that while many individual rights imply a correlative second party duty, some group rights, as McDonald notes, may place the right holder herself under a duty.[45] This is especially the case for some different language groups that co-exist. When a language group is empowered to give, for example, language instruction in schools in a minority language, then those, wishing the other language as the language of instruction, have to comply with the minority language. Such a policy is justified when group identity means a lot to the minority; an identity that could be lost without restriction of some individual choices.

This brief description about rights conceptions might have shown that group rights could find a conceptual place within a general understanding of rights. As we have seen, much like many individual rights, group rights, too, can be explained and justified by appealing to claim-rights and their correlative second party duties. Like some individual rights, the exercise of some group rights, too, requires that the right holder be at liberty in exercising them. It should, on the other hand, be noted that Hohfeld's correlative relation of "power" and "liability" could be the main ground for opponents of group rights. That is, when the group holds the power, individuals would then be liable to have their choices changed by the group. This is again the same problem we face; namely, empowering

[45] Ian MacDonald, 'Group rights', *Philosophical Papers*, vol. 18 (2), 1989, p. 125.

groups with rights would come at the expense of individual rights, which we discussed above.

VI

Returning to our previous discussion, we can now present some more features associated with group rights. It can be said that whatever is the credibility of the arguments against the idea of group rights, and of the notion of group right in a general rights theory, many countries *in practice* provide varying degrees of collective power for their cultural minority groups to achieve a more fair society. Different language groups have special status and rights in Belgium, Switzerland and many other countries. "The Belgian constitution provides that, with the possible exception of the prime minister, the cabinet must include equal numbers of French-speaking and Dutch-speaking ministers; and the law requires that a just equilibrium (interpreted as parity) must be maintained between French-speaking and Dutch-speaking members of the civil service."[46] This implies special status for different linguistic groups, and different rights and opportunities for individuals on the basis of their group membership. Fiji and New Zealand have separate electoral rolls and a quota of seats in the central legislature for their different ethnic communities. Likewise, "by ascribing certain rights to control the buying and selling of land on reservations to Indian tribes rather than to individual Indians, the U.S and Canadian governments have equipped Indians with the legal tools that, with varying degrees of success, can be used to protect Indian cultures"[47]; Quebec has received a number of governmental powers in order to promote Quebec's distinct culture; Basques and Catalans in Spain have established their autonomy in the relevant regions; ethnic and

[46] Vernon Van Dyke, 'The cultural rights of people', *Universal Human Rights*, vol. 2 (2), 1980, p. 5.
[47] Allen Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*, Boulder: Westview Press, 1991 p. 75.

religious groups in many western states are exempt from some public requirements, and provided with public funding for their cultural and religious practices.

Since these rights are not same in nature, we need to present their specific distinctive features in relation to individual rights, which will enable us to see the extent of compatibility of group rights with those of individuals. There are two kinds of group rights: those that are reducible to individual rights and those that are not reducible. In other words, they differ from each other in two ways; some can be accorded to and exercised by individuals while some others are exercised collectively.[48]

Individually exercised group rights include exemption rights such as "a Sikhs right to wear a turban and a Muslim employee's right to time off for prayer"[49]; some forms of language rights, i.e. the rights of individuals in Canada to use French language as well as English in federal courts[50], and the rights "to engage in cultural and religious ceremonies or rituals."[51] These rights are such as provide "individual entitlements that the group in question cannot control."[52] However, they are not individual rights in nature, since they go to individuals *as members of the relevant group*. They are granted to individuals due to being members of the group in question. As Buchanan puts it, "even if the individual has standing as an individual and can invoke [these rights] independently, the interests

[48] This distinction has widely been accepted by many authors although they label it with different concepts. See for example, Kymlicka, *Multicultural Citizenship*, pp. 45-47; and 'Individual and community rights' in Judith Baker ed., *Group Rights*, Toronto: University of Toronto Press, 1994, pp. 18-23; Bhikhu Parekh, *Rethinking Multiculturalism*, pp. 213-219; Allen Buchanan, *Secession*, pp. 74-81; and 'Liberalism and group rights', in Jules L. Coleman and Allen Buchanan eds., *In Harm's Way: Essays in Honour of Joel Feinberg*, Cambridge: Cambridge University Press, 1994, pp. 2-7; Geoffrey B. Levey 'Equality, autonomy, and cultural rights', *Political Theory*, vol. 25 (2), 1997, pp. 215-248; Peter Jones, 'Group rights and group oppression', pp. 356-364.

[49] Parekh, *Rethinking Multiculturalism*, p. 215.

[50] Kymlicka, *Multicultural Citizenship*, p. 45.

[51] Buchanan, 'Liberalism and group rights', p. 3.

[52] Joseph Carens, *Culture, Citizenship, and Community: A Contextual Exploration of Justice as Evenhandedness*, Oxford: Oxford University Press, 2000, p. 59.

served by recognizing [them], and hence the ultimate justification for [them], are not his alone."[53] Indeed, this is the key point involved in the nature of group rights, to which we shall turn shortly.[54]

Self-government rights are obviously exercised collectively; they are accorded to and exercised by the relevant group rather than its individual members. In the context of self-government rights, the notion of individual rights may not be the central concern of the demand, since right-claims regarding these rights are about government structure that requires, in many forms of them, the consideration of territory and borders; and in all forms, they "aim at establishing those institutions which are needed for the realisation of the self-determination" of the group.[55] Mechanisms for self-government rights can be in the forms of a constitutional right of nullification (in validating some culture-affecting decisions made by the majority culture), or rights to a canton, province, federation or state.[56] These rights are exercised through some sorts of collective actions performed, for example, by elected representatives on behalf of the group. Certain seats are reserved to the groups in some federations. Seats in the New Zealand legislature, for example, reserved for Maoris cannot go to Europeans, regardless of the personal merits of the individual candidates.[57] In such forms of group rights, no individual as such has a right to the reserved seats. Individuals are entitled to get reserved parliamentary seats insofar as

[53] Allen Buchanan, 'Liberalism and group rights', p. 4.
[54] It should however be noted that some religious and cultural practices could be performed within individual rights. When a government, for example France, legislates that any student if they wish can wear headscarf, then the right to wear headscarf would be an individual right, since it does not specify any particular group whose members can be entitled to wear headscarf.
[55] Avner De-Shalit, 'National self-determination: political, not cultural', *Political Studies*, 1996, vol. 44 (5), p. 912.
[56] Buchanan, *Secession*, p. 75.
[57] Dyke, 'Justice as fairness...', p. 612.

they are members of the relevant group. When they leave the group, they could not be eligible for the reserved quotas.[58]

Language rights can be counted as both individually and collectively exercised group rights.[59] Every language has its normal process in terms of both transmitting group culture to future generations, and maintaining it within the group. The first implication of language rights then can be regarded as a right to maintain this normal process without "interference"[60], which can be understood as the prohibition of the minority language in private education, for example. Other relevant groups, thus, have a duty not to interfere with that process in the sense that they cannot implement any measure prohibiting the use of minority language. However, such a negative language right is a minimal demand for language rights. Demands for language rights, to a great extent, take the form of a positive right to public resources for public education and constitutional recognition of the minority language to be used, at least, in the areas where the relevant group is territorially concentrated.[61] This is the second sort of language rights that is not exercised individually. Such positive language rights as the right of a minority group to have its members educated in its language are not held individually; "the subsidies not_being granted to individuals as such, but rather to groups, which then exercise some control

[58] There are, on the other hand, some other sorts of group rights that are exercised by individuals, but controlled by the group. Kymlicka cites special fishing and hunting rights of indigenous peoples as examples, since the rights are often not accorded to individuals, but to the Indian tribe/band council that assigns these rights to particular members. Kymlicka, *Multicultural Citizenship*, p. 45.

[59] Denise G. Reaume, 'The constitutional protection of language: survival or security?', in David Schneiderman ed., *Language and the State: The Law and Politics of Identity*, Cowansville (Quebec): Yvon Blais, 1991, p. 49.

[60] Denise G. Reaume, 'The group right to linguistic security: whose right, what duties?', in Baker ed.,*Group Rights*, p. 128.

[61] Denise G. Reaume and Leslie Green, 'Education and linguistic security in the charter' *McGill Law Journal*, vol. 34 (4), 1989, p. 784.

over how [language rights] are used, either by some collective decision process or through agents purporting to act for the group."[62]

VII

Perhaps the distinction between individually and collectively exercised group rights is morally less important than the justification of these rights, though the justification process may require this distinction. Bearing in mind that "different societies would reach different decisions on which collectivities should enjoy which rights"[63], we would like to present a general justificatory framework for a given group right claim. Such a justification, like any other given right, requires both *practical* and *normative* grounds.

We presented some practical justificatory grounds for group rights in the previous chapter; namely, cultural attachment, we argued, is one of the significant sources of meaning, identity and choice for individuals. Regarding the second ground, it can be said that a normative justificatory ground for group rights could be derived from the interest theory of rights. The basic claim of the interest theory of rights is that having a right requires the right-holder to have an interest that *justifies* holding the other party to be under a duty.[64] Raz's interest theory of rights could be helpful to see how this theory can provide a ground for group rights. He specifies three conditions for that;

> First, it exists because an aspect of the interest of human beings justifies holding some person(s) to be subject to a duty. Second, the interests in question are the interests of individuals as members of a group in a public good and the right is a

[62] Buchanan, 'Liberalism and group rights', p. 4.
[63] Parekh, *Rethinking Multiculturalism*, p. 217.
[64] The validity of the interest theory of rights for group rights has been endorsed by some exponent of group rights. See for example, Joseph Raz, *The Morality of Freedom*, pp. 207-210; Denise G. Reaume, 'The group right to linguistic security...', in Baker ed., *Group Rights*, pp. 118-141; Leslie Green, 'Internal minorities and their rights', in Baker ed., Ibid., pp. 101-117; Peter Jones, 'Group rights and group oppression', pp. 353-377.

right to that public good because it serves their interests as members of the group. Thirdly, the interest of no single member of that group in that public good is sufficient by itself to justify holding another person to be subject to a duty."[65]

The first condition is an elaboration of what he regards as the nature of a given right. In this account, "X has a right if and only if X can have rights, and, other things being equal, an aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty."[66] As can be seen, having an interest itself does not confer a right; an interest can create a right if and only if it provides *sufficient* reasons for holding other(s) to be under a duty. That is, the core of the concept of a right is that someone's interest is so important that it deserves to be protected by somebody else's duty.

The second condition qualifies a right as a group right. Given that participation in a culture's activities such as values, beliefs, practices, mode of behaviour, language, or religion is a significant condition for individual well being, and that such participation requires the *collective* or *shared* activity of relevant individuals, it follows that the shared interests of individuals participating in their own cultural activities generate the relevant right that secures this participation. In this account, group rights are derived from individuals' shared interests.[67] Given that individual rights are attributed to individuals

[65] Raz, *The Morality of Freedom*, p. 208.
[66] Raz, *The Morality of Freedom*, p. 166.
[67] However we should note that the view that regards the group as a separate moral entity from its constituting individuals could also provide a strong ground especially for collectively exercised rights. As we shall see in Chapter 4, *one way* of justifying self-government rights for minority cultures may not sufficiently be derived from the reference to the reducibility of group interests into individual interests. Rather, such a justification may be derived merely from a *distinct identity* and *existence* of the relevant group. However, accepted, as we did in the previous chapter, that there is an interdependency between the social productions of culture on individual identities and individuals' unique contribution to communal values, and that the right of a culture to *survive* is not grounded on the necessity of survival of a culture *per se*, but on the basis that cultures contribute to the well being of their individuals, the

who have the power to exercise the relevant rights, and the good secured by these rights is the good of individuals; and that group rights are attributed to groups of individuals and to individuals as members of the group, and the good secured is the interests of the group as well as of individuals, there is no incoherency between the system of individual rights and of group rights as long as the interests of the group are attributable to the interests of its individuals. Thus, as Jones puts it, "if we accept that individual can have rights that derive from their individual interests, it is hard to see how we can resist the logic ... that claims that groups of individuals can hold rights jointly that derive from their shared interests."[68]

Raz's third condition specifies the very nature of group rights. Whether they are exercised individually or collectively, the interests protected by the relevant right are derived from some commonly possessed features that are both shared by individuals and *characterise* the relevant group as it is. The interests protected by the relevant right, as we said, are not those of a single individual; no single individual's interests can provide a sufficient ground for there to be a group right. Culture-related interests obviously meet this condition. Individuals from a culture have the relevant interests interdependently or communally. In other words, individuals, who have an interest in maintaining a certain

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interest theory of rights becomes more plausible for defending group rights. In this account, the right of cultures is still vital, because they contribute to the well being of individuals by providing them with a system of meaning, choice and a sense of identification. Moreover, even if we accept the point that some group interests may not be reducible to the *visible* interests of individuals, we can still talk about reducibility of group "consciousness" to individual consciousness. As Vinit Haksar notes, the group can have interests that may not be reducible to the interests of its individuals. The financial interests of a company, for example, can be different from those of its members. The success or failure of a co-operative activity may not be reducible to those of its individual members. The success or failure of a football team cannot always be reducible to the success or failure of its players. Likewise, the interests of the community may not always be reducible to the interests of its individuals. But all these do not mean that "the joys and sorrows" of the group are not reducible to the sorrows and joys of its individuals. Vinit Haksar, 'Collective rights and the value of groups', *Inquiry*, vol. 41 (1), 1997, p. 24.

[68] Jones, 'Group rights and group oppression', p. 366.

cultural belief or practice, do not have that interest in isolation from other individuals; rather, it is an interrelated interest that characterise the group.

To be sure, individuals' participation in their cultural beliefs and practices, as we said in the previous chapter and in our discussion of Kukathas, vary in degree and kind, and thus there may not be uniform interests that they all share. First, the point here is not whether all individuals of a cultural group have uniform interests, but whether there are a *sufficient* number of individuals whose joint or common interests provide *sufficient* reasons for possession of the relevant right. Second, there may not be many shared interests; rather, *one single* interest, i.e. language, could be enough to provide a sufficient ground for there to be a group right. As Jones notes, "groups that possess rights can be sets of individuals who share nothing but an interest on a specific matter."[69]

However, conflicts of interests could arise at many levels of accommodating collectively exercised group rights. Of these rights, language rights are the most delicate ones in the sense that they may give rise to conflicting rights of individuals, given that "use of a particular language is effective only if it is accomplished through law, where one group uses the power of the state to restrict the freedom of another group" to use the language of its choice.[70] Prohibition of other languages from being used in, for example, some public written signs, education, commercial relationships and courts could be restrictions as such. This is especially the case where different language groups coexist. The constitution of Belgium, for example, recognizes, French-speaking and Dutch-speaking language groups. Each group is authorised to determine language matters in their own area, French in Wallonia, Dutch in Flanders, where they constitute the majority; a right

[69] Jones, p. 358.
[70] Denise G. Reaume, 'The group right to linguistic security', p. 129.

which was denied to the Dutch-speaking community until 1970. After constitutional reforms Dutch became the official, business and the language of instructions in education in Flanders. Such an arrangement, as we shall discuss in Chapter 5, is rightly based on the principle that a language group, like any other language groups, has a right to protect and to enhance its distinctive language. It ensures that individuals belonging to such distinct communities have an opportunity of participating in their own cultures with full satisfaction and self respect, since, as Van Dyke argues, "individuals can enjoy enhanced self-respect because of the enhanced status of their group."[71] Thus, the principle that each language group has a right to public recognition of its language is correct. However, such arrangements may restrict individual choices of non-members; Children of French speaking parents attending public school in the Dutch-speaking part of Belgium cannot be taught in their mother tongue. In such cases, an obvious tension arises between the right of the group to preserve and flourish its language (culture) and the right of the individuals, at least non members, to have their own choice of language in education, business and other public offices. Likewise, indigenous groups' right to have a control over property may restrict individual members' right to sell their property to members of the majority group, which the group as a whole does not approve.

Once rights and interests come into conflict with each other, there cannot, as we said, be an arrangement through which all relevant parties' interests and rights can be met fully and equally. Bearing in mind that each group right claim would have its unique arrangements, it can be said that some sorts of restrictions can be justified. The distinction between "external protections" and "internal restrictions" suggested by Kymlicka should be mentioned here. According to this distinction cultural groups can make two sorts of claims: the first sort of claim involves the right of a group against the

[71] Vernon Van Dyke, 'The cultural rights of peoples', p. 10.

larger society; the second one involves the right of a group against its own members.[72] Following this distinction, it can be said that external protections that empower the minority group against the larger society are acceptable insofar as they "ensure that members of the minority have the same opportunity to live and work in their own culture"[73], which members of the majority take for granted.[74] In such a case, the sacrifice required of non-members might morally be less important than the sacrifice required of members of the minority group; a sacrifice that might cause the loss of a culture without which individuals might not have a significant conviction of their life.

VIII

Conclusion

In this chapter, we tried to tackle the idea of group rights in relation to individual rights and interests. We considered two possible standpoints within liberalism in assessing the credibility of group rights. Rejecting the view that regards group rights as rights normatively and practically incompatible with individual rights, we argued that group rights can be defended and justified on the ground that the interests and values protected through them are the *shared* interests and values of individuals. Thus, whether they are exercised individually or collectively, justifications of all group rights are derived from the interests and values which individuals have *as members of* the group. That individuals have the relevant rights as members of the group indicates the function of group rights; namely, they are about the protection of the *collective* life of the group. A cultural life of a group is a form of individuals' collective activity. Denying that collective activity, namely, denying public expression of minority cultures, would undermine the social

[72] Kymlicka, *Multicultural Citizenship*, pp. 35-36.
[73] Ibid., p. 109.
[74] Internal restrictions that allow the group to restrict the liberty of its members obviously involve quite difficult problems for liberals. We shall discuss these problems in Chapter 6.

nature of the relevant individuals, satisfaction of which has much to do with individual well being, because it is that social nature that provides individuals with a context of meaning, identity and choice. Group rights are therefore needed and desired when they protect and further that collective dimension of individual identity.

Claims for group rights would then arise when the larger society's mainstream institutions are designed in such a way that they aim either at assimilating or integrating minority cultures into the majority culture against their will. In other words, there would be a case for group rights when a given situation satisfies three conditions: (1) when the existence of the culture in question, and its values and practices are of significant importance for its individuals and their interests; (2) when they demand to maintain them; (3) but they are, either within the existing arrangements or deliberately, prevented from doing so. Thus, the main thrust of group- right claims is based on a concern that aims at protecting the minority culture against the dominant culture, which, as we shall see in Chapter 5, is inevitably supported by the state. In this sense, group rights are also defended on the ground that since the state inevitably supports a culture (the majority culture), it cannot legitimately deprive minority groups of participating in public life in accordance with their own cultural beliefs and practices. Fairness in a multicultural society requires the state be sensitive to the *distinct collective* life of the minority cultures, protection of which may require some specific group differentiated rights. Thus, given that a cultural community has a significant effect on individual well being, the liberal emphasis on individual liberty, or in more wide sense individual well being, cannot dismiss group rights out of hand, because they are in many cases quite compatible with furthering individual well being. Moreover, viewing people only as individuals and

viewing them only as right holders could end up with ethnic, national and religious injustices.

To be sure, to dismiss the consideration of individual human rights within the discussion of group rights would be a naïve attitude towards the issue. The rights of a group to preserve its culture are as we said limited by the rights of individual human rights, the rights of other relevant groups and the state. They cannot stand and be justified independently from the rights of other relevant parties. The rights of other parties, too, cannot be assessed and justified independently from the collective rights of the minority group. In other words, rights at different levels, namely the individual, the group(s), and the state limit each other, and the rights of each party need to be justified through the consideration of the rights of others. Thus, in assessing the credibility of a given group right, we need to take all relevant parties into account, and arrive at a fair balance of the interests and rights that are involved at the individual, the group and the state level.

On the other hand, there is, particularly in cases of conflicts, no general principle that can suggest what the implications of that balance should be like. In some cases an arrangement may ensure such a balance through, for example, prioritising individual rights against the group, while some other cases may require the opposite. In each case, liberals should challenge group rights for the sake of individual rights and freedom, but they cannot reject them out of hand. They do need to take the strength of individual rights into account seriously while dealing with the question of how a fair accommodation with group rights could be achieved. That is, the main task of liberals in

group rights debates is to find a ground on which they can combine individual human rights with group differentiated rights, as some international documents suggest.[75]

Thus, bearing in mind that the justification of all rights is derived from their contribution to individual well being, the justification of a group right-claim depends on the particular case in which it arises. This is so, because different *demands* and *needs* of different cultural groups call for different forms of rights and arrangements, which require a contextual exploration to be justified. In the next two chapters then, we shall tackle some specific forms of group differentiated rights that could meet those demands and needs, and some problems that could arise through accommodation of them.

[75] Article 31 of *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe*, 1990, states that "persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law." And its article 32 goes on to state that "persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. In particular they have the right
(32.1) to use freely their mother tongue in private as well as in public;
(32.2) to establish and maintain their own educational, cultural and religious institutions or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation;" Likewise, *Proposal for a European Convention for the Protection of Minorities*, 1991, Council of Europe Doc. CDL (91) (7) (1991) in its chapter 1-general principles states that "The international protection of the rights of ethnic, linguistic and religious minorities, ..., is a fundamental component of the international protection of Human Rights, ..."

Chapter III

The Rights of Minority Cultures

I

The issue of the rights of minority cultures arises in societies that contain culturally distinct groups. As constitutive elements of multicultural societies, these culturally distinct groups are national, ethnic, immigrant and religious groups. In this chapter, we shall tackle some specific forms of group differentiated rights for them, which may enable them to maintain their distinctiveness. In doing this, we shall basically follow Will Kymlicka's classification, though we shall present some more considerations in some detail. His classification, we should note from the very outset, is not enough to tackle all the specific needs and demands of different cultural and religious groups. Following Kymlicka's classification, therefore, does not mean that we accept his rationale as the *only* one for distinguishing minority groups and their rights from each other. According to him, for example, the basic determining factor that distinguishes these groups (national, ethnic immigrant and religious groups) and their rights from each other is their *demands*, which are derived from such particular features as "nation" and "ethnicity" that they have. However, as we shall see, this rationale is quite vague for distinguishing these groups. The main obstacle is not that their demands and their general features do not play a role in determining what forms of rights could be suggested for them; but rather, that the rights that could be suggested for them cannot be determined by a *single* factor. Depending on the context, there could be countless different factors for different groups, which determine the form and the degree of the rights that are relevant to them. For example, sometimes their demands may determine what sort of right they should have; but in some other cases, their *need* or the degree of their relationship with the wider society would determine the arrangement. For this

reason, perhaps there cannot be any classification that is able to encompass all sorts of groups and their possible rights.

On the other hand, we need a classification to determine and limit the sphere of our discussion. Since Kymlicka's classification is the one most often cited in the literature[1], we shall, to a great extent, follow it, though the detailed discussion will involve additional considerations, outside his classification. However, as noted above, we shall tackle some specific difficulties involved in his classification in the course of the chapter. But, first, let us start by presenting some minority groups and some possible rights for them. Having tackled these rights and some problems associated with them, we shall discuss another liberal challenge regarding group differentiated rights; namely, the argument that granting these rights to minority groups would undermine some civic virtues on which the ideal of *common citizenship* is based. The second task of this chapter, then, will be to explore the question of the impacts of group differentiated rights on common citizenship.

II

Kymlicka makes a distinction between multinational and what he calls polyethnic societies as forms of culturally plural societies. Multinational societies involve national minorities "occupying a given territory or homeland, sharing a distinct language and culture"[2]. These societies involve two or more nations. Minority nations are "communities that share a state with one or more larger (or more dominant) nations"[3] The incorporation of these nations may take place by agreement or by force; in other

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[1] In a recent publication, for example, Andrea T. Baumeister cites Kymlicka's classification. (Andrea T. Baumeister, *Liberalism and the Politics of Difference*, Edinburgh: Edinburgh University Press, 2000, pp. 28-36.)

[2] Will Kymlicka, *Multicultural Citizenship*, Oxford: Clarendon Press, 1995, p. 11.

words, minority nations may become minorities for various reasons. "They may have been conquered and annexed by a larger state or empire in the past; ceded from one empire to another; or united with another kingdom through royal marriage."[4] Kymlicka and Norman call these kinds of national minorities, stateless nations.

Another kind of national minority group they suggest is indigenous peoples, such as aborigines in Australia and North America, the Maoris and the Inuits. They became minorities when "their traditional lands were overrun by settlers and then forcibly, or through treaties, incorporated into states run by outsiders."[5] However, it is not clear what criteria make them nations and why they differ from stateless nations. According to Kymlicka and Norman, they differ from stateless nations in terms of their *demands*. Although they were independent in the past, their concern is not to form an independent state; rather, their main concern is to be able to maintain their traditional ways of life within existing states. On the other hand, stateless nations, conceiving themselves as distinct political communities, are seeking to protect and maintain their distinctive culture and language either within the existing state or by establishing their own sovereign state. "While [these] nations", they argue, "dream of a status like nation-states – with similar economic, social and cultural achievements – indigenous peoples usually seek something rather different: the ability to maintain certain traditional ways of life and beliefs while nevertheless participating on their own terms in the modern world."[6]

Although these descriptions of indigenous and national minority groups are valid, there is no clear ground on which we can call indigenous groups nations. To be sure, there is

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[3] Will Kymlicka and Wayne Norman, 'Introduction', in Will Kymlicka and Wayne Norman eds., *Citizenship in Diverse Societies*. Oxford: Oxford University Press, 2000, p. 19.
[4] Ibid., p. 19.
[5] Ibid., p. 20.
[6] Ibid, p. 20.

a difference between indigenous groups and national minorities in terms of their demands. But, this difference would not establish a *necessary* criterion through which we distinguish indigenous groups from national groups, nor would it be valid for all stateless nations, in the sense that some of them may not seek to establish an independent state. We shall, in the next, chapter present some criteria that could be suggested for a group to qualify as a nation. Yet, for now, we should note that we had better call indigenous groups, peoples rather than nations.

The second form of multicultural society is, in Kymlicka's words, "polyethnic societies."[7] There are two significant minority groups constituting these societies: ethnic immigrant and religious minority groups. Immigrant groups are those which have left their country of origin, and seek to settle in a new society where they expect to have a better standard of living. The reasons for leaving their native country are various; economic and political reasons are the most common ones. Here, we basically consider the status of immigrants who have been entitled to enjoy the rights of citizenship in their new country.

The second constitutive group of polyethnic societies is religious minority groups. As we noted in Chapter 1, aspects of religions, and their effects in shaping and regulating their believers' practices and perspectives, cannot be assessed within a concept of culture attributable to national and ethnic groups; because they are not cultural groups in the sense that national and ethnic groups are. However, religious differences and their accommodation in liberal societies, as we said, have been going alongside with, and sometimes been at the centre of, the discussion of multiculturalism. For this practical

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[7] Kymlicka, *Multicultural Citizenship*, pp. 30-31.

reason, we include the demands of religious groups and the rights they may have, in our discussion.

Kymlicka and Norman make a distinction between "isolationist" and "non-isolationist" religious groups.[8] Isolationist religious groups are those that isolate themselves from mainstream (or modern) society in accordance with their religious principles and requirements. The Hutterites in Canada and the Amish in the United States are such groups. Isolationist religious communities are basically non-liberal groups in the sense that they keep a distance between their community and the modern world, which is seen as having corrupting influences on their members. Here, our main focus is on the commonly seen religious minorities in liberal societies; namely non-isolationist religious communities, "whose faith differs from either the religion of the majority, or secular beliefs of the larger society and state institutions."[9] They differ from isolationist religious groups in the sense that they do want to participate in the mainstream institutions of the larger society, insofar as they have some aspects of their religious requirements protected or fulfilled as they participate in those institutions. As Parekh notes, "they seek the cultural space to lead and transmit their ways of life and an opportunity to make their distinct contributions to the collective life."[10] Thus, polyethnic societies involve people of different ethnic and religious communities seeking to participate in the mainstream institutions of the larger society without abandoning some of their distinctive ethnic and religious practices and requirements.[11]

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[8] Kymlicka and Norman, 'Introduction', p. 22.
[9] Ibid., p. 23.
[10] Bhikhu Parekh, 'Cultural diversity and liberal democracy', in David Beetham ed., *Defining and Measuring Democracy*, London: Sage Publications, 1995.
[11] We should note that we limit our discussion to those who have the citizenship rights of the host society and *want to* participate in its institutions without abandoning some of their cultural and religious requirements.

In sum, these different forms of minority groups would call for different forms of rights. This is not to say that certain groups would *always* have certain sorts of rights. Different national minorities, for example, could seek to have different degrees of *political autonomy*, ranging from local autonomy to secession; from federation to having their language recognised as an official language in public institutions. These different arrangements highlight the fact that there are various factors that determine the extent and degree of the relevant arrangements for different national minority groups. In this sense, their demands would be only one determinative factor amongst many others. Likewise, indigenous peoples would probably seek a certain degree of local autonomy that enables them to preserve their traditional ways of life. They may seek to obtain some specific norms regarding the content of property rights, that enable them to prevent land alienation, for example. On the other hand, ethnic and religious groups would, as we shall see, have basically two sorts of demands. They may seek to be exempted from certain legal rules and obligations that are not compatible with their cultural traditions or religious requirements and practices. Sikhs and orthodox Jews seeking for exemption from dress codes in the police and military forces, Muslim girls seeking exemption from dress codes in public schools, and Muslims and orthodox Jews seeking exemption from Sunday closing law are such demands. Secondly, they may seek public funds to enable them to maintain their cultural practices. These public funds may vary from funding for a minority language to newspapers, from funding for ethnic associations to book publishing.

We can now address some rights that could be suggested for these groups. Kymlicka, basing his distinction on two major cultural groups, "nation" and "ethnicity", suggests three kinds of group differentiated rights for them. Self-government rights, to a great extent, have the function of protecting national minorities, while polyethnic rights

secure the cultural practices of ethnic and religious minority groups. The third kind of group differentiated rights is representation rights. Both national and ethnic groups may have group representation rights, but for different reasons. While they may sometimes go alongside self-government rights, in the sense that they provide protection against the majority nation, which could unilaterally remove or modify powers of self-government without the minority's consent, they are also seen as rights for redressing the political disadvantages of ethnic and religious minorities.[12] The justification of these three group differentiated rights for minority cultural groups is based on the desire to put these cultures on an equal ground with the dominant majority culture. In other words, the common aim of these special group rights is to establish various arrangements through which members of the relevant minority groups may live in accordance with their cultural values and practices. In this way, the vulnerability of minority cultures to the culture-affecting decisions of the majority group is reduced or eliminated. Let us consider these rights in some depth.

III

1. *Self Government Rights*

Self-government rights are about the protection of territorially concentrated groups. National minority groups, indigenous peoples and territorially concentrated language groups are such groups. However, these rights are mainly suggested for national minority groups, and can provide an extensive form of political autonomy or territorial jurisdiction for them. "Self government claims", as Kymlicka notes, "take the form of devolving political power to a political unit substantially controlled by the members of

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[12] It should, however, be noted that group representation rights could sometimes be permanent measures for these groups as well as for some other groups such as gays, lesbians and any other sort of social groups. In this sense, they are not seen as measures that are based only on the relevant groups' being disadvantaged or mariginalized situations, but measures that ensure a fair public hearing for different interest groups.

the national minority, and substantially corresponding to their historical homeland or territory."[13] These politically autonomous units and territorial jurisdictions promote minority groups' ability to make decisions over their language, education, administration, etc. Thus, self-government rights, as the name suggests, allow members of the group to exercise authority over the group. Although they may have the function of compensating for some past or present disadvantages experienced by national minority groups, the main thrust of the demand for self-government rights is based on the desire that the relevant group should be ruled by its members. In this sense, self-government rights ensure a political unit for the minority group, which is different from that of the majority. These political units may take various forms; they may be cantons, states or provinces in a federal or confederal system. Examples of these forms "range from Quebec to KwaZulu, from Eritrea to Tibet; Slovakia, Scotland, Catalonia, Brittany, Kashmir, the Basque lands, and the Jura canton in Switzerland."[14] Self-government claims can, in their extreme form, amount to secession when a national minority group thinks that it will not be able to maintain its distinctiveness within the larger state.

Federalism

As can be seen, there are many ways of realising the requirements of the principle of self-determination.[15] However, one popular mechanism for self-government is federalism, which divides powers between the central government and regional sub-units such as provinces, states and cantons[16]. Canada, Belgium and Switzerland are examples. One of the requirements for achieving a federal arrangement is that

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[13] Kymlicka, *Multicultural Citizenship*, p. 30.
[14] Jacob T. Levy, 'Classifying cultural rights', in Ian Shapiro and Will Kymlicka eds., *Ethnicity and Group Rights*, *Nomos*, vol. 39, London: New York University Press, 1997, p. 33.
[15] We shall say more about that principle in the next chapter.
[16] Kymlicka, *Multicultural Citizenship*, p. 27.

minorities should be territorially concentrated in certain areas, where boundaries are drawn so that members of a minority group form a majority within the relevant sub-unit, within which the group can exercise its own political power. In this sense, "federal arrangements", as Wayne Norman notes, "allow a minority within a large domain to be a majority within a smaller, territorial sub-unit."[17] They, through decentralised government, turn minority groups into regional majorities and thus enable them to exercise their legislative power over such matters as language, religion, culture and economy. The federal arrangement in Switzerland is such an arrangement; namely, it is a federal state in which power is divided between the central government and twenty-six cantonal governments that perform a wide range of important tasks.[18]

As can be seen, a federal system is a significant method by which the cultural autonomy of different groups is to a great extent ensured. However, it does not particularly focus on certain aspects of a culture; rather, it provides a *political and legislative framework* through which the cultural needs and interests of a territorially concentrated group may be protected. The forms of those needs and interests would determine the scope and form of a particular federal arrangement. In this sense, federal arrangements can differ from each other considerably in content, "ranging from federalism in support of group pluralism and individual liberties in the United States, to federalism in support of local liberties in Switzerland and federalism on a linguistic basis in India, to federalism as a means of gaining mild decentralization in Venezuela."[19] Here, our main focus is on the sorts of federal arrangements like those in Canada, Belgium, Switzerland and Spain, which are about accommodating national, ethnic and linguistic differences.

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[17] Wayne J. Norman, 'Towards a philosophy of federalism', in Judith Baker ed., Toronto: University of Toronto Press, 1994, p. 79.
[18] Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries,* London: Yale University Press, 1984, p. 28.
[19] Daniel J. Elazar, *Exploring Federalism*, Tuscaloosa, AL: The University of Alabama Press, 1987, p. 10.

The reasons that make the idea of federation attractive could be various. The most common ones are those: first, it is argued that it satisfies some practical concerns, which are based on the view that it is simply not possible for all nations to have their own sovereign states. They cannot have their own sovereign states, since, it is argued, there are many more potential nations than territories where they can establish their own states.[20] Second, a fair federal arrangement that would be preferable for the relevant groups would protect the interests of small national groups, which cannot establish and run a sovereign state. Thirdly, it is regarded as a significant alternative form of self-government to secession, which is seen as a threat to common citizenship; namely, as a catastrophe to some shared political, cultural, and social values on which the ideal of common citizenship is based.

Although virtually all sorts of federal arrangement by nature have a dynamic tending to secession[21], federal arrangements between some national groups *may* provide significant responses to the concerns regarding it, since they are, as Elazar defines, "concerned with the combination of self-rule and shared rule". They involve "the linking of individuals, groups, and polities ... in such a way as to provide for the energetic pursuit of common ends while maintaining the respective integrities of all parties."[22] In this sense, federal arrangements establish a balance between the desire to maintain the unity of the state,

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[20] We shall discuss the credibility of this argument in the next chapter. We could for now say that it might support a particular federal arrangement, but it cannot be suggested as a principle through which the idea of secession could be jeopardised.

[21] The possibility of secession arising out of federal arrangements is much more likely than from any other form of self-government rights, since multinational federalism is based on the acceptance that partners are separate peoples constituting a separate political community. That is, as Kymlicka notes, "the more successful a multinational federal system is in accommodating national minorities, the more it will strengthen the sense that these minorities are separate peoples, ... whose participation in the larger country is conditional and revocable. And if the attachment of national minorities to the larger state is conditional, then sooner or later one can expect conditions to change, so that staying within the federation no longer seems beneficial." Will Kymlicka, 'Is federalism a viable alternative to secession?, in Percy B. Lehning ed., *Theories of Secession*, London: Routledge, 1998, p. 138.

which is seen as an entity that guarantees the protection of some *shared interests*, and the national aspirations of the minority groups, which are based on the desire that *they* should determine their own political and cultural affairs. In other words, on the one hand, federal arrangements allow the relevant groups to have self-rule for their own affairs different from those of other groups; on the other hand, they combine them under some shared rules, which may be for the protection of common economic, political and social interests.

Thus, there are two principles to be accepted by the relevant parties as the basis of their federal union: the acceptance of the principle of self rule whereby the relevant groups maintain their distinctive institutions, and the acceptance of the principle of the protection of shared cultural, political, social and economic interests that partners may have. Of course, each particular federal arrangement would have its own specific requirements and terms; but these two principles could be valid for all forms of federalism as their justificatory grounds.

At the practical level, the partners are required to fulfil two conditions if the union is to be stable and fair. First, the state, through legislation or other federal bodies, should not attempt to "recentralize" its authority. To avoid this problem, minority groups should be empowered with full veto and nullification rights on certain culture-affecting decisions. Allen Buchanan, before considering a constitutional right to secede, mentions these two rights as "alternative devices to secession; namely, minority groups should have both "constitutional *group veto right*", the right of a specified group ... to block national legislative proposals" that could adversely affect their cultures, and "a constitutional *right of nullification*, the right of each specified unit ... to declare any item of federal

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[22] Elazar, *Exploring Federalism*, p. 5.

legislation null and void in [their territories]"[23]; nullifying a taxation rule of the federal legislation in their territories, for example. The second condition to be fulfilled is that minority groups, having established a fair arrangement on the side of the state, should not "use secession threats to bargain for unjustified privileges."[24]

All these arguments call for a well-defined constitution. That is, the stability and fairness of a federal arrangement require a well-defined constitution that encompasses all relevant groups' needs and aspirations, and provides them with a ground on which they will be able to "negotiate" fair terms of the union. James Tully calls such a constitutional relationship, "constitutional negotiations [that] are not monologues in an imperial voice, but intercultural dialogues", which reflect the cultural diversity of the population[25]. The scope of such a constitutional dialogue should be determined by democratic means in solving potential conflicts between the parties. Rainer Baubock calls such a union, "democratic federalism"; in other words, "[it] is not just about granting national minorities special rights, it is also about maintaining and defending democratic institutions at the level of the federation."[26]

However, even a well defined constitution that covers all relevant interests of the partners is not a final form of negotiation. As Tully puts it, "[federal] constitutions are not fixed and unchangeable agreements reached at some foundational moment, but chains of continual intercultural negotiations and agreements in accord with, and

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[23] Allen Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*, Boulder: Westview Press, 1991, p. 38.
[24] Rainer Baubock, 'Why stay together?' 'Why stay together? A pluralistic approach to secession and federation, in Will Kymlicka and Wayne Norman eds., *Citizenship in Diverse Societies*, Oxford: Oxford University Press, 2000, p. 371.
[25] James Tully, *Strange Multiplicity: Constitutionalism in an age of diversity*, Cambridge: Cambridge University Press, 1995, pp. 183-184.
[26] Baubock, Rainer, 'Why stay together?', p. 374.

violation of the conventions of mutual recognition, continuity and consent."[27] Here, Tully rightly points out that although such elements as mutual trust, respect, and consent of partners can play a crucial role in maintaining a stable and fair federal arrangement, even such a form of federation cannot guarantee the stability of the union. Partners' desire to have more political and economic power in the decision making process would be the main reason for an unstable union. But this is not a serious flaw in *democratic* federalism. It is accepted that democracy is not a regime of harmony, but a regime providing a platform on which different interests find a fair hearing and parties use peaceful means in spelling out their interests, then the acceptability of a federal union would depend on whether the partners use democratic means throughout their *ongoing dialogues*. Such dialogues would enable them to see their different and shared interests, and thus they could arrive at mutually acceptable arrangements.

We have so far focused on *territorial* federalism. We should note that some significant problems are likely to arise in such federal arrangements. Norman mentions two possible problems: First, he considers scattered linguistic, religious, ethnic minorities, and argues that "[territorial federalism] provides no special mechanisms for assisting members of groups that are not territorially concentrated." The second problem is that devolving state power to a minority sub-unit through federal arrangements inevitably creates new minority groups.[28] In Norman's view, a just federalism requires that we "extend some of the logic of federalism beyond its territorial roots." Considering the Canadian experience, he suggests that "while Inuit and Indians on reserves could participate as new kinds of partners in a territorial federal system in Canada, non-status Indians – who share cities and towns with other Canadians – might nevertheless be

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[27] Tully, *Strange Multiplicity*, pp. 183-84.
[28] Norman, 'Towards a philosophy of federalism', p. 80.

'intraterritorial' or 'consociational' federal partners with control over ... their own schools, hospitals, and social welfare sytem."[29]

The claim that we need to go beyond the logic of territorial federalism would make "corporate federalism" attractive for some cases. Corporate federalism is, as Lijphart notes, "defined in terms of membership in a cultural community regardless of geographical residence."[30] The millet system of the Ottomans, for example, is an example of non-territorial national autonomy. But unlike that system, the non-territorial democratic federalism with which we are concerned here is one whereby the relevant groups should be organised democratically and should have internal democracy, to the extent that the individual consent should be determinative in their participation in the relevant institutions. Baubock considers some advantages of such "membership-based" democratic federalism. In his view, firstly, corporate federalism involves interests of territorially dispersed members of national minorities. Secondly, it removes the possibility of culturally homogenous territories "by promoting ethnic immigration or territorial resettlement." Finally, it grants "similar rights" to all relevant parties, thereby providing a barrier against groups that could be unfairly privileged[31].

To be sure, mechanisms for non-territorial federalism would be applicable mainly for territorially concentrated *internal* national minorities, not for dispersed ethnic and religious groups. It is a fact that almost all liberal societies involve a diversity of ethnic, religious and linguistic minority groups that are dispersed. As we shall see below, their demands for maintaining their cultural particularities could be met within the larger society because they do not conceive of themselves as separate *political communities*,

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[29] Ibid., p. 80.
[30] Lijphart, *Democracies*, p. 183.
[31] Baubock, 'Why stay together', pp. 387-8.

and thus "they are", as Kymlicka notes, "not asking to set up a parallel society, as is typically demanded by national minorities"[32]. Moreover, suggesting corporate federal arrangements for them would mean that those living, for example, in the same neighbourhood, should belong to *different* political units. Such a federal arrangement could give rise to *homogeneity* in each group. This would undermine the possibility of establishing a sense of common citizenship that is required for sustaining the multicultural structure of these societies.

Thus, corporate federal arrangements would be valid when parties involve some other culturally distinct and *territorially* concentrated internal minority groups. Belgium is an example of such federalism; it is *partly* non-territorial federalism. There are two cultural councils, made up of the members of the French community and of the Dutch community. The Dutch cultural council legislates for Dutch-speaking Flanders in the northern part of Belgium and for Dutch-speaking minorities in Brussels, while the French cultural council legislates for French-speaking Wallonia in the southern part and for the French-speaking majority in Brussels.[33] Within these arrangements, the Belgian federation can be called corporate. But this is not the only arrangement. In addition to the non-territorial federal arrangement, the country is divided into three *regional units* between Flanders, Wallonia, and Brussels.[34] As the Belgian case shows, where cultural groups are mixed and have internal minorities, so that drawing federal boundaries between them is not plausible or possible, non territorial federalism becomes a significant alternative to territorial federalism. In such cases we need, as Baubock notes, "to refine [traditional federalism] by adding provisions of non-territorial cultural rights,

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[32] Kymlicka, *Multicultural Citizenship*, p. 15.
[33] Lijphart, *Democracies*, p. 29.
[34] Ibid., *Democracies*, p. 184.

federal protection, and special exemptions and powers for groups that cannot form a federal unit."[35]

External Rules for Indigenous Peoples

That territorially concentrated minority cultures should be entitled to have group power within the relevant territory, to prevent the culture thwarting effects of the regional and central governments' decisions is valid for indigenous peoples as well. Protection of their cultures may sometimes require some measures that put some restrictions on the members of the majority group in their territories. Levy calls such measures "external rules"[36] while Kymlicka labels them as "external protections", which "involve *inter*-group relations - that is, the ethnic or national group may seek to protect its distinct existence and identity by limiting the impact of the decisions of the larger society."[37] External rules would, for example, empower Indians to impose restrictions on the entry of non-members into their territories. American Indians in North America have certain guaranteed powers in their territories, within which non-Indian Americans have restricted "mobility", "property", and "voting rights".[38] These restrictions would entitle them, for example, to "establish longer residency requirements for non-members to prevent formation of voting majorities that would enact laws that erode Indian culture."[39] Restrictions on mobility and property rights entitle Indians to deny non-Indians the right to purchase Indian Lands, or at least, "[Indian] governments might simply enact a surcharge on real estate transactions involving non-Indians as well as a special tax on non-Indians who rent land or dwellings on Indian territory."[40] Likewise, Quebecois "have sought the power to limit the settlement of immigrants in their area.

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[35] Baubock, 'Why stay together', p. 370.
[36] Levy, 'Classifying cultural rights', p. 34.
[37] Kymlicka, *Multicultural Citizenship*, p. 34.
[38] Kymlicka, *Liberalism, Community and Culture*, Oxford: Clarendon Press, 1989, p. 136.
[39] Buchanan, *Secession: The Morality of Political Divorce*, p. 57.

Where ownership or sovereignty do not already grant such control, an aboriginal veto over mining or development on tribal land would serve as an example of external rule."[41]

External rules can be regarded as an example of the minority group's right of self-government. Since the enforcement of external rules often would require some level of government structure which is different from that of the majority group, a connection between external rules and self-government is easy to build up. However, this is not an overall tie. Although all self-government rights involve external rules, not all external rules require a separate government structure. In other words, external rules do not necessarily go along with self-government rights. A minority group, say a tribe, without a valid claim for self-government rights, can legitimately have some right to have the liberty of non-members in its territory restricted.

One possible problem with external rules, as can be understood, is whether putting restrictions on non-members is compatible with the principles of individual freedoms of mobility, property and voting rights. First of all, it can be said that all cultural groups - minority and majority groups- need some restrictions on non-members for the sake of maintaining their own established ways of life and their cultural integrity. On the other hand, not all sorts of restrictions can be accepted. External protections would, like any other rights, have some limitations. If it is accepted that a secure cultural identity is a significant condition for individual well being, the scope of restrictions should be limited to the extent that they do not thwart this condition. Although it is not easy to determine which aspects of a particular culture have significant effects on and importance for its integrity and its individual members, it can, as a general statement, be

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[40] Ibid., p. 58.

said that the comparable interests of members should be more important than the liberty of non-members if external rules are to be justified.

2. Polyethnic Rights

The second form of minority rights are what Kymlicka calls "polyethnic rights". They are basically for ethnic immigrant and religious minority groups, which do not occupy a specific territory. (However, as we shall see, some rights within this category can be suggested for indigenous peoples as well.) Polyethnic rights, as we said, include such rights as the right not to be discriminated against, rights to financial support for cultural practices, and exemptions from laws and regulations in order to enable the members of minority groups to perform their own distinctive cultural practices. These rights are, in Kymlicka's words, "intended to help ethnic groups and religious minorities express their cultural particularity and pride without it hampering their success in the economic and political institutions of the dominant society."[42] Thus, the main function of these rights is to ensure that members of the minority groups can live in accordance with their cultural and religious practices and values, while they *participate* in the mainstream institutions of the dominant society. In other words, while these rights enable ethnic minorities to keep and maintain some distinctive aspects of their cultures, they at the same time help them to integrate into the dominant society in terms of their political and economic activities.

In the context of polyethnic rights, minority groups could have two main forms of demands. The first one, which can be called negative rights, involves demands for exemptions from law and regulations: exemptions from sabbatarian laws, especially exemption from the Sunday closing law, a demand made by Muslims and Jews; and

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[41] Levy, 'Classifying cultural rights', p. 34.

exemptions from some dress codes that are not compatible with religious requirements. are such rights. The second one is about the entitlements of the group to financial support for its cultural practices, such as funding for arts and for language programmes. Fulfilment of these rights would require that at least some members of the majority group provide financial support for minority cultures, for example, via taxation. So they are positive rights. Let us tackle these rights in turn.

a. Exemption Rights

Exemption rights entitle members of minority cultures to engage in their own cultural practices which are not taken into account in the laws or regulations of the dominant society. In this sense, they enable them to be exempt from complying with such laws and regulations. These rights are demanded and justified on various grounds. Some are demanded on religious grounds, some others on cultural and traditional grounds. Demands based on religious grounds could occur in two ways. First, they are demanded when laws impair a minority's religious practices or compel its members to do something, which their religious practices require them not to do. That is, they are forced to act in a manner contrary to that required to do by their religion. Some exemption rights for such groups entitle them to fulfil their religious requirements. "The ceremonial use of wine by Catholics and Jews was exempted from alcohol Prohibition in the United States. The religious use of peyote by American Indians is similarly exempted from laws on narcotics and hallucinogens. The Amish in the United States have sought or obtained exemptions from mandatory schooling laws; ... A century ago American Mormons sought an exemption from laws against polygamy."[43] The second kind of religiously oriented exemption rights arise when members of the minority are expected to enjoy some opportunities insofar as they comply with the majority's rules

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[42] Kymlicka, *Multicultural Citizenship*, p. 31.

and regulations. Exemption rights, in such cases, ensure that members of the minority maintain their religious requirements while they are not disadvantaged in terms of enjoying the same life chances that the members of the majority enjoy. Providing time off on Friday afternoons for Muslims to attend a mosque for prayers; exemption from Sunday closing law for Muslims and Jews, exemption from some dress codes for Sikhs and Muslims while they participate in economic and some public institutions of the dominant society are such rights. The justification of these religiously oriented exemption rights is, as Kymlicka and Norman notes, based on the principle of "freedom of conscience and religion"[44].

There are some other exemption rights which are demanded and justified on different grounds. Demands for exemptions, for example, from hunting and fishing regulations are demanded and justified on cultural grounds. Arguing that these regulations are at odds with their traditional way of life, some aboriginal groups have claimed entitlement to be exempt from them. Likewise, "Afrikaner, Quebecois, and Irish citizens of South Africa, Canada, and the United Kingdom have sought exemptions from conscription, saying that they should not be forced to fight on behalf of England."[45]

Exemption rights would be meaningful if the subject of the demand has a distinctive status and meaning for the members of the minority culture. In other words, the more the subject of the relevant demands has a distinctive status and meaning for the members of the minority culture, the more exemption rights would be desirable and justifiable. However, fully justified demands for exemption rights cannot be assessed independently from their impacts on the majority culture and its members. That is, they

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[43] Levy, 'Classifying cultural rights', p. 26.
[44] Kymlicka and Norman, 'Introduction', p. 25.
[45] Levy, 'Classifying cultural rights', p. 26.

can easily be justified if the subjects of the demands do not thwart the cultural practices and the established life of the larger community. However, these rights are, to a great extent, compatible with the requirement of the *harm principle*, which defines the limits of individual freedom. As Levy argues, "so called victimless crime laws", which allow individuals to maintain their distinctive ways of life insofar as they do not disadvantage others, make exemption rights easy to be accommodated.[46] Yet, there are some cases in which the exercise of exemption rights may come into conflict with the interests of others. A Muslim school teacher's interest in having time off every Friday afternoon for Friday prayers may, for example, conflict with the interests of his pupils and colleagues. In such cases, as we shall see in chapter 5, we expect the relevant parties to moderate their *comparable* interests and demands.

On the other hand, exemption rights may be subject to the criticism that, within a sovereign state, they may bring about discrimination in the sense that they grant liberties or privileges to some, which others lack. This should, it is argued, be regarded as the violation of equal liberty of individuals. Such a concern may be valid to a certain extent. Yet, the main point about exemption rights is to ensure equality between individuals of different cultural and religious groups, rather than to privilege some groups over others. Exemption rights, like many other cultural rights, could easily be justified on the understanding that some cultural and religious practices that have significant effect on individual lives may call for exemption from certain laws and regulations of the dominant society. This is, as we shall argue in chapter 5, a requirement of what we could call *intercultural equality*. The use of Peyote and Marijuana, for example, is a religious requirement for the American Indians and Rastafarians. Banning these drugs for these communities would prevent them from

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[46] Ibid., p. 27.

fulfilling a significant requirement of their religion, and exempting them from the ban does not mean that we privilege them. Rather, we take, as Parekh notes, the "effect" of these practices into account, which are important for individuals in maintaining and forming their cultural and religious identity.[47] Such an arrangement would improve rather than undermine equality between the relevant individuals of different groups.

To be sure, the concern we mentioned above could be valid for some demands regarding exemption rights. Everyone, for example, has a right to public education, and the rule of law should rightly endorse and ensure this right. Problems would arise in some cases when a tradition, based for example on religion, prohibits girls from exercising this right. In such cases, it can be said that there should be some overall principles that put some limitations on a general endorsement of exemption rights, as well as some other cultural rights. In this sense, we should accept a general view that the rights of national, ethnic and religious minorities should be endorsed insofar as they respect basic individual rights. We shall say more on this in chapter 6.

b. *Assistance Rights*

Since some aspects of minority culture may require the majority's subsidisation, the main function of assistance rights is to ensure such subsidisation as to enable the minority groups to engage in their own cultural practices. "The most prominent clusters of assistance rights are language rights; funding for ethnocultural art, associations, and so on. All impose a direct cost onto at least some members of the majority or dominant culture; all seek to allow the minority or subordinated culture to do those things which the majority culture can allegedly do already."[48] Given the fact that the common culture reflects the needs and aspirations of members of the majority culture, these rights are

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[47] Bhikhu Parekh, 'Equality in a multicultural society', *Citizenship Studies*, vol. 2 (3), 1998, p. 409.

defended on the grounds that they establish fairness between different groups, and that such fairness requires that the majority group subsidise some distinctive cultural practices of the minority. As Kymlicka puts it, "given that most liberal states provide funding to the arts and museums, so as to preserve the richness and diversity of our cultural resources, funding for ethnic studies and ethnic associations [and funding for minority language schools and classes] can be seen as falling under this heading."[49] In this sense, funding for minority cultural practices can be regarded as a logical extension of state funding for protection of a culture. Taking this logic farther, Tamir argues that "if the state decides to distribute cultural goods, it should distribute them equally among all its members."[50] Tamir's suggestion is based on the provision of "cultural vouchers" to be consumed by "each" individual in such cultural areas as "state-sponsored language teaching, book publishing, social and historical research, the formulation of national curricula."[51]

However, assistance rights are sometimes rejected on the ground that they impose a cost on the members of the majority culture, and thus, they provide members of specific groups with unequal benefits. Indeed, providing assistance for minority cultural practices does, to some extent, impose a cost on the members of the majority. Besides, assistance in language provision, support for community magazines, ethnic associations, museums, ethnic festivals and the like would require a special provision that imposes a cost on the members of the majority group. But demands regarding such practices are related to cultural practices that the members of the majority group already enjoy. This is exactly one of the significant points that justifies the assistance in question and many other cultural rights; namely, the costs involved in provision of assistance rights may be

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[48] Levy, 'Classifying cultural rights', p. 29.
[49] Kymlicka, *Multicultural Citizenship*, p. 31.
[50] Yael Tamir, *Liberal Nationalism*, Princeton, N.J.: Princeton University Press, 1993, p. 54.

less important than the unfairness which could arise when the members of the minority group are denied the opportunity to maintain their cultural practices and values, which members of the dominant culture take for granted. In this sense, even though all assistance rights may impose some costs on the members of the majority culture, these costs could be justified in the name of establishing intercultural equality between the relevant groups.

Another disputed point involved in assistance rights is that they may encourage the separation of the cultures in question. Levy argues that many assistance rights aim to promote integration, and cannot be considered to incur the charge of separatism. This is, particularly, the case when regulations are so designed that they provide all individuals with participation in a political system, i.e. offering multilingual ballots. "On the other hand", he maintains, "funding for minority-language schools, newspapers, radio stations, and so on, while allowing the minority to do the same sorts of things as the majority, do not encourage the two groups to pursue their activities together and do not seem integrationist."[52] However, the justification of assistance rights does not depend on whether provision of them would encourage separatism or not, rather it would depend on whether they improve fairness between the relevant groups. Even if assistance rights provide a licence for separatism, this could be justified by some further considerations, about which we shall say more in the next chapter.

A criticism of the term polyethnic rights

Before tackling the group representation rights, we would like to present one criticism of the term polyethnic rights. According to Joseph H. Carens, Kymlicka's use of the term "polyethnic rights" for immigrant minority groups is not a comprehensive

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[51] Ibid., p. 54.

categorisation for group differentiated rights "because it suggests that only members of ethnic groups do (and perhaps should) possess such rights"[53] Since groups enjoying polyethnic rights are not only ethnic groups, but also religious groups as well as members of national minorities, the term polyethnic rights is not an appropriate term for non-ethnic minority groups and their rights. Carens considers Muslim immigrants in the west, coming from different societies and ethnic background, and thus having different languages and customs. In their cases, he argues, the use of the term polyethnic rights does not fit their religious demands. Likewise, the term polyethnic rights does not enable us conceptually to distinguish such rights from self-government rights even though, he maintains, "Kymlicka wants to establish both empirical and normative links between self-government rights and national minorities on the one hand and between the second kind of rights (polyethnic rights) and ethnic groups on the other hand."[54] Indeed, not only demands of religious groups, but also some demands of indigenous peoples and national minorities can be considered within these rights. Exemption from hunting regulations and assistance for the promotion of a minority language are such rights.

What Carens suggests is the term "recognition rights" instead of polyethnic rights. "This would", he argues, "give some indication of what function the rights perform, which is, broadly speaking, to provide public recognition of and support for certain minority cultural practices or forms of identity"[55] In response to Carens, Kymlicka admits that the term polyethnic rights is misleading. However, the term recognition rights, too, he

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[52] Levy, 'Classifying cultural rights', p. 32.
[53] Joseph H. Carens, 'Liberalism and culture', *Constellations*, vol. 4 (1), 1997. p. 37.
[54] Ibid., p. 37.
[55] Ibid., p. 37.

maintains, is misleading. Citing Nancy Fraser[56], he argues that talk about the "politics of recognition" has been so exaggerated that recognition has been desired for its own sake rather than for securing a fair redistribution of power and resources. In his view, the rights of minority groups should be accommodated through the institutions that are operational rather than symbolic. He therefore suggests the term "accommodation rights", instead of polyethnic rights, and goes on to argue that we need to consider "substantive changes" in order to meet the needs of minority groups.[57]

Given Carens' criticism and Kymlicka's response to it, it might be better use the term *ethnoreligious rights* as an umbrella term covering the terms suggested by them, although it does not connote the rights that could match the demands of some national minorities. Henceforth in this work, we shall use the term ethnoreligious rights to refer to the rights of ethnic and religious minority groups.

3. Group Representation Rights

The third category of rights suggested for minority groups is representation rights. These rights can be applied to all minority cultural groups, as well as to some social groups. They are regarded as rights providing a fair hearing in the political decision making process for such groups as ethnic, national and religious minorities, as well as women, gays, lesbians, the poor and disabled. In other words, the need for group representation would arise not only between minority cultural groups and the dominant groups, but also between various social groups such as men and women; rich and poor; able-bodied and the disabled; whites and blacks. However, we limit our discussion to

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[56] Nancy Fraser, "From redistribution to recognition? Dilemmas of justice in a 'Post-Socialist Age'. New Left Review, 1995.

[57] Will Kymlicka, 'Do we need a liberal theory of minority rights? Reply to Carens, Young, Parekh and Forst', *Constellations*, vol. 4 (1), 1997, p. 86-87, n.3.

cultural groups and refer to other groups where it is necessary in order to evaluate the credibility of a particular group's demands for cultural rights.

The common logic of representation rights for other social groups is valid for cultural minority groups as well. That is, the main function that group representation rights serves for these groups is to ensure a fair representation for them in the relevant political processes that might otherwise ignore their interests and views. In this sense, they are about including them in the decision-making process, through which they could be able to present their cultural needs and interests, rather than granting some group-differentiated rights that match their cultural needs and practices. The basic justificatory ground for representation rights is based on the fact that, even in developed democratic societies, the political process is not fully representative in terms of not reflecting the cultural diversity of population and its different interests and needs. That different groups have some considerably different interests and needs requires that these interests and needs be taken into account in that process. For that reason, a group may seek an arrangement through which they are represented *by their own members* in the decision-making bodies of the state in order to secure their interests and prevent discrimination. This would, as Kymlicka notes, correct some systemic disadvantages, or remove some barriers in the relevant political process "which makes it impossible for the group's views and interests to be effectively represented".[58] In this sense, it is compatible with representative democracy. It is based on the same understanding that just as different individual interests should be reflected in politics, so should some different interests and needs of cultural groups, which have much to do with their individual interests.

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[58] Kymlicka, *Multicultural Citizenship*, p. 32.

It may, on the other hand, be argued that the common rights of citizenship can serve this purpose. Indeed, the common rights of citizenship ensure that individuals have equal rights to vote, through which their interests find a fair hearing in the political decision-making process. In this way, they could have a crucial role in providing a fair voice for minorities. However, they are not sufficient to reflect the cultural needs and interests of various groups in a multicultural society, since they miss the community dimension of interests, i.e. that individuals vote as members of communities of interests, and wish to be represented on this basis. In this sense, common rights of citizenship do not reflect diversity of cultural interests in the relevant politics. As Kymlicka notes, "African-Americans constitute approximately 12.4 per cent of the population in the United States, but hold only 1.4 per cent of the total elected offices, ... Hispanic-Americans constitute 8 per cent of the population, but hold only 0.8 per cent of the elected offices, ... In Canada, Aboriginal peoples constitute 3.5 per cent of the population, but hold only 1 per cent of seats in the federal legislature."[59]

Depending on the particular situation of each society, mechanisms for providing representation rights differ from each other considerably. It may be done according to a fixed quota system, population, a single member legislative assembly or party-list system.[60] These different forms may involve some common issues for representation. In a party list system, the minority group can have a fixed number of seats for its members. But these members may not be chosen representatives of the group; rather, they are, as members of the group, appointed through the legislative process. Here, the emphasis is

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[59] Kymlicka, *Multicultural Citizenship*, p. 132.

[60] In Zimbabwe's first decade of black rule, 20 percent of parliamentary seats were reserved for whites, and three out of the nine seats on Canada's Supreme Court are reserved for Quebec. The number of seats reserved for Maori representation in New Zeland Parliament varies with the number of people choosing to vote on the reserved electoral roll rather than the general one. "Majority-minority" single-member legislative districts have been used in the United States to increase black representation in congress. In party-list systems, parties might have formal or informal commitments to have a certain portion of their candidates coming from particular groups. (Levy, 'Classifying cultural rights', p. 43.)

on the identity of the officials, rather than the identity of the electors. This is, to some extent, similar to preferential or reverse discrimination policies. Alternatively, the main focus may be on the identity of the electors, and fair conditions are sought for the relevant groups to elect their own representatives.[61] Another issue involved in representation rights is that the minority groups may not be represented due to being overwhelmed by majority votes at the time. Some mechanisms have been deployed in order for minority groups to avoid facing this problem.[62]

In Kymlicka's view, group representation rights are seen as temporary measures to the extent that they exist in so far as there are disadvantaged or marginalized groups. This view that representation rights may no longer be necessary when disadvantages are removed may be valid when these rights are needed because of the disadvantage or marginalization of the minority. In this sense, they differ from other group differentiated rights. That is, neither self-government nor ethnoreligious rights can be regarded as temporary measures because the cultural aspects they cover are enduring ones. However, representation rights, too, can be permanent measures.[63] This is especially the case for some groups that claim self-government rights. Kymlicka cites the Canadian Constitution that guarantees three Quebecois judges out of nine on the Supreme Court.[64] And the different forms of group representation rights to which we drew attention above reflect the fact that at some levels of legislature or jurisdiction, group representation rights could go alongside self-government rights. In such cases, representation rights provide a protection against the majority to ensure it cannot unilaterally remove or

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[61] Examples include the Maori voting roll; the pre-coup Fijian constitution with voting rolls for Fijian, Indians, and others (mainly British); and racially gerrymandered districts.

[62] Minority vetoes; Switzerland's seven-person executive council and rotating presidency; pre-civil war Lebanon's reservation of the most important government positions according to cultural/religious status; Belgium's requirement that linguistic legislation be approved by a majority of parliamentarians from each linguistic group; and so on. (Levy, Ibid., p. 45.)

[63] For a view that regards group representation rights as permanent measures see, Iris Marion Young, *Justice and the Politics of Difference*, Princeton, N.J.: Princeton University Press, 1990.

modify powers of self-government without minority's consent. However there is a negative correlation between the degree of self-government rights and representation rights: the greater the degree of a group's exercise of self-government rights, the less its degree of group representation rights.

Some Problems with Group Representation

The ideal of group representation is based on the view that members of the relevant group should represent it, since they are the ones who have the same experiences as other members, and thus know their interests and needs best. In 1789, a group of Frenchwomen laid claim to a place in the Estates General in the following terms:

> Just as a nobleman cannot represent a plebeian and the latter cannot represent a nobleman, so a man, no matter how honest he may be, cannot represent a woman. Between the representatives and the represented there must be an absolute identity of interests.[65]

That each group should be represented by its own members has some obvious difficulties. First, it may amount to a kind of politics through which each group would pursue its own interests without taking into account other groups' legitimate needs and interests. It could undermine such necessary conditions for different cultural groups to co-exist peacefully as mutual trust, co-operation and willingness to understand each other's needs and interests. To avoid this, we expect different constitutive groups in a given society to *represent* others' legitimate demands and interests. Second, the view that each group should be represented by its members may not be possible. Each group

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[64] Kymlicka, *Multicultural Citizenship*, p. 33.
[65] Cited in Anne Phillips, 'Dealing with difference: a politics of ideas or a politics of presence', *Constellations*, vol. 1 (1), 1994.

has its own subgroups. While their interests or needs may be different from those of their fellow members, they may very well be compatible with the interests and needs of the members of other groups. As Kymlicka puts it, "within the category of women of colour, can Asian women represent African-Caribbean women? Can middle-class heterosexual able-bodied Asian women represent poor, disabled, or lesbian Asian women?"[66]

Given these limitations, we need to consider two points as justificatory grounds for group representation rights. First, we need to hold a view that group representation rights are needed where they are the only significant measures for eliminating disadvantages, and promoting fairness between the relevant groups. Second, whenever they are needed, they should be made subject to the constraint that they should not overstep or ignore the interests of others. Thus, we need to have a kind of *political culture* through which each group should be able to understand other groups' needs and interests as well as interests of their individual members, and take them into account *equally* in forming their demands.

IV

Having considered those group differentiated rights, we would like to tackle two issues involved in them: the questions of how firm such a classification could be, and of what the impacts of group differentiated rights on common citizenship are. Let us start with the first one. As we noted before, the classification is not enough to cover all specific needs and demands of different minority groups, and thus has some limitations in terms of providing a comprehensive theoretical framework for the issues involved in multiculturalism. Perhaps the main issues involved in multiculturalism cannot be

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[66] *Multicultural Citizenship*, p. 140.

tackled purely on theoretical grounds, since they arise in practice. Each issue would have its own unique problems and solutions. Given that, any classification would inevitably have some limitations, including Kymlicka's. Iris Marion Young, for example, argues that Kymlicka's theory about institutional recognition of cultural plurality by granting different specific rights to different "kinds" of minority cultures fails to achieve this purpose. According to her, drawing a sharp distinction between nations and ethnic groups makes Kymlicka stop with a "duality", rather than a plurality. In this sense Kymlicka's account suggests a "dichotomy" between national and ethnic minority groups.[67] The main problem is, she maintains, Kymlicka's use of the term nation. Defining the nation as an "internally unifying" existence leads him to hold the view that nationhood is essentially separatist. "The distinction between national minority and ethnic minority turns out to be a distinction between a cultural group that wishes to and has the right to be a separate and distinct society, on the one hand, and a cultural minority that wishes to or is expected to integrate into a larger nation."[68] What Young suggests is that differences between cultural minority groups are a matter of "degree" rather than "kind". Cultural minorities can be considered within a "continuum". They vary along a continuum. Whether a national minority group wishes to be a separate society is a matter of degree; again, whether an ethnic minority group wishes to integrate into the majority culture is a matter of degree; whether the majority group endorses participation of members of the minority group in the mainstream culture is also a matter of degree.[69]

Indeed, such a dichotomy between national and ethnic minority groups suggests separation for national minority groups and integration for ethnic minorities. Although

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[67] Iris Marion Young, 'A multicultural continuum: a critique of Will Kymlicka's ethnic-nation dichotomy', *Constellations*, vol. 4 (1), 1997, p. 49.
[68] Young, 'A multicultural continuum', p. 51.

Kymlicka does not want to arrive at this conclusion, his classification does have this implication in the sense that, as Paul Gilbert argues, "it is not, in the final analysis, what people want, what they themselves actually value, that determines what rights he allows them. It is rather the nature of the culture they have."[70] To be sure, Kymlicka is aware of the problematic nature of such a strict distinction between national and ethnic minorities. In his *Multicultural Citizenship*, he raises this problem by saying that "perhaps we should instead think of all these groups as falling on a continuum."[71] But he rejects this idea. Citing Ted Gurr[72], he argues that "a recent survey of ethnocultural conflict throughout the world concluded that most groups involved fall into two basic patterns."[73]

Thus, his starting-point, as he says, is the actual practices of liberal states towards minority groups. A sharp distinction between voluntary immigrant and national minority groups can easily be seen in the practices of liberal democracies. In these practices, immigrants are legally expected to integrate into the majority culture, in terms of receiving education in the language of the dominant culture, and learning some basic facts about the history and the political institutions of the new society, in order for them to participate in the economic, political and some other institutions of this society. According to Kymlicka, linguistic and institutional integration of ethnic immigrants does not mean that these liberal democracies aim to achieve a total assimilation of ethnic minorities into their culture; on the contrary, they allow the members of minorities to maintain some distinctive practices regarding their original culture. As to

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[69] Ibid., p. 51.
[70] Paul Gilbert, *Peoples, Cultures and Nations in Political Philosophy*, Edinburgh: Edinburg University Press, 2000, p. 180.
[71] Kymlicka, *Multicultural Citizenship*, p. 25.
[72] Ted Gurr, *Minorities at Risk: A Global view of Ethnocultural Conflict*, Washington, D.C.: Institute for Peace Press, 1993.
[73] Kymlicka, *Multicultural Citizenship*, p. 25.

the national minorities, he maintains, in contrast to the treatments they were exposed to in past centuries, liberal democracies in this century have been granting some sorts of self-government powers to them to have their own institutions operating, for example, in their own language. Thus, these differential rights for national and ethnic minorities are "surprisingly" uncontroversial in these democracies.[74]

Moreover, these differential treatments, he maintains, have been widely accepted by both national and ethnic minority groups. The successful integration of immigrant groups has occurred because these groups are aware that some of the conditions, e.g. a defined territory, that would need to be met for them to establish their own society with their own institutions and language, are not met. In such cases, insisting on full access to their native culture would mean that they would not be able to maintain their original culture in full, nor would they have access to the economic, educational and political institutions of the mainstream society; they would thus live at the margins of the society. On the other hand, the same suggestion, as he maintains, does not apply to national minorities. Their integration into the mainstream society is possible, but it is neither necessary nor fair. It is not necessary because they are clearly distinct societies. Unlike immigrant groups, they can have their own public institutions that are different from those of the majority. And it is not fair to demand that they integrate into the majority culture, because their own institutions provide them with a context within which their members can live fully in accordance with their cultural nexus. The actual practices of liberal democracies have widely perceived their national minorities in this way.[75]

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[74] Kymlicka, 'Do we need a liberal theory of minority rights?', p. 73.
[75] Ibid., p. 76.

These democracies and Kymlicka's classification, on the other hand, do not provide a successful conception of how other minority groups should be accommodated within the liberal norms of "freedom and equality". There are a number of groups that cannot be regarded as voluntary immigrant groups, nor can they be seen as incorporated national minorities. Gypsies, ethnic Russians living in countries which seceded from the old Soviet Union, African-Americans whose ancestors were forcibly brought to America as slaves, involuntary immigrant groups and people of Indian descent who were forced to live in Africa do not fit the classification we have presented. Gypsies do not fit the criteria for national minorities, in terms of not having a certain homeland and thus not being territorially concentrated. Russian minorities, perceiving seceded countries as their homelands, fit into neither the immigrant nor national minority groups. African-Americans, who are descendants of slaves who were deprived of their own culture but also isolated from the new culture, can be regarded neither as an incorporated national group nor as a voluntary immigrant group. "The point here", as Matthew Festenstein puts it, is that "the class of dispersed cultural minorities is not coextensive with the class of voluntary minorities."[76] Moreover, the situations of some territorially concentrated religious groups, like Hutterites and the Amish, do not fit Kymlicka's categorisation. Thus, considering all these minority groups which do not fit Kymlicka's categorisation, we face a considerable number of minority groups which need to be taken into account.

Kymlicka recognises that his theory has little to say about these minority groups. He accepts that his theory has some serious limitations in the sense that it excludes some minority groups, and that it does not provide everything for everybody.[77] The fact that

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[76] Matthew Festenstein, 'Cultural diversity and the limits of liberalism', in Noël O'Sullivan ed., *Political Theory in Transition*, London: Routledge, 2000, p. 80.
[77] Kymlicka, *Multicultural Citizenship*, pp. 13-26 and 131.

"we don't have enough alternatives on the table"[78] reflects the fact that this limitation stems basically from the nature of the issue itself, which does not admit a generalisation. Given that, the situations of the groups we mentioned call for some other arrangements that should be worked out for them. The fact that all ethnic relations are continuously in transition makes it quite difficult to suggest overall forms of rights for these groups, as well as other groups we have tackled. This fact gives rise to the view that we cannot assess the scope of these rights and their merits in the abstract; rather, we need to have a deep understanding and evaluation of these relationships in their particular contexts. This may very well require a unique form of arrangement for each relationship, through which fairness could be achieved.

V

The Impacts of Cultural Rights on Common Citizenship

One of the main concerns over group differentiated rights is that they would, it is argued, undermine the common citizenship on which social unity is built. The ideal of common citizenship is based on the historical rejection of social structures in which people's political statuses were determined by their ethnic, religious and class membership. The main implication and virtue of common citizenship is that it regards individuals as having equal and the same rights, regardless of their cultural background. This, in turn, provides a ground for democratic citizenship, through which a sense of solidarity is established between individuals. Thus, the protection of shared civic identity and democratic citizenship requires the establishment of a common citizenship status for all members of a society, regardless of their national, ethnic and religious

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[78] Kymlicka, 'Do we need ...', p. 72. Kymlicka here refers to Jeff Spinner's work to show that there are few systematic accounts in the literature about how we should treat minority cultures. (*The Boundaries of Citizenship: Race, Ethnicity and Nationality in the Liberal State*, Baltimore: Johns Hopkins University Press, 1994). And he says, this account is similar to his account in the sense that it is also based on the basic distinction between immigrant ethnic groups and incorporated national minorities.

background. In this sense, it is argued that once we locate individuals into their ethnic, national or religious membership and grant rights on these bases, then the vital function of common citizenship that secures shared values or common civic identity would be undermined.

This explains why some liberals are not comfortable with group differentiated rights, in the sense that they will undermine the sense of common-democratic citizenship, which is based on some shared civic virtues. According to William Galston, the health of liberal-democratic citizenship depends on four types of civic virtues that citizens are expected to display: "(i) *general* virtues: courage; law-abidingness; loyalty; (ii) *social* virtues: independence; open-mindedness; (iii) *economic* virtues: work ethic; capacity to delay self-gratification; adaptability to economic and technological change; and (iv) *political* virtues: capacity to discern and respect the rights of others; willingness to demand only what can be paid for; ability to evaluate the performance of those in office; willingness to engage in public discourse."[79] In his view, these virtues should be regarded as constitutive elements of liberal democratic societies, "which tend to be organised around abstract principles rather than shared ethnicity, nationality, or history."[80] Likewise, Chandran Kukathas, who regards individuals, "with particular rights and freedoms, as the primary actors in the public realm"[81], argues that liberal politics in a diverse society should be based on a sense of citizenship where members of different groups put aside their differences and engage with the consideration of common good of all citizens in the public domain. In his view, "people from particular religious or cultural or intellectual or moral backgrounds should have every right and

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[79] William Galston, *Liberal Purposes: Goods virtues and diversity in the liberal state*, Cambridge: Cambridge University Press, 1991, pp. 221-227, cited in Kymlicka and Norman, *Citizenship in Diverse Societies*, p, 7.
[80] Ibid., p. 221.

the freedom to speak or to play a role in public affairs. But they enjoy these rights and freedoms as individual citizens, rather than as members of or representatives of particular groups."[82]

As can be seen, these concerns about group differentiated rights in relation to common citizenship stem basically from two views; that citizenship requires some common set of rights that protects shared civic virtues; and that the state, as a requirement of achieving a *just* society, should display *benign neglect* towards different cultural practices. As can be seen, these two views are closely related to each other, and they have certain shortcomings. As we shall see in chapter 5, the state cannot be neutral towards different cultures; it inevitably supports certain culture(s) and undermines others. Here in this section, however, we would like to tackle the question of what kinds of impacts group differentiated rights could have on common citizenship, and the question of what common citizenship should be like in a culturally plural society.

It is correct that the health of a democratic society strictly depends on some shared civic virtues that citizens *should* display in the public domain. Indeed, the virtues Galston mentions are necessary conditions for a good society to be achieved. But these virtues and qualities cannot be perceived in the same way as they are perceived in culturally homogenous societies. In culturally diverse societies, as Kymlicka and Norman put it, "the goals of citizenship, and the means of promoting it, must take into account the levels and forms of ethnic and religious pluralism."[83] Citizenship in such societies, as Parekh notes, is a "much more differentiated and far less homogenous concept than has

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[81] Chandran Kukathas, 'The idea of multicultural society', in his ed., *Multicultural Citizens: The philosophy and politics of identity*, The Centre for Independent Studies, 1993, p. 26.
[82] Ibid., p. 28.
[83] Kymlicka and Norman, 'Introduction', p. 8.

been presupposed by political theorists. It therefore requires a more nuanced and diversified theory of political obligation than has been offered so far."[84]

To be sure, different forms of group differentiated rights would have different impacts on common citizenship. We need, then, tackle the question of citizenship in two kinds of society; namely, common citizenship in multicultural societies and multinational societies.

Common citizenship in multicultural societies

Whether group differentiated rights impose threats on common citizenship or not would depend on whether the demands of the relevant groups involve elements of integration with the larger society or not. Demands for group representation rights, for example, could be partly integrationist, and thus may be compatible with the idea of strengthening common citizenship between different groups. That is, the demands of non-territorial ethnic groups, as well as such groups as women or the disabled to be represented in the decision making process of the larger political community are not motivated by the desire to separate themselves from it. Rather, as we said, they are about removal of some disadvantages. This, in turn, strengthens some of the shared civic virtues on which the ideal of common citizenship is based. On the other hand, representation rights for territorially concentrated national minority groups may not be integrationist. But even in such a case, it can be said that once parties agree on some forms of group representation, they could also agree on a kind of dialogue through which "citizenship [could be] "conceived of mediated by membership of relevant parties and the identities they provide."[85]

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[84] Bhikhu Parekh, 'The Rushdie affair: research agenda for political philosophy', in Will Kymlicka ed., *The Rights of Minority Cultures*, Oxford: Oxford University Press, 1995, p. 311.
[85] Gilbert, *Peoples, Cultures and Nations in Political Philosophy*, p. 164.

Likewise, most demands for ethnoreligious rights involve significant elements of integration into the mainstream society, and have a function of furthering a different sense of common citizenship from the citizenship suggested for culturally homogenous societies. While such demands as those of the Amish and the demands of some other religious groups to have their children exempted from compulsory education are not integrationist, the cases of Sikhs, wanting to join the Royal Canadian Mounted Police, but with their own dress code, *turban*; or of Orthodox Jews, wanting to join the US military, but with their *yarmulke*, are examples of the desire of these groups to integrate into the mainstream society.[86] Likewise, the demands of Muslim girls to attend public schools with their *headscarves*, and the demands of Muslim women to be exempted from some dress codes while participating in public offices and some other institutions of the dominant society are integrationist.

Since these groups take the legitimacy of the larger political community for granted, the rights that refer to their demands should be regarded as enhancing common citizenship rather than as threats of undermining it. That is, their demands for some special rights should be understood as demands that the larger society should *modify* some rules and regulations to accommodate their special needs which are based on their cultural and religious requirements, so that they can be full members of it. Thus, such demands point out the need for *redefining* the scope of common citizenship in a multicultural society. The scope of such common citizenship is that ethno-religious groups may owe political loyalty to the state, but not to its cultural values, customs and way of life.[87] Thus, the loyalty of these groups does not rest on cultural grounds.[88]

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[86] Kymlicka, *Multicultural Citizenship*, p. 177.
[87] Parekh, 'The Rushdie affair ...', p. 310.
[88] Gilbert, *Peoples, Cultures and Nations*, p. 172.

On the other hand, accepting that citizenship "is not just acquiescence in the legal system that the requisite sense of obligation expresses, but endorsement of it as, in a certain sense, one's own"[89], common citizenship in a multicultural society cannot be established only on political grounds, but must rest also on the ground that its politics accommodates distinct cultures and their demands. The fact that the state cannot display benign neglect and that a particular culture is reflected in its institutions at the expense of other cultures would require that it should, to some extent, accommodate the cultural needs and demands of its minority groups within its institutions, if these groups are to endorse it as their own. In other words, if such a state is to be a legitimate political entity in the eyes of its constitutive different groups, then, as Gilbert puts it, "constitutive links between citizenship of a state and the legitimacy, justice and freedom at which the state should aim" would require it to accommodate "different collective identities in the way that [these identities] are treated as members of state."[90] Establishment of common citizenship requires such an accommodation in a culturally diverse society, if culturally distinct minority groups are demanded or expected to be *members* of the state, and demanded to be an integral part of it. It should be so because to sustain such a society would require that these groups, like any other individuals, should feel that the relevant political community *belongs to* them and they, in return, *belong to* it.

This is a requirement of a pluralist perspective, and culturally diverse societies should reflect this fact in their cultural and political institutions. The larger political community (the state) should combine its culturally distinct communities with a new definition of citizenship. This would require some special group rights, since common citizenship in

a culturally diverse society cannot be ensured by assimilating minority cultures into the majority; rather, it requires, in Baubock words, "pluralization of the polity that builds upon the fundamental assets of common individual citizenship and strengthens them by recognising the impact of group membership on the citizens' social and economic opportunities, political powers, and cultural resources."[91] The very structure of a multicultural society itself generates a kind of culture that cannot be *identified* by appealing to any single constituent group's culture. This does not mean that a multicultural society does not have a shared culture leading its members to maintain a common way of life; rather, it means that the common culture cannot be based on the generalisation of a particular culture over other cultures. Thus, common citizenship in a multicultural society would require that no group could legitimately generalise its own cultural values and impose them on others. Politics in such a society should reflect this basic structure in a way that can be equally acceptable to all citizens.[92] Politics in a culturally diverse society will, then, have two basic implications: "to unite its diverse cultures around a common way of life and to respect and nurture their diversity."[93] There is no overall principle to be suggested for determining the extent and degree of unification and diversification of the relevant groups. Yet one point is clear: common citizenship in a multicultural society would require all relevant cultural groups occupy a standpoint through which they aim at arriving a *negotiable* conception of identity. A search for such an identity would take these groups into account equally and arrive at a form of society where no cultural group can have a conviction of its own cultural prerequisites being *absolute*, through which they can establish a sense of common citizenship.

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[89] Ibid., p. 149.
[90] Ibid., p. 3.
[91] Baubock, 'Why stay together? ...', p. 390.
[92] Rainer Forst, 'Foundations of a theory of multicultural justice', *Constellations*, vol. 4 (1), 1997, p. 63.

However, the arguments we mentioned above, to a great extent, do not apply to self-government rights. They are, as we have said, different from the other two rights in the sense that they have an implication of weakening the political, economic and cultural ties with the larger political community, and thus weakening the shared status of citizenship. What makes most self-government demands distinct from other minority right claims is that the relevant minority groups believe that they are, like the larger political community, also a distinct political community. Their union with it is based on the condition of having some governmental powers to maintain their distinctiveness. This union could be terminated when they believe that they do not have enough governmental power to *determine* their own affairs. However, there is no overall criterion for determining the scope of this power. As Kymlicka notes, "there seems to be no natural stopping to the demands for increasing self-government. If limited autonomy is granted, this may simply fuel ambitions of nationalist leaders who will be satisfied with nothing short of their own nation-state."[94] It is exactly this feature of self-government demands that challenges common citizenship. That is, the justification of self-government rights cannot be based only on removing some disadvantages and valuing the existence of culturally distinctive ethnoreligious groups, which in turn strengthen the common citizenship of a single political community. Self-government rights, to a great extent, are based on the acceptance that members of the relevant group belong to a distinct political community, whose *mere existence* entitles it to *determine* its own public affairs. Therefore, self-government of a minority group may have two serious consequences. First, it may amount to rejection of common citizenship within

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[93] Bhikhu Parekh, 'Common citizenship in a multicultural society', *The Round Table*, 1999, vol. 351, p. 455.

[94] Kymlicka, *Multicultural Citizenship*, p. 182.

the larger community. Secondly, related to the first consequence, it may also involve rejection of multicultural citizenship, whose value is derived from valuing the co-existence of different cultures.

However, these challenges to common citizenship and to the idea of valuing multicultural citizenship do not weaken the arguments for self-government rights. First, as we stated before, the practices of many multinational countries, historically, have proved that not only did their attempts to assimilate or to be indifferent to the demands of their national minorities fail, but also their attitudes caused bitter conflicts, which themselves undermined common citizenship. Second, not granting any level of self-government rights to relevant minority groups for the sake of establishing a healthy common citizenship does not in fact achieve this objective. As a result of not being granted any level of self government rights, minority groups feel alienated from the major institutions of the society, and this, too, threatens common citizenship. It turns out that common citizenship can be threatened both through granting and not granting some level of self-government rights to national minorities. We argue, however, that granting some levels of self-government rights *may* improve, rather than diminish the sense of common citizenship between the relevant groups. The scope of establishing a healthy common citizenship in a multinational state should involve supporting the cultural needs and aspirations of the national minority groups through granting some levels of self-government rights. Of course, this argument does not extend to secession. Although secession of a national minority is not the first resort, it can be justified by some considerations over common citizenship. As we shall see in the next chapter, these considerations may very well be compatible with some principles of liberalism. Furthermore, it is also the case that, in many circumstances where conditions are compatible with the demands for self government, i.e. demands of groups conceiving

themselves as distinct political communities, historically occupying a certain territory, being a majority in that territory, and wishing to determine their own political institutions, accommodating these demands within separate government structures would be easier to justify than accommodation of common citizenship within a sovereign state.

VI

Summary

In this chapter we have presented three different forms of group differentiated rights, self-government rights, ethnoreligious rights and group representation rights, implementation of which could fulfil the demands and needs of such minority groups as national, ethnic, religious and indigenous peoples. The common aim of these rights is to establish various arrangements through which members of the relevant minority groups may be enabled to live in accordance with their cultural values and practices. In other words, although different groups demand these rights on different grounds, they all have the function of protecting and maintaining the distinctive cultural identities of minority groups, since their institutional accommodation provide a barrier against some culture-related rules and regulations of the majority. In this sense, they aim at reforming or changing the mainstream institutions to those through which not only are cultural differences endorsed, but also the cultural plurality of the relevant society is endorsed and enhanced.

The scope of these rights and their urgency are determined by such factors as the intensity of the cultural, social, political and economic pressures the majority culture exerts on the minority culture, the particular needs and demands of the minority groups in question, and the degree of their relationships with the majority groups. That various

factors determine the extent and degree of the relevant arrangements for minority groups, to some extent, invalidates the claim that certain groups would *always* have certain sorts of rights. That is, the question of which groups would have what kinds of rights would depend on the specific circumstances in which there could be various determinative factors. While some groups, e.g. national minorities, may seek to establish local autonomy or to have their language recognised as an official language within the institutions of the larger society, some other minorities may seek a more powerful political arrangement such as federalism and secession. Moreover, different minority groups may have similar kinds of demands and rights; not every group, for example, that claims language rights is necessarily a national group.

Given these complexities, we noted that any classification about minority groups and their rights would have limitations. Since the issue is practical in nature, any classification (or generalisation) would have to dismiss some specific, unique factors determining group formation and the relevant rights. In this sense, Kymlicka's classification is not sufficiently fine grained to tackle the problems of multiculturalism. Moreover, as long as his classification is based on "nation" and "ethnicity", we would have to dismiss other sorts of cultural and religious groups and possible rights for them as well. Thus, we argued that we cannot assess cultural groups, their rights and the merits of these rights in the abstract; rather we need to have a deep understanding and evaluation of inter-group relationships in their particular contexts. And such evaluation, we argued, may very well require a unique form of arrangement for each relationship.

Another issue we considered in relation to group differentiated rights was the question of common citizenship in culturally diverse societies. We argued that the ideal of common citizenship, which requires that certain shared political and civic virtues be

displayed by the citizens of a society, cannot be achieved without taking into account the culturally diverse structure of the relevant society. Apart from some forms of self-government rights, i.e. secession, other forms of rights could, we argued, enhance common citizenship. The fact that the structure of a multicultural society itself generates a kind of culture that cannot be *identified* by appealing to any single constituent group's culture requires a definition of common citizenship different from that in culturally homogenous societies. Since common citizenship in a culturally diverse society cannot be ensured through a kind of common citizenship the terms of which are defined by the majority group, all constitutive cultural and religious groups of a multicultural society should aim at arriving at a *negotiable* conception of identity, which would require them not to generalise their own cultural values and impose them on others. This would, in turn, strengthen a kind of common citizenship, the terms of which are determined by all constitutive groups of the relevant society.

Chapter IV

The Right of Self Determination

I

As promised before, in this chapter we shall discuss the right of self-determination and secession in relation to the concern that regarding groups as different political communities and thus suggesting separate government for them would undermine some basic (or shared) civil and political values on which democratic-common citizenship is based, which should be displayed by all citizens of a state regardless of their different cultural and religious backgrounds. We shall not directly address to this question; rather, bearing in mind that not all sorts of self-government rights involve separation of the government, and thus concerns about common citizenship may not be valid for some forms of self-government, we shall basically tackle two questions: namely, what does the self determination of a group consist of, and what are the underlying conditions for secession? Through tackling these questions, we will be able to show that depending on the particular context, there are some overweighing considerations that could be cited as justificatory grounds for the separation of a government.

The idea of group self-determination is based on the value of social, cultural and political decisions being decisions of the relevant group, "determining the character of their social and economic environment, their fortunes, the course of their development, and the fortunes of their members by their own action."[1] A group is self-determined to the extent that it is not subject to external constraints. In other words, when we say a group has a moral right to self-determination, we mean that it is entitled freely to

[1] Avishai Margalit and Joseph Raz, 'National self-determination', in Will Kymlicka ed., *The Rights of Minority Cultures*, Oxford: Oxford University Press 1995, p. 80.

determine its cultural and political status without external constraints. Self-determination of a group is a legal arrangement that entitles it to have authority over such matters as politics, law, language, religion, and territory, some of which could be different from those of the majority group. In this way, cultural and political institutions are, through this right, set up in forms and to degrees that aim at fulfilling the expectations of the members of the relevant group.

Accepting the claim that individuals have an interest in having a secure sense of self-identity, and that this identity has a close connection with their secure cultural structure, we see two basic functions in the exercise of the right of self-determination: first, it secures the cultural, social and political life of the relevant group. Given that a secure cultural structure calls for its institutional accommodation, the exercise of the right of self-determination enables the relevant group to accommodate such distinct aspects of its culture as its language, history, and religion in the public domain. As a result of this, individuals conceive of themselves as members of a worthy community, which in turn provides them with a significant source for shaping their self-identity. This is the second function that is involved in the exercise of the right. That is, given that secure individual identity and well being require expression of cultural membership in public life without discrimination, the right of self-determination provides an environment conducive to such expression. As Yael Tamir puts it, "when [individuals] are able to identify their own culture in the political framework, when the political institutions reflect familiar traditions, historical interpretations, and norms of behaviour, [they] come to perceive themselves as the creators, or at least the carriers, of a valuable set of beliefs."[2] Thus, the right of self-determination of a cultural group enables it to accommodate its culture in public institutions that can be regarded as carriers of the relevant culture. Seeing their

[2] Yael Tamir, *Liberal Nationalism*, Princeton: Princeton University Press, 1993, p. 72.

culture come into existence in public institutions, shared by others, individuals would, then, regard themselves as active members of a worthy community.

Self-determination for a group need not involve full political independence, but may be satisfied by different degrees of political independence. "A group might consider itself to have achieved its goal of self-determination if it secured the right to use its own language as an official language of the state, or if its territory was recognised as a province or state within a federation, or if the group representatives were accorded a veto over constitutional changes or over important areas of federal legislation."[3] Thus, the moral force of the right of self-determination, and its form would depend on the particular context in which the need for self-determination arises.

The search for self-determination may not be a search to secure some basic rights, but a search for *recognition*[4]. Although people of the minority culture may want to gain some civil and political rights, the demand for recognition or "status" lies at the heart of the principle of self-determination. Indeed, the main thrust of the desire of people for self-determination is a quest to have their communal (or shared) identity recognised, rather than to seek to improve some civil and political rights within the larger state. As Isaiah Berlin writes in his 'Four Essays on Liberty';

> "... I may, in my bitter longing for status, prefer to be bullied and misgoverned by some member of my own race or social class, by whom I am, nevertheless, recognised as a man and a rival- that is as an equal- to being well and tolerantly

[3] Allen Buchanan, *Secession: The Morality of Political Divorce form Fort Summer to Lithuania and Quebec*, Boulder: Westview Press, 1991, p. 50.
[4] We shall say more on this in Chapter 6.

treated by someone from some higher and remoter group, who does not recognise me for what I wish to feel myself to be."[5]

Moreover, as Tamir notes, "the Quebecois and the Indians in Canada, the Aborigines in Australia, or the Basques in France, are not deprived of their freedoms and civil liberties, yet feel mariginalised and dispossessed because they are governed by a political culture and political institutions imprinted by a culture not their own"[6] This highlights the fact that even if a community is defined by some democratic principles, the main focus of the right of self-determination is about establishing distinctive cultural, social or political institutions which members of the relevant group regard as their own.

Since our focus is on the protection of a culture, following Tamir, we need to distinguish the right of " self-rule" from that of "self-determination". In her account, the right of self-rule applies to individuals, while the right of self-determination applies to groups. As she puts it, "the right to self-rule ... points to the right of individuals to govern their lives without being subject to external dictates, [the right] of self-determination, ... concerns the way in which individuals define their personal and national identity."[7] These two different rights, therefore, have different consequences in their realisations. Although both focus on the well-being of individuals, the right of self-rule, as can be seen, locates individual members of the relevant community in the framework of liberal-democratic ideals, rather than locating them in the context of their cultural community, and their cultural identity. Taking part in the political process of the larger community and participating in the government directly or through chosen

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[5] Isaiah Berlin, *Four Essays on Liberty*, Oxford: Oxford University Press, 1969, p. 157.
[6] Tamir, *Liberal Nationalism*, p. 72.
[7] Ibid., p. 70.

representatives can provide a protection of basic civil and political rights, but may not guarantee protection for minority cultures. Enjoying the right to self-rule does not mean that individuals have sufficient tools to enable them to reflect their distinctive cultural aspects in the relevant politics. Indeed, even in liberal-democratic states, as we noted in the previous chapter, the possibility exists of members (or representatives) of the minority group being outvoted in culture-affecting decisions.

The right of self-determination, on the other hand, is the right of a group for the protection of a culture. That is, it regards the relevant community as having a distinct culture that constitutes the self-image of individuals, in the sense that they view themselves according to what their culture presents. The right of self-determination should, then, be understood as a right which entitles individuals to protect, preserve and engage the distinctive aspects of their culture in public as well as in their private life. Thus, that the right of self-determination cannot be reduced to a range of civil and political rights, and that the health of a cultural identity and its recognition are the main focus of the right of self determination would lead us to focus on the protection and preservation of that culture, a culture which would have significant effects on individuals in shaping their shared cultural identity as well as their individual identity.

II

Before saying more on cultural identity and its effects on individuals, we need to tackle the question: what sort of group can qualify for the right of self-determination? Such documents as covenants and charters say "peoples". The United Nations Charter states that "the purpose of the United Nations [is] to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, ..."[8]

[8] *The United Nations Charter*, 1945, art. 1(2).

Some other documents also state that "all peoples have the right to self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."[9]

The principle of self-determination, generally in the language of international law, and thus in the practice of the United Nations, however, point to different bearers of the right. On the one hand, the article that "all peoples have a right of self-determination" makes the scope of the principle of self-determination indeterminate, since the phrase "all peoples" can involve any group of people. Within this universalistic approach, what kind of group can have a right of self-determination remains unclear because of the ambiguity of the meaning of "peoples". Margaret Moore writes that the concept, self-determination, in itself does not tell us "who the people are that are entitled to self-determination or the jurisdictional unit that they are entitled to." Quoting Ivor Jennings[10], she argues that "appealing to democratic criteria is not helpful ... the idea that we should let the people decide is ridiculous because the people cannot decide until somebody decides who are the people."[11]

On the other hand; in the present practice of the United Nations, the right of self-determination is, to a great extent, qualified; that is, the subject of the principle of self-determination, "the people" is restricted to inhabitants of existing states that have been subject to racist regimes, and to colonies. Thus, the principle of self-determination in the practice of United Nation carries a criterion. It is thought that interpretation of "the people" in this way would keep the unity of multinational states, and stability of international relationships. Yet, this idea is inconsistent with the moral principle of self-

[9] See for example, *UN International Covenant on Civil and Political Rights*, 1966, art. 1(1); *International Covenant on Economic, Social and Cultural Rights*, 1966, art. 1(1); *General Assembly Resolution* 1514, 1960.

determination of a group. As Moore asks rightly, "why ... should a *majority* suffering racist discrimination (blacks in South Africa under apartheid) be entitled to self-determination but not *minorities* in a state who are suffering under racist or discriminatory policies (a much more common phenomenon)?"[12]

Alternatively, if it is understood that the meaning of "peoples" implies those forming a distinct cultural group, sharing a common language, territory, tradition and history, then, it can be said that each cultural group fulfilling these criteria is entitled to exercise the right of self-determination over their own cultural and political institutions. A demand for self-determination, then, is legitimately made by a people who compose such entities as linguistic, religious, ethnic and national groups.

However, there are different views as to which characteristics a group should have in order to justify a demand for self-determination. We need, then, to state the characteristics of such a group that can be the bearer of the right. These characteristics would at the same time provide a further justificatory ground for the right to self-determination. Margalit and Raz suggest some clusters that could qualify a group as a candidate for self-determination. First, a group demanding self-determination rights should have a common culture "that encompasses many, varied and important aspects of life; ... a common language, distinctive literary and artistic traditions, national music, customs, dress, ceremonies, and holidays, etc."[13] are such features. These features may not necessarily all exist in a particular culture; some cultural groups may have more of them more than do some other cultural groups. Although all these features may not be

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[10] Ivor Jennings, *The Approach to Self-Government*, Cambridge: Cambridge University Press, 1956, p. 56
[11] Margaret Moore, 'On self-determination', *Political Studies*, 1997, vol. 45 (5), p. 905.
[12] Ibid., p. 903.
[13] Margalit and Raz, 'National self-determination', p. 82.

seen in a particular cultural group, we need to find most of them, to distinguish the group from those that cannot be the bearer of the right.

Another requirement for the exercise of the right of self-determination is that the members of the group are expected to reflect the features of their culture through their relationships with other members. Of course, the requirement that members of the group should reflect their culture in their lives does not involve all individuals. Indeed, as we discussed in Chapter 1, the culture of a group may not have a significant place in the lives of some members, for a variety of reasons. However, this does not shake the claim that those reflecting their culture in their life are the subject of the right, since there is a strong tie between their well-being and the protection of their culture. That the welfare of the culture of a group is crucial for those reflecting it in their lives would justify some set of rights to protect this tie.

Thus, individuals reflecting their culture in their life recognise each other mutually, which in turn shapes their self-identity to the extent that they have a clear perception about who they are. As Margalit and Raz put it, "since our perceptions of ourselves are in large measure determined by how we expect others to perceive us; it follows that membership of such groups is an important identifying feature for each about himself."[14] Bearing in mind that there are some other constitutive factors in shaping self-identity and that a culture by itself is not the only determinant of their members' goals and relationships, but a significant factor amongst others, our main concern would be, in Margalit and Raz's words, with "a pervasive culture", which "defines or marks a variety of forms or styles of life, types of activities, occupations, pursuits, and

[14] Ibid., p. 84.

relationships."[15] "Individual dignity and self-respect", as they argue, "require [a pervasive culture], membership of which contributes to one's sense of identity, be generally respected and not be made a subject of ridicule, hatred, discrimination, or persecution."[16] A pervasive culture, its influence on individuals lives, individuals' mutual recognition and self-identification; all these criteria are significant qualifications for a cultural group to be the bearer of the right of self-determination.

III

The argument that encompassing groups that have a "pervasive culture", membership of which provides a secure self identification for their individual members, have a right to self-determination is, according to Harry Beran, vulnerable due to the difficulty of providing a sound theoretical framework for the borders of such pervasive cultures. In supporting his objection, he considers Papua New Guinea, the people of which number around three million, and speak seven hundred different languages.[17] According to Margalit and Raz's theory, Beran writes, these different pervasive cultures would each have a right of political independence. But unification of these cultures under the combination of one or a number of states will not raise an "encompassing group"; rather, it would be based on arbitrarily taken political decisions. Thus, he concludes, "cultural dividing lines" between groups are so indefinite that establishment of rightful political borders would inevitably be arbitrary. [18]

Can every cultural group, then, be the bearer of the right to determine its own political and cultural institutions? In the previous chapter, we have suggested that different cultural groups be granted different degrees of group differentiated rights. Given that

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[15] Ibid., p. 82.
[16] Ibid., p. 87.

the situation of present world societies is incompatible with the principle that "all peoples freely determine their political status", the principle of self-determination seems to fit nations better than tribes and other kinds of groups. National groups qualify for this right, rather than non-territorial ethnic, religious, and linguistic groups.

Acceptance that the principles of the right of self-determination apply to nations gives rise to the question of what a nation is. There are no clear, overall criteria about what exactly qualifies a group as a national one. Difficulties, as Paul Gilbert notes, "spring from contrasting conceptions of what *nation* is: the population of a territory, a voluntary association, a cultural community, a sovereign people, an ethnic group."[19]

Stanley French and Andres Gutman argue that the concept of nation is not sufficient for providing a sound ground for the principle of group self-determination, since nation cannot be defined with individually and jointly defined characteristics, like common language, history, soul, spirit, destiny, race, culture, character and so on.[20] In response to this argument, Harry Beran, quoting Douglas Gasking[21], argues that even if it is true that nations cannot be defined by a single constitutive element, "this shows only that nation, like many other concepts of practical discourse, is a cluster concept": clusters of "common race, language, religion, culture, history, territory and economic relations"[22]

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[17] Harry Beran, 'Border disputes and the right of national self-determination', *History of European Ideas*, 1993, vol. 16 (4-6), p. 481.
[18] Ibid., p. 481.
[19] Paul Gilbert, *'The Philosophy of Nationalism'*, Boulder, Colo: Westview Press, 1998, p. 8.
[20] Stanley French and Andres Gutman, 'The principle of national self-determination', in Virginia Held, Sidney Morgenbesser and Thomas Nagel eds., *Philosophy, Morality and International Affairs*, New York: Oxford University Press, 1974, p. 138.
[21] Douglas Gasking, 'Clusters', *Australasian Journal of Philosophy*, vol. 38 (1), 1960.
[22] Harry Beran, 'Self-determination: a philosophical perspective', in W. J. Allan Macartney ed., *Self-Determination in the Commonwealth*, Aberdeen: Aberdeen University Press, 1988, p. 25.

On the other hand, Daniel Philpott argues that we do not need to identify nations by objective criteria. Quoting Alfred Cobban[23], he writes, "... any territorial community, the members of which are conscious of themselves as members of a community, is a nation"[24] Moore, too, suggests that nations be defined subjectively. On this view, "nation refers to a group of people who identify themselves as belonging to a particular national group, who are usually ensconced on a particular historical territory, and who have a sense of affinity to people sharing that identity."[25] Likewise, Brian Barry, quoting Ernest Renan[26] argues that although such clusters as common language and culture are the ingredients of nationhood, a group is a nation if it has a sense or sentiment which is "subjective" in nature[27]; that is, a nation exists if its members think that it exists.

Gilbert, on the other hand, takes a different view, arguing that criteria for nationhood cannot be based on a "*self-defining* political community."[28] The content of nation would then depend, he argues, on "whatever their members take them to be, and so the idea of nation would play no real part in determining what it is they define themselves as."[29] Thus, national demands based on national identity would have no criteria by which they could be compared and assessed. In such a context, he maintains, "talk of national rights and the like makes no sense", and national issues would be matter of "power struggles", and thus a matter of political concerns rather than ethical concerns.[30]

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[23] Alfred Cobban, *National Self-Determination,* New York: Oxford University Press, 1970, p. 107.
[24] Daniel Philpott, 'In defense of self-determination', *Ethics*, vol. 105 (2), 1995, p. 365.
[25] Moore, 'On self-determination', p. 905.
[26] Ernest Renan, 'What is a nation', in Louis L. Snyder ed., *The Dynamics of Nationalism*, New York: Van Nostrand, 1964, pp. 9-10.
[27] Brian Barry, 'Self-government revisited', in David Miller and Larry Siedentop eds., *The Nature of Political Theory*, Oxford: Clarendon Press, 1983.
[28] Gilbert, *The Philosophy of Nationalism*, p. 12.
[29] Ibid., p. 13.
[30] Ibid., p. 12.

Each view we stated above contains some truth; namely, following David Miller[31], we can say that nation is a self-defining community of people as well as a community involving some objective cultural characteristics. That members of a community should have a set of shared characteristics that distinguish them from others is necessarily involved in the definition of nation. "A national identity" in Miller's words, "requires that the people who share it should have something in common", which what he calls "a common public culture."[32] However, any sets of characteristics are not fixed, and thus cannot be regarded as general criteria by which every national group can be marked out. In this sense, "nation", as Beran puts it, "is a cluster concept rather than one which can be defined in terms of individually necessary and jointly sufficient conditions."[33] Although all elements of these clusters -common race, language, religion, history, culture, territory, etc.- need not exist in a particular group to be qualified as a nation, we expect to find most of them.

On the other hand, defining nation with some objective criteria is not sufficient, though it is necessary. A more comprehensive definition of nation cannot be obtained independently from what a set of people conceives of themselves. As Miller argues, "nations are not things that exist in the world independently of the beliefs people have about them. ... [They] exist when their members recognise one another as compatriots, and believe that they share characteristics of the relevant kind."[34] Indeed, we need to consider the self-definition view of nations as a criterion in the context of our discussion, since one of the main problems national minorities face is that they are identified by others. And this identification takes place in the form of assimilation into

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[31] David Miller, *On Nationality*, Oxford: Clarendon Press, 1995, Ch. 2.

[32] Ibid., p. 25. We should note that, in addition to two substantial conditions that Miller suggests, he considers three more conditions for nationhood; namely, in his account, nations are "active in character", "extended in history" in the sense that they "stretch back and forward across the generations", and "connected to a particular territory". (Ibid., pp. 22-27.)

[33] Beran, 'Border disputes and the right of national self-determination', p. 479.

the majority's national culture. Moreover, the subjective definition of nation would be compatible with the liberal view that people's own conception of life and identity should be respected. Thus, taken together with distinctive clusters or shared characteristics, the self-identification of the group would make a strong case for the right to self-determination.

We shall limit our focus to the protection of a distinctive culture that would, at the same time, be labelled as national identity for the members of the relevant group. In this sense, if we are to follow the principle that "people freely ... pursue their social and cultural development"[35], then we could plausibly limit this principle of self-determination to the cultural interpretation of nation. Anthony D. Smith suggests that such basic cultural elements as "symbols, values, memories, myths, and traditions"[36], are constitutive element of cultural identity and, to some extent, of national identity. They provide, Smith writes,

> "1. a sense of stability, and rootedness, of the particular cultural unit of population;
>
> 2. a sense of difference, of distinctiveness and separateness, of that cultural unit;
>
> 3. a sense of continuity with previous generations of the cultural unit, through memories, myths, and traditions
>
> 4. a sense of destiny and mission, of shared hopes and aspirations, of that culture-community."[37]

That national identity has a cultural component does not mean that all sorts of nationhood have a strong implication of common culture. The implication and

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[34] Miller, *On Nationality*, p. 17.
[35] *International Covenant on Economic, Social and Cultural Rights*, 1966, art. 1 (1).

definition of nationhood may differ from nation to nation. Some nations, for example, derive them from their ethnic decent (ethnic nationalism); some derive them from shared territory and political beliefs (civic nationalism).[38] We are here concerned with what some liberals call "cultural nationalism". Cultural nationalism, as Will Kymlicka puts it, "defines nation in terms of a common culture, and the aim of the nationalist movement is to protect the survival of that culture."[39] Thus, the ideal of cultural nationalism would suit the purpose of this work, given that we are discussing cultures that are exposed to being assimilated into the majority culture.

IV

Secession

Bearing in mind that the self-determination of a national group can take different forms, and involve different degrees of self-government rights, we would like to tackle the most complete and the highest degree of the right of self-determination; namely, the right of secession. "To be subject to its own self-imposed laws within an independent state, and not to be subject to the laws or the will of another party, is what nationalists mean by the freedom of nations"[40] Given that the relevant group conceives of itself as a separate political community, and thus seeks to establish its own separate political institutions, demands for secession would go beyond the merely cultural claims.[41] Here in this chapter, however, we will maintain our culture-centred discussion; namely, we

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[36] Anthony D. Smith, 'The formation of national identity', in Henry Harris ed., *Identity: Essays Based on Herbert Spencer Lectures*, Given in the University of Oxford, Oxford: Clarendon Press, 1995, p. 131.
[37] Ibid., p. 131.
[38] For a detailed account for these distinctions see, Kai Nielsen, 'Cultural nationalism: neither ethnic nor civic', in Ronald Beiner ed., *Theorising Nationalism*, Albany: State University of New York Press, 1999.
[39] Will Kymlicka, 'Misunderstanding Nationalism' in Ronald Beiner ed., *Theorising Nationalism*, Albany: State University of New York Press, 1999, p. 133.
[40] David George, 'The ethics of national self-determination', in Paul Gilbert and Paul Gregory eds., *Nations, Cultures and Markets*, Aldershot: Avebury, 1994, p. 72.
[41] For the argument that since self-determination of a national group can only be achieved through "participation in autonomous political institutions", it is a political right rather than cultural, see Avner De-Shalit, 'National self-determination: political, not cultural', *Political Studies*, vol. 44 (5), 1996, pp. 906-920.

shall tackle some considerations including the need for protection of a culture, to explore the question of whether these considerations could be cited as justificatory grounds for the secession of a national minority.

Accepting that those that qualify as national groups should have their own sovereign states would, in principle, mean that every single minority nation, too, has a right to establish its own state. Is it desirable and possible to demand a fully sovereign state for each minority national group in the world? First, it may be argued that it is not desirable. It is a common view that nationalism has a threatening nature in the sense that nationalists put their national interests over the legitimate interests of others, and thus their interests are secured at the expense of the interests of others. Indeed, some forms of nationalism have proved that political emphasis on nationhood has amounted to racial hatred towards others, and ended with the catastrophic destruction of human values.

However, considering that our focus is on minority groups which are deprived of the resources required to maintain their distinctive cultures, and are therefore seeking to establish their own cultural-political institutions, and in this sense, are already subject to injustices rather than oppressing other national groups, it would be plausible to argue that just as a majority nation has a right to determine its own institutions, so have minority national groups; just as the national identity of the majority group may be important to its members, so it may be as important to members of the relevant minorities. On the other hand, it may be argued that the threatening nature of nationalism, against other sovereign nations, against minorities, and against minorities within minorities can "take an aggrandising form." This may be so. Yet, this concern could be valid for any unrestrained liberty. As Moore writes, "the individual liberty

principle, [too], can take an aggrandising form"[42], if there is unrestrained liberty for individuals.

It may be argued that secession is a kind of moral and political catastrophe in the sense that it undermines common citizenship, which is the basis of "reasonableness and sense of fairness, a spirit of compromise and a readiness to meet others halfway."[43] Indeed, secession, as we noted before, is a rejection of common citizenship in a multinational state, and divides "the people into separate 'peoples', each with its historic rights, territories, and powers of self-government; and each, therefore with its own political community."[44] However, as we have seen in the previous chapter, the values that a democratic common citizenship involves may not be realised if mainstream public institutions reflect a particular culture and dismiss others. Secondly, the relevant groups could be so different from each other that some shared values required for democratic common citizenship may not be available. As Michael Walzer puts it, "if the community is so radically divided that a single citizenship is impossible, then its territory too must be divided"[45]. Moreover, given that liberalism is primarily concerned with the health of individuals rather than that of the state, then, secession would be permissible where individuals' well being in relation to their cultural identity calls for separation of the relevant government.

The second objection against the idea of secession is that secession of every national group is, it is argued, not possible even if it is desirable. Ernest Gellner, for example, argues that provision of the principle of national self-determination to every national

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[42] Moore, 'On self-determination', p. 908

[43] John Rawls, 'The idea of an overlapping consensus', *Oxford Journal of Legal Studies*, Vol. 7 (1), *1987*, quoted in Will Kymlicka, *Multicultural Citizenship*, p. 183.

[44] Will Kymlicka, Multicultural Citizenship, Oxford: Clarendon Press, 1995, p. 182.

[45] Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality*, New York: Basic Books, 1983, p. 62.

group is impractical, since there is not enough room for every nation in the world to establish its own sovereign state.[46] He writes, "very many of the potential nations[47] of this world live, or until recently have lived, not in compact territorial units but intermixed with each other in complex patterns. It follows that a territorial political unit can only become ethnically homogeneous, in such cases, if it either kills, or expels, or assimilates all non-nationals." Hence, "not all nationalisms", he maintains, "can be satisfied, at any rate at the same time. The satisfaction of some spells the frustration of others."[48] Likewise, David George, too, argues that "if all nations pursue self-determination they will inevitably be drawn into conflict with one another (for example, over territory)". Thus, he argues that "national self-determination is a zero sum game in a shared social world."[49]

These arguments could be accepted to some extent, depending on particular cases, but cannot be accepted as governing principles that could be cited as responses against the idea of secession. They can, for example, be accepted if they are derived from the fact that there are some non-territorial national groups within some multinational states, whose situations make the idea of secession morally impermissible. This is compatible with the principle of self-determination, given that it suggests not only secession but also different degrees of sovereignty for the relevant group to determine its own public affairs, and that equal consideration of different interests of the relevant groups calls for some other forms of group differentiated rights rather than secession.

On the other hand, the arguments that are put forward by Gellner in particular, cannot be accepted if they suggest the impracticality of sovereign states for small national

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[46] Ernest Gellner, *Nations and Nationalism*, Oxford: Blackwell, 1983, p. 2.
[47] Small ethnic and linguistic groups.
[48] Ernest Gellner, Ibid., p. 2.

groups, and thus their assimilation into larger nations. First of all, we reject the idea of assimilation for the reasons we have been stating so far. Consideration of size could be significant, though. It is true that every sovereign state is expected to be able to run the basic functions of a state to the extent that it should be able to maintain domestic order and provide basic public goods and services in the areas of, for example, justice, education and health services. Secession of small national groups may not be viable if they cannot provide such basic public goods and services. Yet, there is no overall a priori criterion that can be suggested for determining how much size is needed for a group to be able to display such basic functions of a state, and this may sometimes be irrelevant to the size of the group. As Philpott, considering some small states like Andorra, Monaco, and Liechtenstein, argues, there is no significant reason why small nations cannot have their own states in so far as they perform the basic functions of a state.[50]

The third objection against the idea of secession could be derived from the diversity argument. One of the significant questions involved here is the question of whether secession of minority nations furthers diversity. Indeed, secession of a group in order to form its own distinctive societal and political institutions increases diversity. However, if we value diversity in connection with individuals' participation in different political and cultural practices, then the claim that secession furthers diversity would not apply to the secession of groups whose cultures are not open to other cultures. Since secession of such groups could give rise to homogeneity in each of them, it would diminish rather than further diversity. Perhaps, endorsing secession on the ground of diversity is,

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[49] David George, 'The ethics of national self-determination', p. 71.
[50] Philpott, 'In defense of self-determination', p. 366.

Buchanan argues, acceptable "if the political, intellectual, cultural and aesthetic boundaries of the various societies are permeable."[51]

These arguments we have presented for and against secession are too general, and we need to tackle the question of secession in some detail. In other words, considering secessionist movements as a resurgence of nationalism, the question of whether each minority national group in the world is entitled to have its own state is still a disturbing one, in the sense that these movements could lead to limitless social upheaval, tipping the present political, commercial, demographical balances between societies. In the case of ethnic groups in conflict, moreover, secessionist movements lead to a great loss of human life. Thus, an adequate attitude towards secession must give careful consideration to the questions of whether secession is morally justified; if so, on which grounds such justification should be based; and under which circumstances resistance against secession is morally right. In what follows, we shall tackle some considerations that could enable us to assess the idea of secession.

Territory

Territorial claims occupy a significant place in the disputes between national minority groups which make claims for secession and states, since secession, in Buchanan words, "is an effort to remove oneself from the scope of the state's authority, ... by redrawing the boundaries"[52]. That is, secession necessarily involves a claim to territory. This is, at the same time, one of the significant conditions for secession. The exercise of the right of secession requires that the relevant peoples be concentrated in a certain territory for which they make a claim. Besides some other requirements, a territorially concentrated national group could be a significant bearer of the right.

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[51] Buchanan, *Secession*, p. 33.

However, there could be some limitations involved in territorial claims. First, we face the same problem; namely, the size of the relevant territory and peoples. The facts that there are many minority cultural groups territorially concentrated within some sovereign states, and that they are permeable raise the question of how big the relevant territory must be, to be the subject of the right. In addition to the requirements we stated above, perhaps we should follow Margalit and Raz's answer that suggests "the largest regions inhabited by one people or nation".[53]

The second limitation is that secession would harm the existing state's territory and its resources over which it has interests. The right of a national group to secede would be disputable when the parties have a claim to seceding territory. In such cases some questions arise: namely, whether the existing state is the rightful owner of the land, what are the criteria for having a valid title to the territory, who is the owner of the land and what is the meaning of taking the land. Buchanan argues that the state does not own the land, rather, it is, he maintains, an "agent" in the sense that it has "jurisdictional" and administrative powers to protect it on behalf of individuals.[54] Philpott, too, claims that "the state governs, not owns; it is a matter of government, not land."[55]

These arguments in practice are not helpful, since it is a fact that parties' disputes over seceding territory, in terms of claims to its resources, could be quite determinative factors in deciding whether secession of the relevant group is permissible or not. That is, a justification for secession needs to consider the question of whether doing so would undermine the state's basic interests in the seceding region. These interests could

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[52] Ibid., p. 11.
[53] Margalit and Raz, 'National self-determination', p. 81.
[54] Buchanan, *Secession*, p. 108.

basically be financial and military interests. When the remainder state's economy is, to a great extent, dependent upon the economic resources of the seceding region and, thus, its people would be worse off in the case of secession, the exercise of the right to secede would have some limitations. As Wellman puts it, that the existing state has significant interests in the relevant territory would only "limit the conditions" of seceding group, but not "suppress it altogether"[56]. Assuming that other measures have failed to protect the distinctiveness of the minority group's culture, and accepting that people of the remainder state have a right not to be handicapped economically, we can, in such a case, say that limitations on the conditions for secession would, for example, be in the form of a welfare transfer from seceding region to the remainder state.

Let us assume that the state has a valid claim to the relevant territory, and consider the point whether protection of a distinctive culture could outweigh this assumption. In other words, without stating the reasons why the state has a valid claim to seceding territory, we would like to assume that it has a valid claim to it, since whether the reasons are financial, military and/or political would depend on the particular situation; in some cases such factors may provide a strong case against secession, and in others they may not. Taking the assumption for granted that the state has a valid claim to the relevant territory, there seem to be three cases through which we could evaluate the question of whether the right to preserve a culture can create a valid territorial claim for a seceding group, which overrides the state's right to the relevant territory.

The first case could arise in a situation in which the majority group is willing to grant some group differentiated rights, to the extent that these rights would enable the

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[55] Philpott, 'In defense of self-determination', p. 370.
[56] Christopher H. Wellman, 'A defence of secession and political self-determination', *Philosophy and Public Affairs*, vol. 24 (2), 1995, p.145.

minority group to maintain its distinctive culture. In such a case, some less costly measures may be preferable to secession as far as protection for the distinctiveness of the minority culture is secured. As we noted in the previous chapter, language rights, the constitutional right for the relevant minority to be able to veto culture-affecting decisions of the majority, and special property rights could be such measures.

The scope and the degree of the rights that could be an alternative to secession can only be assessed and justified on a case by case basis. This means that each case would give rise to its own problems and justifications. Take property rights, for example. The minority group being granted governmental units can, for example, enact some property laws to restrict its members' right, as well as that of members of the majority, to alienate the land. That is, restrictions on these people's selling and buying of land would limit the individual right to private property; and this would, at least, as far as a liberal state is concerned, be a controversial issue, giving rise to the question of whether the right to preserve a culture should be at the expense of the individual right to private property.[57] However, once we accept that the culture in question is endangered to the extent that its members cannot live in accordance with it without some group differentiated rights, and thus calls for protection, then, besides some justified restrictions on the right to private property, some other less drastic measures, too, should be accepted. Buchanan, for example, suggests some special taxation for those who want to buy and sell the land.[58]

Although some measures, depending on particular cases, could be significant alternatives to secession, and co-operation of the relevant parties based on such values as good will and mutual respect could keep them together, the degree of difference

[57] We shall present some language-related problems in the next chapter.

between the majority and the minority would very likely be a determinative factor on the relevant arrangement. And in some cases this difference may point to the secession of the parties rather than other measures. As David Miller writes, where national identities have already "become so strong that what we have is really two separate nationalities living side by side, the best solution is ultimately likely to be the secession of one community."[59]

The second case would arise in a circumstance where a non-liberal minority group would, on the one hand, tend to keep some illiberal aspects of its culture as authoritative over individual members, and, on the other hand, has a claim to separate itself from a liberal state. In chapter 6 we shall discuss the question of what a liberal state's attitude should be towards non-liberal ethno-religious groups. Here, we just limit our discussion to national groups as such. As far as national minorities are concerned, a liberal state would have little room to interfere with them. By saying there is little justification for imposing liberal values on national minorities, we mean that they should be left alone if they are not seeking to impose their values on other groups; if their members' right to exit the community is secured; and if they do not commit gross human rights violations such as ethnic cleansing. As we shall see in Chapter 6 in some depth, the idea that these communities might maintain their distinctive illiberal cultural features, in so far as the right of their members to exit the community is secured, is Chandran Kukathas' argument.[60] According to his argument, it would be within the individual's freedom of choice to enter into and exit from illiberal enclave communities.[61]

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[58] Buchanan, *Secession*, p. 58.
[59] David Miller, *Market, State and Community: The Foundations of Market Socialism*, Oxford: Oxford University Press, 1989, p. 288.
[60] Chandran Kukathas, 'Are there any cultural rights?', *Political Theory*, vol. 20 (1), 1992.
[61] However, the right of exit, as we shall discuss in chapter 6, cannot be accepted as a general principle that could be valid for all such cases. That is, the right of exit from an illiberal community may not be possible, since such a community by nature would not provide its members with sufficient options for

Buchanan supports secession of, what he calls, "illiberal" groups from a different angle. According to him, the political aspirations of some illiberal groups tend to use liberal values as a means to their illiberal ends, which have destructive effects on basic civil and political rights by which a liberal society is marked. It is, he maintains, this "liberal paradox" which allows these groups to secede. According to this account, then, in the name of protecting liberal integrity and coherency, allowing the secession of an illiberal group would be compatible with a liberal state's commitment to liberal values, rather than compromising individual freedom and toleration.[62]

Finally, the third case would arise when the state refuses to grant some other rights, of varying degrees, to the relevant minority group. In such a case, the right of a culture to preserve itself would give rise to a valid claim to secession. However, it may be argued that claims to secession could be invalidated when the effects of the relevant culture on its members are so vague, and its cultural boundaries are so permeable that it does not justify secession.

Oppression

The situation changes when the state actually attacks a culture, even though it is vaguely defined, and could be protected by measures short of secession. Broadly speaking and subject to qualifications, although the right to preserve a culture, in such a vague situation, provides only a limited justification for secession, the right of a culture to defend itself from the aggressor state can produce a valid claim to territory for the national group. Buchanan believes that "whatever moral title to the seceding territory

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choice, and thus they cannot be aware of alternatives available to them. For this claim see, Will Kymlicka, 'The rights of minority cultures: reply to Kukathas', *Political Theory*, vol. 20 (1), 1992.

[62] Buchanan, *Secession*, p. 34.

the aggressor state previously held is invalidated by the gross injustice of its genocidal efforts." The right of a culture to defend itself, he maintains, "implies an effort to protect against a lethal threat, a deadly attack by an aggressor."[63] In a convincing context for secession, a group, Buchanan argues, is rightly entitled to protect itself from "destruction of its culture, literal genocide, or various injustices falling under the general heading of ethnic discrimination, including violations of civic and political rights that ought to be granted to all citizens regardless of ethnicity."[64] However, not only intentional discrimination but also some existing arrangements that do not take the needs and demands of the minority into account can be regarded as oppression. That is, oppression, both through intentional discrimination and through existing arrangements, entitles the oppressed group to remove injustices by freeing itself from the sovereignty of the existing state.

However, the view that oppression is another requirement for the exercise of the right of secession may miss the underlying point about the meaning of self-determination of a national group. According to this view, if the law of the state were unjust *enough* to the people of minority group, then this group would have a right to secede. Emphasising another grievance different from those Buchanan states, Lea Brilmayer also argues that legitimate "historical grievance" produces a justification for secession.[65] Likewise, George writes, "it might be said that the true value of the self-determination of peoples

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[63] Ibid., p. 65.

[64] Ibid., p. 50. Elsewhere Buchanan presents another situation in which "a group may secede from a state that is not itself that aggressor". He considers Polish Jews who were not protected from the Nazis by the Polish state, and thus occupied and defended an area in the forests of Poland (from 1941 until 1945), "in effect creating their own mini-state, for purposes of defending themselves and others from annihilation by the Germans". "The idea" here, as he notes, "is that a *state's authority over territory is based at least in part in its providing protection to all its citizens* – and that its retaining that authority is conditional on its continuing to do so." Allen Buchanan, 'Secession and nationalism', in Robert E. Goodin and Philip Pettit eds., *A Companion to Contemporary Political Philosophy*, Oxford: Blackwell, 1993, pp. 590-591.

[65] Lea Brilmayer, 'Secession and self-determination: a territorial interpretation', *Yale Journal of International Law*, 19, 1991, p. 189.

lies in removing oppressive foreign rule (tyranny) and cognate injustices, rather than some erroneously assumed eirenic propensity."[66]

Thus, the state, according to these arguments, needs only to avoid doing injustice to maintain its claim to territory. Secession would be impermissible when the state treats its minority groups justly. In other words, if the state treats members of the minority group justly, then, that group has no right to secede; but if it is unjust enough, then it loses its political legitimacy over the relevant group. It follows that the right of secession is not a primary right. It is not a secondary right either, but, as Christopher Wellman notes, a "tertiary right."[67] First, the state is expected to avoid unjust treatment towards its minorities. Thus, the primary right of the minority group is not to be treated unjustly. Second, the state is expected to compensate present and past injustices that may have been done to the minority group. Demand for compensation for past and present injustices would therefore be the secondary right a minority group can have. Finally, secession would be permissible if these two degrees of rights fail to protect the minority culture, and thus, the state would lose its claim to the territory.

However, secession, as Beran notes, is a justified response to injustice, though the principle of group self-determination is based on distinctiveness of the relevant culture.[68] As Moore puts it, the principle of self-determination cannot be based on past injustices and present discrimination. Rather, it is derived from "the mere existence of a nation" in the sense that it is "equally possessed by all nations, [and thus] involves the *equal* recognition of different national identities"[69]. Indeed, although the justification of secession is, to a great extent, based on injustices and violations of some basic rights

[66] George, 'The ethics of national self-determination', p. 71.
[67] Wellman, 'A defence of secession and political self-determination', p. 148.
[68] Beran, 'Self-determination: A philosophical perspective', p. 24.

that the state causes, they are not the only reasons for a national minority group to seek secession. It may simply want to gain complete political autonomy for quite different reasons, rather than seeking for justice. It may simply believe that it should, as a requirement of being a distinct political community, establish its own independent political and social institutions. That secession of a national minority cannot only be based on being subject to oppression points to some more considerations being suggested as justificatory grounds for secession: namely, liberty (or freedom) and consent.

Liberty (Freedom)

The claim that liberalism places a high moral value on individual liberty in terms of endorsing freedom of expression, religion, and political association of individuals would give rise to another claim that this liberal understanding of individual freedom could involve the recognition of the right of a national group to secede as well. In other words, accepting the value that individual choices should be respected in so far as they do not harm the well-being of others, then the right of secession seems to be a logical conclusion of this argument, as long as exercising this right does not involve violations of basic individual rights and the rights of other groups.

However, two major objections should be mentioned against the claim that the logical implication of individual liberty requires the recognition of a group right to secede. It may be argued that individual liberty cannot be equated with collective freedom. Although it can, as a general statement, be said that there is a considerable tie between collective freedom and individual freedom, this tie is not necessary, since, as George argues, "different concepts of freedom are involved at the group and individual

[69] Moore, 'On national self-determination', p. 900.

levels."[70] Individuals determine themselves, and thus are free if they are not governed by the will of another party. A national group determines itself, and thus is free if its laws are self-legislated, or are not imposed by external rulers. However, the distinction between government and governed may involve a tension between individual freedom and national freedom. "Government and governed", as he maintains, "are identical in the case of the free or self-governing individual, but in the case of a free and self-governing nation there is no such identity; one part of the nation's membership rules the remainder"[71] Thus, individual freedom cannot be exercised in the case of an oppressive government.

The second objection is a common one. As we mentioned before, and will discuss in some depth in the next chapter, it is argued that securing basic civil and political rights can provide a rightful response to any claim for secession. In this sense, upholding these rights within a state would allow different forms of life to coexist. Thus, the right to secession cannot be regarded as an urgent right in so far as the existing state does not violate fundamental liberty rights and treats members of the minority justly. Lee Buchheit, for example, believes that the political legitimacy of the state would be valid as long as it fulfils a minimal standard of justice over its citizens.[72] Anthony Birch, too, argues that "groups are not entitled to opt out of a democratically governed state unless very special circumstances obtain."[73] Taking the assumption for granted that liberal democracy, with its components like the right of free speech and free association, allows groups to have fair collective decisions about government policy, he argues that "having the right of voice, without fear of retaliation, they do not ... need the right to

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[70] George, 'The ethics of national self-determination', p. 72.
[71] Ibid., p. 73.
[72] Lee C. Buchheit, *Secession: The legitimacy of Self-Determination*, London: Yale University Press, 1978.
[73] Anthony H. Birch, 'Another Liberal Theory of Secession', *Political Studies*, 1984, vol. 32 (4), p. 598.

exist."[74] Thus, since groups have a "right of voice", and have the opportunity of affecting political decisions, they do not need to exercise the right of exit, even though they are territorially concentrated.

Birch's argument is refutable in some ways. First, impermissibility of the right of a group to exit is incompatible with the liberal principle that individuals have a right to exit even if they have a right of voice. The right of a group to secede seems to be a logical extension of this principle. Second, related to the first, his argument ignores the consent of the groups in that it does not consider the case in which a national minority group does not consent to be a part of a larger political community.

Consent

What if the majority of the members of the minority do not wish to remain within the state? Should they not be allowed to free themselves from the political authority of the state if they wish to do so? Is it not the consent of the governed that justifies the sovereignty of the state over its people?[75] Given the acceptance that justification of the state's sovereignty should be based on the consent of the governed, many liberals have endorsed the consent theory of national self-determination.[76] Here again a link between individual consent and group consent to the state is established. Liberal theory is based on the acceptance that individuals have a capability of determining their personal and

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[74] Ibid., p. 598.

[75] For the discussion on making secession analogous with no-fault divorce, see Buchanan, *Secession*, p. 7; Kai Nielsen, 'Secession: the case of Quebec' *Journal of Applied Philosophy*, vol. 10 (1), 1993, p. 29; and for an opposite view, see R. E. Ewin, 'Peoples and secession', *Journal of Applied Philosophy*, vol. 11 (2), 1994, pp. 225-231.

[76] See, for example, Harry Beran, 'Self-determination: a philosophical perspective, in *Self-Determination in the Commonwealth,* Aberdeen: Aberdeen University Press, 1988; and 'A liberal theory of secession' *Political Studies,* vol. 32 (1), 1984; Christopher H. Wellman, 'A defence of secession and political self-determination', *Philosophy and Public Affairs*, vol. 24 (2), 1995; Daniel Philpott, 'In defense of self-determination' *Ethics*, vol. 105 (2), 1995; David Gauthier, 'Breaking up: an essay on secession', *Canadian Journal of Philosophy*, vol. 24 (3), 1994; Kai Neilsen, 'Secession: the case of Quebec', *Jornal of Applied Philosophy*, vol. 10 (1), 1993; Brian Barry, 'Self-government revisited', in *The Nature of*

social and political relationships. Having this capability makes individuals bearers of the right of personal self-determination, and others' freedom is restricted to the extent that they cannot impose what kind of relationship individuals should have. Thus, individuals, in this account, are sovereign in determining the forms of their relationships; and since they are "rational self-governing choosers"[77], there can be no political authority without their consent.[78]

The relationships between government and the governed are, therefore, not given relationships; rather, they are built on the consent of the parties. In this sense, endorsement of the sovereignty of individuals in determining their political and social status would be compatible with group self-determination. That is, that the legitimacy of political authority should be based on the consent of the governed would be the logical extension of the principle that individuals, among other realms of life, should determine their political status. This, in turn, would involve acceptance, too, that the unity of the state should also be based on the consent of the governed. As Harry Beran puts it, "the consent theory of political legitimacy entails that individuals have a moral right to emigrate and change their nationality and that any territorially concentrated group within a state should be permitted to secede if it wants to and if it is morally and practically possible."[79] Thus, a national group which conceives of itself as a distinct political community, and wishes to establish its own distinct political and social

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Political Theory, David Miller and Larry Siedentrop eds., Oxford: Clarendon Press, 1983; Harry Beran, *The Consent Theory of Political Obligation*, Croom Helm Publishers, 1987.

[77] Harry Beran, 'A Liberal Theory of Secession', p. 26.

[78] We should note that the idea that legitimacy of political authority should be based on the consent of the governed is quite attractive for some liberal views, since it alleviates the tension between two liberal values: namely, between liberty, whereby individuals have a moral dominion over their lives and, are exempt from second party coercion in so far as their actions are not harmful to others, and the inevitable nature of the political authority, the state, which restricts liberty of its citizens. Assuming that political authority is necessary for a society, the consent theory as a justificatory basis for the state's sovereignty not only endorses its intrusion in protecting its citizens' rights, but also provides a right to secede for national groups which cease to consent to it.

[79] Beran, *The Consent Theory of Political Obligation*, p. 37.

institutions has a right to do so. The state's right to uphold its authority over members of the relevant group would not be valid when they withdraw their consent to it.

However, Buchanan is uneasy about the idea of consent, since, according to him, such a most complete self-determination cannot be derived only from the consent of people. Assuming that the state has a valid claim to territory, he argues that "the consent and fair play arguments can, at most, demonstrate the conditions under which the state has no longer authority over people; they cannot show when the state no longer has control over territory. So arguments from consent and fair play... cannot even *in principle* justify secession."[80]

Indeed, unqualified and independent from the other considerations mentioned above, pure consent theory as a basis for secession would lead to limitless secession of any group. Particularly when we take the state's valid claim to territory for granted, Buchanan would be right, since lack of the consent of the relevant minority alone cannot provide a justification for secession. Lack of consent in such a situation could plausibly involve the rejection of a particular political authority within a wider, accepted political structure, rather than involving a demand for dissolution of that political structure. On the other hand, the consent of the relevant minority would be a significant factor for the exercise of the right when it goes alongside other considerations. In other words, taken together with such components as cultural distinctiveness of the group, its size, the scope of its concentration in the relevant territory, and its ability to run the basic functions of a state, the consent of the group would in such a case be a significant determinative factor for the exercise of the right.

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[80] Buchanan, Secession, p. 73.

Summary

In this chapter we have tried to underline some general principles of the right of group self-determination. The right of group self-determination is suggested for cultural groups that conceive of themselves as distinct political communities. That is, the main underlying point involved in this right is the acceptance that the relevant group is culturally and politically distinct, and entitled to establish its own distinct cultural and political institutions. This right should therefore secure and reflect the unique aspects of the relevant culture at the constitutional level. In this way, the exercise of the right would enable members of the relevant group to express aspects of their cultural identity in the public domain, to the extent that they would have the opportunity to participate in the national life of their community. Thus, institutional accommodation of their culture would enable them to see the relevant aspects of their culture as their own, and in turn, would enable them to perceive themselves as members of a worthy community.

The exercise of the right to self-determination can take varying degrees and forms. There is no general guiding principle in deciding when a national minority culture is entitled to what sort of cultural and political autonomy. Each particular case would have its own sort of self-determination and arrangements. These different arrangements would depend on circumstances and the expectations of the parties. Of them, we tackled the right of secession, which is the strongest and the most complete form of self-determination. Generally speaking, since secession may be a serious challenge against some values on which social unity and common citizenship are based, it is not the first resort for the protection of a culture. In this sense, we tried to present some general guiding principles on which the idea of secession could be assessed. According to them, a national minority which has a distinctive culture, is territorially concentrated, is large enough to set up and run the basic functions of a state, and wishes to secede has a moral

right to do so, in so far as its secession does not violate basic individual rights and does not cause a considerable harm to the existing state's interests in the seceding territory.

On the other hand, although political boundaries may be necessary for protecting and fostering the relevant culture, the right of secession, like many other rights, can be overridden by some overriding moral considerations. Establishment of a sovereign state for a national minority group could very well restrict the right of other groups to determine their own cultural and political institutions. Some circumstances may make the exercise of the right unwise or impossible. Following one of the basic liberal principles,[81] it can be said that enjoyment of the right to self-determination for a national group is restricted by the enjoyment of the same right for other national groups. Thus, we can say that *equal* recognition of different national cultures would be a determinative criterion in qualifying the degree and the form of the right.

[81] This is Rawl's first principle of justice, that "each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others" John Rawls, *A Theory of Justice*, Oxford: Oxford University Press, 1972, p. 60.

Chapter V

Ensuring Intercultural Equality

I

The discussion of individual equality on the basis of some civil and political rights and economic opportunities has not only been a significant subject in contemporary liberal thought, but also attracted many thinkers from different traditions. Such concepts as equal opportunity for individuals to participate in the economic and political activities of their community, equal civil and political rights, and equality before the law have been built up on the assumption that societies are culturally homogeneous or that individuals' cultural and religious differences are irrelevant to those equal individual rights and liberties. In this context, the idea of group differentiated rights has been challenged from within liberalism on the ground that granting rights on the basis of group membership is not compatible with the idea of justice, in the sense that these rights are arbitrarily granted to certain groups, e.g. minority groups. They inevitably privilege such groups over others, and thus they are inherently discriminatory.[1]

According to this view, justice should be based on basic and general human interests, and rights should be granted on the basis that protects these interests. These basic human

[1] See, for example, Nathan Glazer, *Affirmative Discrimination: Ethnic Inequality and Public Policy*, New York: Basic Books, 1975; and, 'Individual rights against group rights', in Will Kymlicka ed., *The Rights of Minority Cultures*, Oxford: Oxford University Press, 1995; Michael Hartney, 'Some confusions concerning collective rights', in Kymlicka ed., Ibid.; Jeremy Waldron, 'Minority cultures and cosmopolitan alternative', in Kymlicka ed., Ibid.; Chandran Kukathas, 'Are there any cultural rights?', *Political Theory*, vol. 20 (1) 1992.

interests are what Rawls calls "primary goods".[2] According to this argument, equality and fairness should be based on our "common characteristics", regardless of our differences. Such interests as income, education, health care, civil and political liberties are "primary goods" which are universally shared interests, regardless of our ethnic and religious differences. Hence, in Rawls' "original position", individuals, "together with the veil of ignorance", treat each other in the same way regardless of their religious, sexual, racial, and class differences.[3] Needless to say, Rawls recognises that societies are different in some respects. But, they are the same in some basic respects; they are the same because the persons composing them are equal in the sense that they are all "moral persons, ... having a conception of their own good and capable of a sense of justice."[4]

This understanding of justice is closely connected to the idea that a liberal state should be neutral towards competing conceptions of what individuals believe to be good for their lives. A liberal state should not support any particular conception of the good that individuals may pursue. It should provide individuals with equal life chances, through which they shape their own conceptions of the good. Indeed, the state should be neutral towards different conceptions of the good life, not because all conceptions are equally good, but because it cannot *represent* any conception of the good life. As Rawls puts it, the state should be neutral between different conceptions of the good, "not in the sense that there is agreed public measure of intrinsic value or satisfaction with respect to which all these conceptions come out equal, but in the sense that they are not evaluated at all from a social standpoint."[5]

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[2] John Rawls, *A Theory of Justice*, Oxford: Oxford University Press, 1972.
[3] Ibid., p. 19.

The logical extension of this understanding of state neutrality in relation to individualism is the idea that the state should be neutral towards different cultures. It should not support a particular culture, and undermine others. Special distribution of resources and state power to a particular minority group to protect its culture would, it is argued, be a violation of the idea of benign neglect. According to this view, since interests regarding cultural membership are already protected through equal civil and political liberties through which individuals are free to take part in any cultural practice regardless of their cultural background, favouring any political recognition or providing support for particular cultural practices would not be fair. It would not be fair, since such recognition and support would be at the expense of others, since it would use resources which are supposed to be channelled equally to the *common* needs of all members of society. In this sense, implementation of group rights for one group would limit the availability of the relevant resources for other groups to provide their individual members with distinctive ways of life. Moreover, there is, it is argued, no need to provide state support for a particular culture, since any culture will be able to sustain itself as long as individuals consider it worthwhile to follow the relevant cultural practices.[6] Promotion of cultures should be left to individuals' own free choice. If a particular cultural way of life is decaying, then it would mean that the culture in question does not attract people any more. It is therefore argued that the state should not be regarded as an entity that promotes or inhibits the fate of a culture; in other words, it should take a neutral position towards cultural practices, neither promoting nor restraining them.

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[4] Ibid., p. 19.
[5] Ibid., p. 94.
[6] See, for example, Waldron, 'Minority cultures and the cosmopolitan alternative'.

The separation of state and church has led many liberals to hold the view that the religious toleration of the state should be displayed towards cultural differences as well.[7] Cultural and religious identity are something which individuals are expected to express in their private lives, and thus are not within the interests of the state. Nathan Glazer, for example, argues that equality concerns over groups would mean "that we abandon the first principle of liberal society, that the individual and the individual's interests and good and welfare are the test of a good society."[8] Thus, elsewhere he argues, the public should display "benign neutrality" towards "ethnic inheritance."[9] This is what individual welfare calls for. Cultural and religious groups, "under the doctrine of state-church separation", can have their own schools, publish books and newspapers in their own languages, and maintain their distinctive religions, but they cannot ask for state assistance. The state should, he maintains, have a "policy ... of salutary neglect" towards these practices.[10] Thus, just as the state should display benign neglect towards different religious practices, so it should not support or undermine any particular ethnic group and its identity.

II

The argument that the state is an impartial entity towards different cultures and their practices, in the sense that it does not represent or support any particular culture at the expense of others, is false. The state *cannot* display benign neglect towards different cultures

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[7] The idea of state neutrality towards different cultures stems basically from the historical fact regarding religious conflicts throughout which liberal states have achieved neutrality. The history of liberal states has witnessed a destructive conflicts between Catholic and Protestant religious groups. Instead of granting some special group rights to these groups, the conflicts were resolved by abandoning the state's commitment to any particular religious group, and granting individuals the right of 'freedom of worship'. In this way, both the relevant minority religious groups and individuals are protected against the state discrimination.

[8] Glazer, *Affirmative Discrimination*, p. 220.

[9] Nathan Glazer, *Ethnic Dilemmas*, 1964-1982, London: Harvard University Press, 1983, p. 124.

[10] Glazer, *Affirmative Discrimination*, p. 25.

as it can (or does) towards religions and their practices. It is quite possible for a state not to reflect a particular religion through its institutions, but it cannot, for example, provide education without language, which could be a significant cultural marker. As Kymlicka puts it, "the idea of responding to cultural differences with 'benign neglect' makes no sense. Government decisions on languages, internal boundaries, public holidays, and state symbols unavoidably involve recognizing, accommodating, and supporting the needs and identities of particular ethnic and national groups. The state unavoidably promotes certain cultural identities, and thereby disadvantages others."[11] France creates Frenchmen: it teaches French history, traditions, and the French language; the United Kingdom teaches British history, the English language and so on. Almost all states have a dominant culture and value system, from which some national, ethnic and religious minorities feel marginalised. Moreover, the argument that basic individual rights establish fairness between different cultural and religious group is also untenable. As Kymlicka argues, "the right to free speech does not tell us what an appropriate language policy is [in a multilingual society]; the right to vote does not tell us how political boundaries should be drawn, or how powers should be distributed between levels of government; the right to mobility does not tell us what an appropriate immigration and naturalisation policy is."[12]

On the other hand, the impossibility of state neutrality does not mean that we should accept the cultural particularity of the state, nor should we blame it. The problem is not that multicultural liberal societies are insufficiently liberal, and a more fully liberal society would be neutral on cultural matters. We need to build our arguments on the fact that state

[11] Will Kymlicka, *Multicultural Citizenship*, Oxford: Clarendon Press, 1995, p. 108.
[12] Ibid., p. 5.

decisions, for example, on the language(s) to be used in government, the bureaucracy, the courts, and schools, inevitably support a particular culture, and thus undermine others. Thus, the question is not whether the state is neutral towards different cultural and religious practices; but rather, how we can accommodate the different needs and demands of different groups in a fair way to obtain a more comprehensive arrangement that, on the one hand, furthers intercultural equality: and on the other hand, supplements basic individual rights.

III

Since the state cannot be neutral towards different cultures and their practices, the scope of equality in a multicultural state, then, cannot be defined in culturally neutral terms. Fairness to be established in such a society cannot be based *only* on the concern to secure the civil and political rights of individuals and protect their equal economic opportunities, isolating them from their cultural context; but would also be based on the concern to protect the collective goals of cultural groups, locating the relevant individuals, who are so, in their particular cultures. In this sense, subsidizing their cultures cannot be rejected on the ground that granting special status to these groups distributes public benefits and state powers to them at the expense of others. As Tamir notes, "if the state supports specific cultures, ... [minority groups] are entitled to receive [their] fair share of cultural funding and use it to practise those aspects of their culture."[13] The question to be considered is, then, the question of how state powers in *culture-affecting* decisions can be distributed in a fair way between the relevant groups.

[13] Yael Tamir, *Liberal Nationalism*, Princeton, N. J. :Princeton University Press, 1993, p. 54.

To expand the view that the state in a culturally diverse society should take the claims and needs of all relevant cultural and religious groups equally into account, which may entail group differentiated rights for them, we need to consider two limitations to this view. First, some differential treatments, as proponents of state neutrality suggest, may amount to privileging some groups over others. That is, some group differentiated rights might undermine equality between the relevant groups in the sense that one group may seek to have rights in order to oppress another group. As Kymlicka notes, "demands for increased powers or resources will not be necessary to ensure the same opportunity to live and work in one's culture. Instead, they will simply be attempts to gain benefits denied to others, to have more resources to pursue one's way of life than others have. This was clearly the case with apartheid, where whites, constituting 20 per cent of the population, controlled 87 per cent of the land mass of the country, and monopolised all the important levers of state power."[14]

Indeed, some group rights *in practice* can amount to injustice between groups, like the old apartheid system. But *the principle* that fairness requires that special status and rights be granted to minority groups in order for them to be able to protect and maintain their cultural and religious values and practices is correct. Thus, one significant point in accommodating intercultural equality between different groups is to give proper answers to the questions, to what extent granting special group rights could improve equality between them, and to what extent these rights could amount to discrimination of an unfair kind.

[14] Kymlicka, *Multicultural Citizenship*, p. 110.

The second limitation is that no society with limited resources can afford to satisfy all the different demands and needs of different groups equally. Satisfaction of all interests would be impossible in a world of scarce resources and clashing interests.[15]. Since no society with limited resources can afford to satisfy all interests equally, a proper response to the needs and demands of minority groups should be based on equal consideration of all "reasonable" demands and needs. As Rainer Frost argues, a conception of justice in a multicultural state should be based on reasonable "claims to certain rights and resources."[16] A demand made by a group should be reasonable for other relevant groups. The criterion for a reasonable demand is that no group is entitled to impose its own cultural values on others. In forming their demands, minority groups should, firstly, be aware of the fact that the society has limited resources that may not be sufficient to meet all demands equally. Secondly, their demands are limited to the demands of other minority groups.[17] Thirdly, in response to the demands of minority cultures, the majority group should have an understanding that recognition of some demands is justified on the basis of the goods involved in cultural attachments, which they take for granted.

What the state in a multicultural society should do, then, is to take equal consideration of reasonable demands and interests of different groups. The main implication of "equal

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[15] This problem can be seen in almost all other areas of public life. When any given state is setting up allocation of resources in the areas, for example, of health care, education, or recreational activities, it inevitably puts more weight on one good than another.

[16] Rainer Frost, 'Foundations of a theory of multicultural justice', *Constellations*, vol. 4 (1), 1997, p. 63.

[17] We shall tackle another limitation in the next chapter; namely, in addition to the limitations we mentioned above, demands of some non-liberal groups to maintain their illiberal religious and cultural practices as authoritative entities over their individuals give rise to a significant limitation on the granting of group rights to minorities; namely, the limitation is that they have a right to enjoy their cultural and religious practices in so far as they respect the basic individual rights of their members.

consideration of interests"[18] of different demands and needs would be that a multicultural society and the state should be "culturally sensitive"[19]. That is, on the one hand, the state should avoid imposing its cultural particularities on other cultural groups as much as possible; and, on the other hand, it should provide enough room for the cultural particularities of other groups to be able to maintain their distinctiveness as much as possible. In other words, in accommodating the distinctiveness of different cultural and religious groups, the state is, to some extent, expected to be neutral towards different cultural and religious practices; but to some other extent, it is expected to subsidize them in order for them to maintain their cultural distinctiveness. From a liberal point of view, the scope of such a balance should be based on individual well being. As Wesley Cragg writes, "the state is not entitled to interfere in the movement of the cultural market place except, ..., to ensure that each individual has a just share of available necessary means to exercise his or her moral powers."[20]

IV

Hence, in addition to the concept of justice between individuals, we need another sense of justice that has an implication that furthers intercultural equality between the relevant groups. This sense of justice would locate individuals concretely in their distinctive cultural and religious nexuses, which could be significant sources in relation to which they can establish and maintain their own conceptions of the good. We need this sense of justice for

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[18] I borrow the notion of "equal consideration of interests" from Peter Singer (*Practical Ethics*, Cambridge: Cambridge University Press, 1995, Ch. 2) This notion is useful for our discussion, since it can be regarded, in Singer' words, "as a minimal principle of equality" in the sense that it does not dictate equal treatment where intercultural equality requires differentiated treatment for the relevant groups.

[19] Bhikhu Parekh, 'Equality in a multicultural society', *Citizenship Studies*, vol. 2 (3), 1998.

[20] Wesley Cragg, 'Two concepts of community or moral theory and Canadian culture', *Dialogue*, vol. 25, 1986, p. 47.

groups, since the individualistic conception of justice, which is based on the idea of benign neglect, as Carens notes, regards people in the "abstract", rather than locating them in their particular cultural context.[21] Minority groups demand that their cultural particularities be respected and taken into account in the same way as the majority culture. These demands focus on ensuring intercultural equality between the relevant groups; that is, individuals' right to their native culture and the rights of these cultures to be respected and protected in the same way as the majority culture are the main thrust of these demands. This is because their very national, ethnic and religious identities may be reasons for their being disadvantaged; or they may simply want to preserve and maintain their distinctive identities. Moreover, accepting that "self-respect and a sure confidence in the sense of one's own worth is perhaps the most important primary good"[22], then, depriving persons of education in their own native language, for example, would be a violation of their dignity, which would to a great extent deprive them of self-respect. In other words, the acceptance of the idea that liberalism is committed to accommodating different and competitive forms of life does require that a liberal society accommodate forms of life that stem from individuals' cultural and religious attachments. This would require some set of rights that locate the relevant individuals in their cultural and religious particularities. As Carens puts it, locating people in their cultural particularities would require "our institutions and policies to take an evenhanded (rather than a hands off) approach in responding to the claims that arise from different conceptions of the good, including matters of culture and identity."[23]

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[21] Joseph Carens, *Culture, Citizenship, and Community: A Contextual Exploration of Justice as Evenhandedness*, Oxford: Oxford University Press, 2000, p. 6.
[22] Rawls, *A Theory of Justice*, p. 396.
[23] Carens, *Culture, Citizenship and Community*, p. 7.

Needless to say, we do not discard the individualistic sense of justice. We do need an individualistic conception of justice; that is, equality requires equal rights for individuals irrespective of their "irrelevant" differences.[24] However, this is not enough to satisfy the aspirations of minorities. In practice they want justice on the basis of their community; that is, justice for them as collective entities. Hence, the individualistic conception of justice in a multicultural society should go alongside a collective sense of justice, since, as Vernon Van Dyke argues, "justice for groups and justice for individuals [in a culturally diverse society] cannot realistically be considered independently of each other."[25] Accommodating intercultural equality will, then, involve a two-fold sense of justice, one aspect of which endorses our universally shared common interests, while the other endorses our particularities stemming from our cultural and religious attachments.

V

Van Dyke suggests three principles of justice for groups: "(1) where concern for equality requires it, certain weak groups should have special protection; (2) where a group has been denied equality by discriminatory policies and practices, compensatory justice should be afforded; and (3) special status and rights should be extended to some groups to enable them to survive."[26] We have so far not considered the second principle, and will not tackle it in the rest of this work. We do not focus on this principle, since the injustice it involves stems from a certain kind of political power that deliberately deprives one group of political and

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[24] Such irrelevant individual differences as intelligence and economic welfare are not relevant to differentiated treatments. However, furthering equality between individuals, too, may sometimes require differential treatments for them. They are justified in so far as they put the relevant individuals on an equal footing with others. Redesigning pavements for those using wheelchairs is an example of justified differentiated treatments.

[25] Vernon Van Dyke, 'Justice as fairness: for groups?', *American Political Science Review*, vol. 69 (2), 1975, p. 612.

economic opportunities. Remedy for this kind of injustice calls for temporary measures. The main aim of so called "reverse discrimination" or "affirmative action" policies is to favour members of certain groups in such areas as civil service, universities, bank loans, and government contracts. Such measures are justified in so far as political and socio-economic disadvantages to which the relevant groups have been exposed are removed. In this sense, as Charles Taylor notes, they aim at ensuring "difference-blindness" in public policies.[27] Cultural rights, on the other hand, aim at supporting group practices and identity permanently. As he maintains, "the goal of [these rights] is not to bring us back to an eventual "difference-blind" but, on the contrary, to maintain and cherish distinctness, not just now but forever."[28]

Taking for granted the assumption that members of the minority group enjoy the same basic civil and political rights that members of the majority have, our focus is on the other two principles of justice for groups; namely, that certain "weak" cultural and religious groups should have special protection; and that, as measures for such protection, special status and rights should be granted to them in so far as they enable the relevant groups to live in accordance with their cultural and religious nexus. We tackled some of these special rights and status in the previous two chapters. In what follows, we shall discuss some more group differentiated rights and some practical issues to explore the scope of intercultural equality.

VI

[26] Ibid.

Furthering Intercultural Equality for Linguistic Groups

Linguistic matters could give rise to considerable group inequalities between the relevant groups. As Van Dyke notes, "in multilingual situations, ... decisions about the language to use in government, in schools, and in work are bound to produce differential advantages and disadvantages both for individuals and linguistic groups."[29] Indeed, being exposed to the majority language is a significant obstacle to linguistic groups to maintaining and living in accordance with their cultures. This exposure can be seen in two different policies the majority group could impose on the minority language; it may either by special design or through existing arrangements erect barriers against the use of a minority language. Assuming that a liberal state does not constitutionally prohibit the use of any language, the linguistic group inequality we mean here is the second kind, that stems from the arrangements by which members of minorities are exposed to the majority language. In such cases, the majority group, without condemning or banning the use of a minority language, but at the same time as not subsidising or encouraging its use, arranges unilingual teaching materials and a schooling system that ignores the use of the minority language. Likewise, it may arrange public and governmental institutions throughout which the majority language is used and, thus, members of the minority are discouraged from using their own language. Economic organisations and the market, too, may reflect these unilingual arrangements. They may require the use of the majority language in these areas, which could put members of the minority into a situation in which either they accept being assimilated or retain their own language but are deprived of decent opportunities.

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[27] Charles Taylor, 'The politics of recognition', in Amy Gutmann ed., *Multiculturalism and The Politics of Recognition*, Princeton, N. J.: Princeton University Press, 1992, p. 40.

Such group inequalities regarding linguistic matters are striking counter examples to the idea of the separation of the state and ethnicity, and the idea of benign neglect. As Kymlicka puts it, "when the government decides the language of public schooling, it is providing what is probably the most important form of support needed by societal cultures, since it guarantees the passing on of the language and its associated traditions and conventions to the next generation. Refusing to provide public schooling in a minority language, by contrast, is almost inevitably condemning that language to ever-increasing marginalization."[30] Unilingual education in such multilinguistic society, as Denise Reaume argues, "makes it close to impossible for the minority to use the public education system as a locus of linguistic socialization, a use that the majority takes for granted." And, "creating a unilingual school system through decisions about which institutions particular children must attend and which materials they must use and what the qualifications of their teachers shall be cannot be construed as the majority's going about its own business, with unfortunate side-effects for the minority." [31]

Language protection is, then, needed for furthering intercultural equality between language groups. There can be two arguments for language protection. First, it can be said that a language should be protected for the survival of the relevant culture, since it is an important means of passing it to the next generations. In this account, the emphasis is on the language itself. However, such a language-focused argument may not be persuasive. Leslie Green argues that the language itself cannot be the bearer of the relevant right, but only the

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[28] Ibid.
[29] Van Dyke, 'Justice as fairness: for groups?', p. 613.
[30] Kymlicka, *Multicultural Citizenship*, p. 111.
[31] Denise G. Reaume, 'The group right to linguistic security', in Judith Baker ed., *Group Rights*, London: University of Toronto Press, 1994, pp. 129-130.

individuals speaking it.[32] Likewise, Denise Reaume, too, argues that "rights based on human interests must focus on the speakers of a langauge rather than on the language itself."[33] In supporting this argument, she considers people speaking French in Canada. If our main concern for protection of a language were the language itself, we would probably ignore French speaking people's demands, since the French language itself is not in danger and in need of protection.

In fact, there is a strong connection between individual-concerned language protection and culture-concerned language protection. Securing one would secure the other as well. Although language protection, as far as language groups are concerned, is necessary for cultural continuity, our main focus, too, is on individuals who speak the relevant language. That is, the justificatory ground on which we would like to establish our arguments for language protection will be individual-centred language protection. We have a vital interest in using language(s) in the sense that without language, as a means of communication, as a means of self-expression, a human life would hardly be possible. It is through the language that its speakers can think, conceptualise things, exercise and reveal their creative capacities, and perceive things in a determinate and reportable way. Any given language, as the means of perception, determines what its speakers are aware of, what is important to them. With its symbols -nouns, verbs, adjectives-, it provides a sphere of reality with which behaviours performed by its speakers become meaningful both to each other and to themselves. It provides a medium through which individuals are aware of themselves and of their actions.

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[32] Leslie Green, 'Are language rights fundamental?', *Osgoode Hall Law Journal*, vol. 25 (4), 1987, pp. 655-656.

[33] Denise G. Reaume, 'The constitutional protection of language: survival or security, in David Schneiderman ed., *Language and the State: The Law and Politics of Identity*, Cowansville (Quebec): Yvon Blais, 1991, p. 39.

As Joyce Hertzler puts it, "the active language of a people is a primary outgrowth of their life, and centres about things and occurrences that are essential to them. Hence it reflects every phase and aspect of their life, represents all the known realities of life and tremendously influences every facet of life ..."[34] Furthermore, not only does it identify the content of certain activities, but also it is a content itself in the sense that it is, as Joshua Fishman argues, "a referent for loyalties and animosities, an indicator of social statuses, and personal relationships, a marker of situations and topics as well as of the societal goals and the large-scale value-laden arenas of interaction that typify every speech community"[35]

Accepting that individuals have vital interests in using a language does not necessarily call for the protection of a particular language, so long as they are provided with a language. In other words, the arguments presented above could mean that individuals have an interest in speaking a language, but not a particular language. In this sense, it may be argued that when a minority group is provided with the majority language through education, business and government services, then denial of the minority language cannot be considered as an infringement of the right to language.

There are two significant reasons to be considered as justificatory grounds for education in people's mother tongue. First such an education provides children with self-confidence, as it enables them to express themselves without any difficulty, and in turn, helps them to establish their individual identity in a secure way. Second, if it is accepted that individual identity is, to some extent, shaped by cultural identity, and that language is an important

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[34] Joyce Oramel Hertzler, *A Sociology of Language*, New York: Random House, 1965, p. 20.
[35] Joshua A. Fishman, *The Sociology of Language*, Rowley (Mass): Newbury House, 1972, p. 4.

cultural marker and, thus, a marker of identity, then education in that language would mean that the group in question, its members, their selfhood and distinctive particularities that are valued by the group should all be *respected.* In this sense, the language of a group is the good of its members. Given that a language enables individuals to *participate* with others in different social practices and that through efficient participation, individuals create their own *self-identity,* exposing people to learning a language different from their mother tongue would mean that they are disrespected and, to some extent, are prevented from forming their own individual identities in a secure way. Thus, language provisions in a minority language for furthering intercultural equality would be based on the following arguments: equality requires equal consideration of reasonable interests, and individuals have vital interests in access to their native language which is inherently connected to the relevant culture; thus language is not only a significant good of a culture to be protected, but also a significant ingredient for establishing a secure sense of self-identity for the relevant individuals.

To be sure, no government can ensure the use of a particular language in all its contexts; the main point of linguistic security is not the protection of a language in all aspects of community life; rather, it is its public use or institutional accommodation. There is no justifiable reason to deny an efficiently used minority language in education and in governmental services, and to impose the use of another language. As Denise Reaume argues, "there can be no basis for an assertion that one language group is inherently superior to another such that its vital interests should be systematically preferred to the comparable interests of another."[36] This argument rightly suggests that the majority group should not regard its culture as intrinsically superior to other cultures, and should minimize group

inequalities, one of which arises in linguistic matters. Thus, all linguistic groups should have the opportunity to maintain themselves as distinct cultural groups, and where a minority has its own distinctive language, effectively used by its members, then we can say that the state should ensure provision of that language in public schooling and other relevant public institutions.

One measure for ensuring language protection could be for regional majorities to be granted regional power to determine their own language policies. In this way, minority groups would form a majority in the relevant territory, and thus be able to protect their languages. This argument could be compatible with the idea of benign neglect. It suggests that decisions about which language should be used in public services should not be made by the state, or through official recognition of various languages. Instead, such decisions should be left to each political subunit, which can make its own language policy. In this way, it would be possible for a minority group to be a majority in the relevant unit, so that it can decide which language should be recognized officially. Hence, without state recognition, each group will be able to set up its own language policies in the relevant subunit.

This suggestion is acceptable in terms of not ignoring smaller language groups. Indeed, each group should be allowed to use its language of choice; to publish materials in its language, to organize regional public services in that language, and to use that language in regional administration. However, it involves some difficulties. It gives rise to an ambiguity about the boundaries of language groups and their relevant political subunits. As Kymlicka rightly asks, "what level of government should make [language] decisions? Should each

[36] Reaume, 'The group right to linguistic security', p. 128.

neighbourhood be able to decide on the language of public schooling and public services in the neighbourhood? Or should this decision be left to larger units, such as cities or provinces? And how do we decide on the boundaries of these subunits? If we draw municipal or provincial boundaries in one way, then a national minority will not form even a local majority. But if we draw the boundaries another way, then the national minority will form a local majority."[37] If society's multicultural structure is to be preserved, then, not only should there be territorial use of the minority language, but also, either the minority language should be used alongside the majority's language in public institutions, or state power should, to some extent, be devolved to the relevant groups so as to provide decent opportunities for their members in that language. That is, some significant opportunities in public institutions including governmental services and in the market should be available to the speakers of the minority language. Such measures are necessary for the health of a multilingual society. As Reaume puts it, "if government is to be a part of ... community, it must be prepared to communicate with its members in their own language ... the more the minority can feel comfortable with ... institutions [government services, including judicial services] as representative of their linguistic community, the more they can feel that [the political community] is fully open to them as a pursuit"[38] This calls for constitutional accommodation of the relevant language.

However, such a state supported language provision and constitutional recognition of language cannot be granted to all linguistic groups, regardless of their size. Perhaps, we should argue that constitutional recognition of a language depends, in addition to territorial

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[37] Kymlicka, *Multicultural Citizenship*, p. 112.
[38] Reaume, 'The constitutional protection of language', p. 53.

concentration and the size of the group, on how efficiently the language in question is used by the members of the group, and how effectively it distinguishes one group from another. Of course, this does not mean that we discard smaller language groups, which may very well use their languages effectively. They, too, should not be required to adopt the majority language; that is, even if the government cannot (or does not) subsidise these languages, it should, at least, "refrain" from imposing its language on members of these groups. Reaume calls such a case "the regime of tolerance", that protects speakers of any language group, regardless of its size.[39] The regime of linguistic tolerance does not call for constitutional recognition of a language. Rather, it provides a private sphere for the relevant groups, within which they use whichever language they choose; "to publish newspapers and support the electronic media; and to organise schools and services in any ... language at their own expense."[40]

Putting aside tolerance-based language rights, the language policy in Switzerland, as an example of constitutional recognition of languages, is a significant model for securing peaceful co-existence for different language groups. The French, German, and Italian languages are recognized equally in its constitution. "The Swiss political system considers that each language and language community has a traditional and historic territory, and that one major goal of language policy is to maintain this system in equilibrium." And thus, on the basis of equal consideration of these languages, "certain programs and institutions provide more ... to the smaller and culturally weaker language communities than to the

[39] Ibid., p. 54.
[40] Leslie Green, 'Are language rights fundamental', p. 660.

larger ones."[41] In other words, federal financial help is not granted on the basis of proportionality of the language groups, but on their needs, whatever their size is. Moreover, financial support to language groups does not entitle federal government to involvement in the decision-making process regarding language policies. These policies are left to cantons rather than to federal authorities. Cantons have linguistic sovereignty. Such a "decentralized federal" model in language matters ensures that there is no overall language plan to be imposed from the top. The health of this balance is secured through direct democracy, based on initiative and referendum, which, to a great extent, ensure the compatibility of governmental policies with the popular will.[42]

Belgium has a more or less similar arrangement. Its constitution identifies communities according to their languages, French-speakers in Wallonia and Dutch-speakers in Flanders. Brussels, the capital, is bilingual. Each language group has the right to maintain its own language in the state-supported schools and in other public areas. The law requires people to use the language of the region, regardless of personal preferences. Governmental offices and agencies are to operate in French in Wallonia and Flemish in Flanders, as are business concerns. Schools may teach any language as a subject, but must use the language of the region as the language of instruction.[43] A political reflection of this arrangement is that half of the members of the cabinet must come from the French-speaking community and half from the Dutch-speaking community.[44]

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[41] Kenneth D. McRae, 'Precepts for linguistic peace: the case of Switzerland', in David Schneiderman ed., *Language and the State: The Law and the Politics of Identity*", Cowansville (Quebec): Yvon Blais, 1991, p. 168.
[42] Ibid., p. 171.
[43] Vernon Van Dyke, 'The cultural rights of peoples', *Universal Human Rights*, vol. 2 (2), 1980, p. 9.

These language policies based on territorial boundaries of languages separate the relevant languages in such a way that unilingualism is the rule in the operations of local government services, schools, and public services. Swiss citizens, for example, are free to cross the language boundaries; but if they do, they are expected to change their language. The Swiss federal tribunal, when it rejected the claim of a businessman who had protested against a local regulation forbidding him to advertise his products in the language of his choice, held the argument that

> "safeguarding the harmonious relationship amongst the various segments (ethnic groups) of our country requires that each be guaranteed the integrity of the territory over which its language is spoken and over which extends its culture ..."[45].

The decision was taken on the acceptance that each culturally distinct group is equally protected within a *decentralized* federal system. However, as can be seen, territorial language policies restrict the freedom of choice of outsiders. In such cases, as Green notes, "citizens within one nation may be treated like migrants between nations: they must be prepared to learn and use the majority language of the region in which they settle."[46] This policy can be acceptable on the understanding that instead of imposing on a minority group to the majority language and thus exposing its members to a policy through which they are treated like migrants, all relevant groups should undertake some necessary costs equally. Of course, this does not mean that we ignore each community's particularity, and suggest the

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[44] Van Dyke, 'Justice as fairness: for groups?', p. 611.
[45] Jean A. Laponce, 'Reducing the tensions resulting from language contacts: personal or territorial solutions?', in David Schneiderman ed., *Language and the State: The Law and Politics of Identity*, Cownsville (Quebec): Yvon Blais, 1991, p. 177.
[46] Leslie Green, 'Are language rights fundamental?', p. 653.

same language protection measures for all linguistic groups. In Luxembourg, for example, nearly all citizens speak three languages: Luxemburgese is spoken in private. French dominates in church and government, while German dominates in the field of business. Thus, each community's particularity would determine the way in which it accommodates linguistic matters, as well as other cultural differences. One common criterion involved in different arrangements would, however, be that all those particular policies should be based on the acceptance that all speakers and all languages are entitled to protection, either by state assistance or without it.

VII

Furthering Intercultural Equality for Ethnoreligious Groups

As we noted in Chapter 3, the demands of ethnoreligious groups vary from being exempt from certain legal rules, regulations and obligations that are not compatible with their cultural traditions or religious requirements and practices to seeking some public funds that could enable them to maintain their cultural and religious practices. Their demands that they should be able to engage with their own cultural and religious values and practices while they participate in the activities of the wider society give rise to serious challenges to some policies of these societies. Some provide acceptable policies compatible with liberal principles, while others do not. Quebec's and Britain's policies, for example, are more or less compatible with the liberal commitment to the principle of religious freedom, beliefs and their practices. French policies, on the other hand, prohibiting *hijab* for Muslim girls in public schools, the Canadian policy prohibiting *turbans* for Sikhs in the police force, and the United States' policy forbidding the wearing of *yarmulkes* for Jews in the police force are

not compatible with the principle of respect for religious freedom of choice and associated practices.

Perhaps we should not be too quick to criticize such policies. Michael Walzer, for example, argues that each state (political community) has its own distinctive culture. This distinctive culture is reflected through its institutions, practices and partly through its "articulated ideas". Each political community (and culture), he argues, "establishes its own bonds of commonality."[47] Each community's sense of justice and its scope are shaped by this commonality. His argument could be interpreted in two ways; first, in its narrowest scope, it can be said that each state, as a single political, cultural and historical entity, has a *single* political culture, and thus its politics would reflect a particular sense of justice to be accepted. There is a potential danger here, which can, for example, equating French policy with a particular French history and culture, justify French rules prohibiting hijab in public schools. Equating a multicultural society with only *one* cultural and religious group's particular history and culture cannot be helpful for accommodating cultural and religious differences. We need, then, the second implication that Walzer's argument involves, that each particular community *including* minority groups has a cultural and historical particularity to be respected. By this interpretation either we regard a minority group as having a particular history and culture of its own, and thus seek to accommodate this particularity; or, in addition to this particularity, we regard it as having another kind of particularity which stems from its relationships or *co-existence* with other groups, including the majority group. Thus, in seeking to further equality between ethnic and religious groups in a multicultural society, we need, first of all, to accept the fact that different groups'

coming into contact with each other itself creates a *particular* history and culture that cannot be identified by appealing to the history and culture of one single constitutive group of a multicultural society. The French policy against hijab, for example, stems from a particular French history through which the *French* struggled to remove religious domination in the political realm. It should be respected. On the other hand, Muslims seeking to remove the ban on hijab are also having an effect on *present* French history. In this sense, no group in a culturally diverse society can have a *pure* culture and history. The co-existence of different religious and cultural groups, too, creates a particular political community and history that cannot be reduced to the culture and history of one single group. What is needed, then, is to establish an acceptable balance between the needs and demands of all relevant groups. Through our discussion, we will try to make it clear that peaceful co-existence of different groups in a culturally diverse society requires that all relevant groups moderate their demands in a mutually acceptable way.

Thus, following the second implication of Walzer's argument, we can say that although every liberal political community has certain principles, such as freedom of speech, freedom of association, freedom of religion and so on, they cannot operate these principles in the same way. Of course, this does not mean that their particularity may require non-recognition of any minority group's demand. What is needed for these communities is to arrange and change some rules and regulations to the extent that they reflect the public accommodation of different cultural and religious identities. The particular context of each community would be the main factor determining the extent and scope of the relevant arrangement. Since there cannot be an overall criterion to be followed in accommodating different ethnic and religious

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[47] Walzer, *Spheres of Justice: A Defence of Pluralism and Equality*, New York: Basic Books, 1983, p. 29.

demands, we would like to limit our discussion to some particular major demands that minority groups make, and some concrete cases that arise in western democracies in relation to individual members of minority groups.[48]

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The liberal commitment to the principle of freedom of different religious beliefs and of their practices requires that a liberal society take equal consideration of different religious demands. Some of them are relatively easily accommodated, while some others are not. Allowing individuals, for example, to take oaths according to what they believe is easy to accommodate in the sense that its exercise neither violates the rights of other relevant parties, nor imposes any particular duty on them. "Under the Oaths Act of 1978 [in Britain], Muslims may swear on the *Koran,* Hindus on the *Gita* or the *Vedas*, Sikhs on *Guru Granth Sahib* or *Gutka*, and Parsis on the *Zendavesta*."[49] The exercise of this right not only furthers equality between different religious faiths without imposing any cost on others, but also is compatible with the idea that oaths in the courts should serve the goal of obtaining the truth.

On the other hand, some other demands may not be so easy to be accommodated, and would give rise to some considerable difficulties. Demands related to public holidays, dress codes, and working days are examples. Generally speaking, there are two approaches that could be suggested for establishing intercultural equality between different cultural and religious groups: neutrality and evenhanded or differentiated approaches. The first approach

[48] In this chapter, we limit our discussion to a few demands because there can be quite varying demands from, for example, seeking the endorsement of arranged marriage, or of polygamy to seeking exemptions from institutional education; from marriages based on religious laws to demands seeking to prohibit education to girls after a certain age. We shall, as we said, tackle these sorts of demands and their limitations in the next chapter.

suggests more neutrality in the sense that we should replace existing arrangements, which favour particular group(s), with more neutral arrangements.[50] This is, partly, Kymlicka's suggestion. According to him, redesigning public holidays, state symbols and government uniforms, and replacing religious oaths with secular ones in the courts, all require us to choose some neutral measures for all relevant groups.

This suggestion can only work in some areas. While replacing religious oaths with secular ones, for example, could be regarded as a neutral measure, and may work, some other measures, i.e., changing public holidays and working days for more neutral ones, would give rise to a number of problems. Firstly, the tradition in liberal societies has been a product of a particular culture, and has also created a culture. Major public holidays like Christmas and Easter are products of that culture. Asking people to change these days for neutral ones would basically mean asking them to abandon their cultural ways of life. Such a suggestion would not only invalidate all the discussions in which we have been engaging so far, but would also be an unfair demand. Secondly, this suggestion may not be compatible with the idea of multicultural society itself, in the sense that doing so will not endorse and accommodate cultural diversity in the relevant society. Rather, it will homogenise society in another way.

Thirdly, choosing neutral days for public holidays is not desirable for practical reasons either. This is especially valid for working days and the Sunday closing law. To be sure, this law more or less advantages Christians, but not Muslims and to some extent Jews. A neutral

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[49] Bhikhu Parekh, 'Equality, fairness and limits of diversity', *Innovation*, vol. 17 (3), 1994, p. 291.

day would mean that Jews and Muslims should abandon their own days, Saturday and Friday. Choosing a neutral day, say Tuesday, will make Christians worse off, but will not make anyone better. As can be seen, a neutral closing day cannot be accepted, since it does not make any of the relevant parties "well off" in the sense that people would not be able to engage in what their ethnic and religious practices demand of them.[51]

It may be suggested that different closing days should be granted to different groups. But, providing different closing day for different groups, say Sunday closing day for Christians, Friday closing day for Muslims, and Saturday closing day for Jews, would divide society sharply in the sense that the possibility of improving interrelationships, and thus mutual understanding between different ethnic and religious groups would be reduced, and that is certainly not compatible with the idea of sustaining multicultural society.

On the other hand, this difficulty can, to some extent, be overcome in major public holidays. Kymlicka suggests that "we could have one Christian holiday (say Christmas), but replace Easter and Thanksgiving with a Muslim and a Jewish holiday, and would also encourage people of each faith to learn something about the beliefs of other faiths."[52] Again, this suggestion would make Christians, to some extent, worse off. Yet, it can be said that such a compromise is a necessity for the health of a multicultural society. Managing a multicultural

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[50] To be sure, public holidays and working days, for example, based on the needs of the Christian majority have not been chosen to discriminate against other religious groups, but are just, for Jews a fortunate but for Muslims an unfortunate, historical accident.
[51] Peter Jones, 'Bearing the consequences of belief', *The Journal of Political Philosophy*, vol. 2 (1) 1994
[52] Kymlicka, *Multicultural Citizenship*, p. 223, n. 9.

society requires, as Parekh argues, a "two way process" in the sense that both the majority and the minorities adjust their demands according to each other.[53]

This suggestion about major public holidays will not, on the other hand, work when the Sunday closing law is at stake. That this law makes Christians better off, but not other religious groups does not mean that multicultural fairness requires that we should abandon this law. Rather, such a fairness would, as Carens argues, require "guaranteeing time off to those who worship on other days or permitting them to keep their businesses open on Sundays if they close them for religious reasons on another day"[54] As a requirement of the principle that liberalism respects religious diversity, and is against religious discrimination, the exercise of the right of worship requires that a liberal society provide time off on Friday afternoons for Muslims, and on Saturday (The Jewish Sabbath) for Jews, so that these groups can be exempt from Sunday trading laws in compensation for Friday and Saturday. Ensuring such an exemption does not privilege these minority religious groups, as Parekh notes, "for it neither confers more rights on them nor gives them additional resources to exercise their equal rights. It only enables them to exercise the same rights as the bulk of the community."[55] Indeed such exemptions do not give any extra right to these groups, but the same rights that the majority group takes for granted.

On the other hand, whether such exemptions would cause extra cost on the majority group would depend on the kind of the exemption, and on the circumstances in which it arises. The Jewish Sabbath, for example, enables Jews to be exempted from Sunday closing laws, and

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[53] Bhikhu Parekh, 'The Rushdie affair: research agenda for political philosophy', in Will Kymlicka ed., *The Rights of Minority Cultures*, Oxford: Oxford University Press, 1995, p. 310.

thus having a Saturday closing day does not seem to put extra cost on others.[56] Providing time off on Friday afternoons for Muslims, however, may not only put an extra cost on others, but also require them undertake some extra duties which could be quite controversial.

> "Mr. Ahmad, a devout Muslim, was employed as a full-time school teacher by the Inner London Education Authority (ILEA). At first Mr. Ahmad taught in a district which made him unable to attend a mosque for prayers on Friday afternoons. When he was transferred by the ILEA to a district within reasonable distance of a mosque, he insisted that, thenceforth, he should attend the mosque each Friday afternoon. His doing so meant that he was absent for the first three-quarters of an hour of teaching time on Friday afternoons and his absence had to be covered by other teachers. ILEA refused his appeal and offered to re-employ him as a part time teacher, that would have meant a commensurate reduction in his salary. His appeal was rejected by the Employment Appeal Tribunal, the Court of Appeal and finally by the European Court of Human Rights."[57]

Ahmad's case points out the fact involved in rights assertions; namely, as we noted in Chapter 2, that no right can be exercised whatever it costs. On the other hand, no right can

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[54] Carens, *Culture, Citizenship, and Community*, p. 10.
[55] Parekh, 'Equality, fairness and limits of diversity', p. 292.
[56] It may, however, be argued that since the majority of the society does not have a tradition of shopping on Sunday, the exercise of this right by Jews would put an extra cost on them. Indeed, this arrangement, too, may put an extra cost on Jews. But, this would be acceptable. As we shall see later in this chapter, no society can provide everything for every need and demand; nor can it satisfy different demands and needs to the same extent.

be accommodated without any cost. Exercise of each right would have its own costs, justifications of which would depend on the particular circumstances. There are three significant points to be taken into account in Ahmad's case. The first one is about the question of who may legitimately bear the consequences of Ahmad's belief. The majority has a duty to pay equal attention to the cultural and religious needs and demands of all members of different groups. It has a duty to provide a Muslim with time off on Friday afternoons. Here we reject Peter Jones' claim, that since people choose what they believe, they should be held responsible for the "costs" of their beliefs, since it is their "choice" to decide what to believe.[58] Putting aside the complicated nature of how we obtain our beliefs, a multicultural society should undertake some costs of the exercise of a right as such, if our main concern is to secure the peaceful co-existence of different religious beliefs in the relevant society. But this duty is limited by some weighting considerations. This is the second point in Ahmad's case, that the duty should be discharged in so far as the exercise of that right does not put *unreasonable* costs on others. Thirdly, the duty should be discharged to the extent that doing so does not violate the rights of other people involved, i.e., pupils and other colleagues. That is, the right in question is exercised in so far as the relevant person does not have a weighting duty towards other people. A Muslim cannot exercise this right when it causes other people not be able to exercise their own right(s), and puts unreasonable costs on them. Thus, consideration of the rights of other parties imposes, in turn, a duty on the members of the minority culture in the sense that in forming their demands they need to make a fair balance between their needs and those of members of the majority. As Parekh argues, "the concept of objective necessity needs to be so defined that it is culturally

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[57] Jones, 'Bearing the consequences of belief', pp. 24-25.
[58] Ibid.

sensitive and does justice both to the minorities and to the [majority's] established way of life."[59] The two cases we shall mention below could be exemplary models for such a justice.

> In *Kingston and Richmond area Health Authority V Kaur* (1981) a Sikh woman who, after being accepted onto a two-year course as a nurse, wanted to wear her traditional dress of a long shirt (*quemiz)* over a baggy trousers (*Shalvar*) rather than the required uniform, was refused a training place on the ground that all nurses had to wear a standard uniform. The Industrial Tribunal upheld her claim on the ground that 60-70 per cent of Sikh women living in the UK wore *shalwar-quemiz* as a cultural or religious requirement. Moreover, wearing it did not impede the discharge of her duties as a nurse. The Tribunal was overruled by the Employment Appeal Tribunal on the ground that the decision should have been taken by General Nursing Council. The Council made more flexible rules about dress codes. In consequence, Miss Kaur was once again offered a training place by the relevant Health Authority on the understanding that when she had qualified as a nurse she would wear 'grey' *shalwar* and 'white' *qemiz*.[60]

Likewise;

> In *Malik V British Home Stores* (1980), a Muslim girl had been refused employment by BHS because it operated a rule requiring all female sales staff to wear skirts and she had insisted, on religious grounds, upon wearing clothing which fully covered her legs.

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[59] Parekh, 'Equality, fairness and limits of diversity', p. 296.
[60] Sebastian Poulter, *Asian Traditions and English Law*, Stoke on Trent: Trentham Books, 1990, p. 101.

The tribunal ruled against BHS, pointing out that only a small alteration to the uniform was required to accommodate the needs of Muslim women."[61]

As can be seen, the principle of equal opportunity for certain jobs can be accommodated through a consideration that takes individuals' cultural and religious particularities into account. Indeed, the principle that a certain facility should be open to all those who have enough *capacity* for the relevant facility may not be fulfilled through an arrangement that suggests identical treatment for individuals, regardless of their cultural and religious particularities. Thus, where the principle based on identical treatment is not enough to ensure the principle of equal opportunity for individuals who want to participate in the relevant opportunity on their own cultural or religious terms, a reasonable or mutually acceptable balance would be needed between their demands and the relevant rules and regulations to be changed. In the cases mentioned above, such balances have been made; the relevant organizations kept their overall policies on dress colour requirement, while individuals followed what their cultural background demanded of them. This is quite compatible with the principle of equal opportunity. Requiring Orthodox Jews not to wear their yarmulke, Sikhs to abandon their turban, and Muslim women to wear skirts in order to be candidates for certain jobs would mean that we regard these aspects of the cultures, as Parekh notes, as producing "incapability" for the relevant job.[62] Likewise, Muslim girls in France, for example, have an equal opportunity to go to school. But a policy of disallowing them to wear 'hijab' would not only disrespect part of their identity, but also close an opportunity which is available to others, simply because their cultural backgrounds are

[61], Ibid., pp. 101-102.
[62] Bhikhu Parekh, 'Equality in a multicultural society', p. 409.

incompatible with the policy; a policy that dislocates individuals from their cultural and religious context. In such a case, too, a reasonable arrangement can, as in the cases we mentioned above, be achieved. Muslim girls should wear their hijab, but they should comply with school requirements in, for example, choosing their colours. The institutions concerned here, as Parekh puts it, should be "neither de-culturalized and [rendered] bland, nor eclectically multi-culturalized and [rendered] comical."[63]

However, there might be some cases in which individuals' cultural particularities themselves can provide a legitimate ground for depriving them of certain jobs, though they can have relevant capability to perform them.

> In *Singh v Rowntree Mackintosh Ltd* (1979) and *Panesar v Nestle Co Ltd* (1980) Sikhs were refused employment at factories manufacturing sweets and chocolates because the companies in question had rules prohibiting the wearing of beards at these factories. The companies argued that beards could not be allowed in their factories for reasons of hygiene; small particles or hairs might fall into bars of chocolate as they were being made. The tribunals believed they were entitled to try to attain very high standards of hygiene in the interests of public health and the protection of consumers.[64]

These cases highlight the fact that not every cultural and religious demand can be accommodated to the same extent and be given equal weight. As we shall see in the next chapter, a liberal society, like any other society, has limitations. It cannot satisfy all different

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[63] Parekh, 'Equality, fairness and limits of diversity', p. 296.
[64] Poulter, *Asian Traditions and English Law*, p. 100.

cultural and religious needs and demands equally, with some cultural prerequisites and limited resources. In this sense, no society can be expected to establish everything necessary to meet every need and demand equally. However, this does not invalidate our argument that a liberal society, like any multicultural society, is required to take into account different cultural and religious demands to the extent that social, political and cultural arrangements reflect reasonable needs and demands of these groups. Depending on the circumstances, the same sorts of demands can sometimes be accommodated. In some cases, for example, demands regarding the wearing of beards can very well be counted as reasonable demands to be accommodated.

VIII

Summary

In this chapter, we have tried to show that the liberal individualism, whereby the state should be neutral towards competitive conceptions of the good life, cannot be maintained when different cultures are at stake. The state cannot display benign neglect towards different cultures, since state decisions on areas affecting culture, e. g., languages to be used in government, the bureaucracy and schools, inevitably support a particular culture, and thus undermine others. This is, we noted, not to say that multicultural liberal societies are insufficiently liberal, and a more fully liberal society would be neutral on cultural matters. Rather, this is to say that since the state cannot be neutral on cultural matters, if culture-affecting arrangements are to be accepted by different cultural and religious groups, they cannot be based only on culturally neutral considerations. Intercultural equality requires accommodation of the different needs and demands of different cultural and religious groups as well as securing basic individual rights; in other words, an individualistic conception of

justice in a multicultural society should go alongside a collective sense of justice. This highlights the need for a multicultural state to take equally into account the claims and needs of the relevant cultural and religious groups to the extent that social, political and cultural arrangements reflect the needs of these groups.

Accepting that the state should equally take into account the claims and needs of the relevant cultural and religious groups does not mean that every cultural and religious demand should be accepted to the same extent and given equal weight, since a liberal society, like any other society, has limited resources and cultural prerequisites. What is needed, we noted, is the equal consideration of *reasonable* demands and needs. The main implication of such reasonability is that no group has a right to impose its cultural and religious values and practices on other groups. This is a rather general criterion. Since each demand has its unique features, problems, and thus solutions, the particular context in which the demand in question arises would determine the reasonableness of the arrangement, as well as of the demand. In this sense, such considerations as the genuineness of the need and demand in question; the effect of the subject of the demand on the minority group, and on the majority; to what extent the majority group should undertake a duty to meet the relevant needs; and whether the demand can be moderated when its cost on other people is not reasonable, would determine whether the relevant arrangement is reasonable and mutually acceptable.

Chapter VI

The Limitations of Cultural Rights

I

Minority cultures' demands for institutional recognition of their cultures can, to a great extent, be read as struggles for a more tolerant and democratic society in which there should be a public sphere for their cultures to be expressed without being discriminated against. We have so far argued that these demands are legitimate. However, there are some cultural and religious groups in liberal societies, which, while are seeking such recognition, at the same time, tend to keep some illiberal aspects of their cultures and religions as authoritative over their individual members: Clitoridectomy on young girls, forced marriages, polygamy, denying women the right to education and to vote or hold office, citing culture as a defense for maltreatment of women. In the name of culture and religion, such practices that restrict basic civil rights and liberties, especially of women, are seen as requirements of religion, tradition or, of cherishing group solidarity. Likewise, some indigenous groups (the Pueblo), and self-contained religious groups (the Amish) restrict the rights of their members by maintaining some sexually discriminatory rules, and by rejecting their members' right to education.

The situation of such groups gives rise to a striking obstacle for some group right claims both in theory and practice. As we noted in chapter 2, much of the skepticism about group differentiated rights is based on the concern that they could undermine individuals' basic civil rights and liberties. That is, in the name of cultural difference, it is argued, the rights to support the *autonomy* of such groups would undermine the basic norms and values of

liberal societies, which are based on the moral equality of individuals. Indeed, this concern could be particularly valid for women and children in those groups. Some inevitable questions in such cases arise: can group rights for minority cultures be defended to the extent that a group has a right to live in accordance with its cultural and religious values even if this limits and violates the individual freedom of its members? Does the autonomy of a cultural and religious group permit restricting basic individual rights? At the practical level, what should a liberal state's attitude be when the claims of minority cultures and religious groups come into conflict with the values with which a liberal society identifies itself? Does endorsing rights for minority groups require the liberal society to tolerate some practices of these groups which violate the principles of individual human rights? Should there be some limits on cultural and religious diversity? If so, what are the underlying principles to be suggested for these limits?

By tackling such questions, we shall not seek to suggest philosophical principles that can be applied to every circumstance in which the issues of toleration arise. Michael Walzer, for example, rightly argues that "there are no principles that govern all the regimes of toleration or that require us to act in all circumstances, in all times and places, on behalf of a particular set of political or constitutional arrangements".[1] Because of the fact that there are, and have been, different regimes of toleration, he suggests "a historical and contextual account", through which he examines five different regimes of toleration: multinational empires (like the millet system of the Ottomans, where different groups were tolerated by a single power on religious grounds), international society (a regime of toleration that recognizes the sovereignty of states insofar as they do not "shock the conscience of

[1] Michael Walzer, *On Toleration*, London: Yale University Press, 1997, pp. 2-3.

humankind"), consociations (such as Belgium and Switzerland, where different groups tolerate each other), nation-states (in which dominant nations tolerate other national minorities to maintain their cultures), and immigrant societies (like the United States, where "the objects of toleration are individual choices and performances.")[2]

Of these regimes of toleration we shall limit our discussion to immigrant ethnoreligious minority groups in liberal societies where the mainstream institutions are constructed in a way that secures basic individual rights, and with which some minority practices seem to be conflicting.

II

To be sure, our discussion of toleration is not about the question of whether the *existence* of minority cultures and religions should, as whole entities, be tolerated or not; but about some of their practices that are regarded as offensive to the values with which a liberal society identifies itself. That is, it is rightly argued that a fair accommodation of minority cultures cannot be achieved *only* within a regime of toleration, or through the attitude of tolerance. One significant reason for that is the nature of the notion itself. Although we are not primarily concerned with the meaning of toleration/tolerance in its various dimensions such as ontological, moral, religious, and political, but with the role that it plays in a multicultural liberal society, it could be useful to present a brief account of its problematic nature, and see why it is not a sufficient notion by which the problems of multicultural societies can be tackled.

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[2] Walzer, *On Toleration*, pp. 14-36. It should, however, be noted that Walzer does not mean to draw a purely *relative* picture of toleration; rather, although "tolerance (the attitude) takes many different forms, and toleration (the practice) can be arranged in different ways", he argues, "each regime of toleration must be singular and unified to some degree, capable of engaging the loyalty of its members" (Walzer, Ibid, pp. xi-xii) We shall soon say much about that point that a regime of toleration requires a certain quality of individuals in the sense that they should value it, if it is to be sustained.

Susan Mendus mentions some conditions in which the issues of toleration arise. The first condition is that "the problem of toleration arises in circumstances of diversity. The second is that toleration is required where the nature of diversity is such as to give rise to disapproval, dislike, or disgust." Another necessary condition of toleration is that "the tolerator should have the power to interfere with, influence, or remove the offending practice, but refrain from using that power."[3]

Given this short description of toleration, some inevitable problems involved in its nature arise. First, that the tolerator has the *power* to "remove the offending practice" points out the very nature of toleration: it refers to a power relationship, in which the tolerated is in a disadvantaged or *relatively* unequal situation; and thus, gives rise to the question of whether the power in question is legitimate. That is, any justificatory ground to be provided for toleration needs, first of all, to examine the legitimacy of this power. As Preston King notes, "if an advantage [i.e. the power] is justifiable, then tolerance may serve it as a worthy adjunct. ... But where such advantage is not justifiable, then the power to tolerate must be adjudged intolerable."[4] In the context of our discussion, we shall take the legitimacy of institutions in a liberal society for granted. Given that the dominant idea that underlies liberalism is the rejection of state commitment to a particular conception of the good life, we shall assume that the institutions in a liberal society uphold the basic civil and political rights of individuals, through which they maintain their different conceptions of the good life.

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[3] Susan Mendus, *Toleration and the Limits of Liberalism*, Basingstoke: Macmillan, 1989, pp. 8-9.
[4] Preston King, *Toleration*, London: Allen & Unwin, 1976, p. 11.

That the dominant liberal view does not presuppose a good life for individuals does not mean that liberals in their private capacity do not have a conviction of the good life, and thus commit themselves to a particular conception of the good life. Given that, the second, more problematic, problem involved in the nature of toleration arises. That the tolerator has the power to "remove the offending practice", but "refrains from using that power", obviously, especially when toleration is based on moral disapproval, involves a *moral* tension from the tolerator's view point. To disapprove of something that "matters" to her means that she judges it to be wrong.[5] And when she judges it to be *morally* wrong, she does not *respect* it.[6] It should, however, be noted that we limit our focus to the things that are morally disapproved, for this tension might not be valid for the circumstances in which toleration is based on *dislike*, for example. The question, remaining within this limited understanding of the notion, is how can something, which is believed to be morally wrong and thus disrespected, be allowed when it can be restricted or prevented?

There are two answers available to this question. The first one focuses on inevitability of being tolerant. According to this view, the tolerance that the tolerator displays comes *out of necessity*. This understanding of toleration basically stems from the historical fact regarding religious conflicts through which the history of liberal states has witnessed bitter conflicts

[5] Perhaps we should here point out one distinctive feature of toleration from "indifference" Toleration does not involve indifference. "To be tolerant", as Albert Weale notes, "involves the acceptance of differences that really matter to you. If you do not care about people's conduct and preferences, then you are not tolerant in allowing them to do what they want, you are merely indifferent." (Albert Weale, 'Toleration, individual differences and respect for persons' in John Horton and Susan Mendus eds., *Aspects of Toleration*, London: Methuen, 1985, p. 18.)

[6] Another distinctive feature of the notion of toleration we need to mention is that since the practice in question is morally disapproved, it would differ from *acceptance* and *recognition* that involve *respect*. This is exactly the point from which we shall derive our argument that the very existence of cultures and religions cannot be the subject matter of toleration, at least, in today's multicultural societies. Of course, this does not mean that these concepts, acceptance and recognition, are clearly separable from toleration. They could, especially in practice, be achieved through the act of toleration. That is, the tolerator, given enough time, may realize that what she was tolerating is in fact something that should be morally accepted. This point is one of the justificatory grounds for toleration, which we shall mention in the main text.

between different religious groups, Catholics and Protestants. The conflicts ended through endorsement of all religious beliefs, rather than destroying or ignoring one religion in favour of the other, which was not possible anyway. In her discussion of Locke's understanding of toleration, which he derives from religious conflicts of his time, Mendus cites him as saying that "people can be threatened and coerced into *professions* of belief; they cannot be coerced into *genuine* belief."[7] What this quotation suggests is that forcing or compelling people to lead their life according to a certain moral belief could at best lead them to *conform* with it; but they would not *internalize* it. That is, to induce the tolerator's moral belief in others by coercive means simply does not erase other alternative moral beliefs. The differences or diversity of beliefs would still exist. In such an account, therefore, toleration is a *practical necessity* that supports one party being tolerant because it is better than being intolerant.

The second answer to our question defends toleration on the ground that it is a *value*. In this account a strict connection between the value of difference (or diversity) and that of toleration is established. Chandran Kukathas draws our attention to two features that make toleration valuable: toleration as an instrumental value, and as a value in itself. He writes, "whatever the strength of our convictions, whether they be about matters of fact or of value, there must always be some element of doubt about them because there is no method or mechanism by which to establish their correctness ... It is in recognition of our own fallibility that we are inclined to tolerate what we think is mistaken". Therefore, "a commitment to discovering what is true about the good life or about proper moral practice

[7] Mendus, *Toleraton and the Limits of Liberalism*, p. 26.

requires a social order whose fundamental disposition is to toleration."[8] However, toleration cannot only be defended on instrumental grounds, but also at the most fundamental level, it is, he argues, "valuable because it is the condition which gives judgements worth", through which "rational inquiry and therefore moral inquiry" could be possible.[9]

Another defense of toleration as a value is derived from the value of autonomy. In this account the value of toleration goes along side with individual autonomy. Mendus writes that "Mill is justifying liberty and toleration by reference to autonomy, and he is insisting that the attainment of autonomy requires pluralism".[10] The autonomous nature of human beings can only flourish in the circumstances of diversity. In this sense, Mendus cites as Mill saying, "we should tolerate things believed to be wrong because we are interested not only in what people do, but also in the reasons they have for doing those things. Thus it is (in general) more important that people act autonomously than that they act correctly. Making choices for oneself (choosing autonomously) is more important than making right choices (choosing correctly)".[11]

We shall during the course of our discussion cite and evaluate some of these ideas presented above. Autonomy-based toleration, especially we shall argue, does not ensure diversity when non-liberal minority groups are at stake. For now, we can say that both responses reflect some features involved in the nature of toleration. That is, once the tolerator gives a high value to diversity and difference, then the notion of toleration and the

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[8] Chandran Kukathas, 'Cultural toleration', in Will Kymlicka and Ian Shapiro eds., *Ethnicity and Group Rights*, Nomos vol. 39, New York: New York University Press, 1997 pp. 79 and 86.
[9] Ibid., pp. 79 and 86.
[10] Mendus, *Toleration and the limits...*, p. 55.

act of tolerance would be regarded as virtues. In this sense, toleration is a virtue. However, it is an unusual virtue, because diversity and difference of beliefs will still exist even if they are not tolerated. Hence, toleration is, we could say, a virtue out of necessity.[12] As Walzer puts it, "it sustains life itself, because persecution is often to the death, and it also sustains common lives, the different communities in which we live. Toleration makes difference possible; difference makes toleration necessary."[13]

Returning to our argument that whole existence of cultures and religions cannot be tackled within the notion of toleration. To be sure, a regime of toleration could very well enable different groups to co-exist with their own distinctive cultures and identities. On the other hand, although it does aim at providing a polity in which different groups can co-exist peacefully, it does not have an implication through which differences can be *equally respected* or *accepted*. Given that toleration arises in circumstances in which difference gives rise to "disapproval, dislike, or disgust", minority cultural and religious groups are not demanding that their cultures be tolerated, but rather, be *recognized*. They rightly argue that constitutive elements of their cultural and religious identities are not something inferior to those of other cultures, but rather, something that should be viewed as a matter of basic respect to the extent that their separate identity should be accepted publicly. Indeed, every culture as we said in chapter 1, has its own spirit and values that provide their adherents a context of meaning, identity and choice. Given the liberal principle that different individual conceptions about the value and meaning or, in more general, about how to lead one's life

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[11] Ibid., p. 57.

[12] The question of whether toleration is a virtue or not has given rise to opposing views. For the view, for example, that toleration is a virtue, see Glen Newey, *Virtue, Reason and Toleration: The Place of Toleration in Ethical and Political Philosophy*, Edinburgh: Edinburgh University Press, 1999, Ch. 3; For a contrary view that toleration cannot be in itself a virtue, see Alastair MacIntyre, 'Toleration and the goods of conflicts', in Susan Mendus ed., *The Politics of Toleration*, Edinburgh: Edinburgh University Press, 1999.

should be respected equally, and that since different cultures provide different conceptions of the good for their individuals about how to lead their lives, they should be *equally* respected. Respect for persons as moral beings therefore does require respecting their own cultural particularities, through which they, to some extent, shape their conceptions of the good. In this sense, they have a valid claim, not only to tolerance, but also, at the most fundamental level, to institutional recognition of their cultures. Therefore, our basic starting point in assessing other cultures should, as Charles Taylor puts it, start from a "presumption" that "we owe equal respect to all cultures", "even if [they are] accompanied by much that we have to abhor or reject".[14]

The second reason for our argument that the existence of a culture and religion cannot be evaluated wholly within the notion of toleration is that no culture can be illiberal in all its aspects. The values and practices of a cultural and religious group cannot be illiberal altogether, and likewise, no culture can be liberal in all areas of human life. Since every culture and religion provide their adherents with a sense of meaning and identity, and no culture can provide the same advantages and disadvantages for its members, as we discussed in chapter 1, there is no culture or religion that can have illiberal standards in all its aspects. Thus, we should not regard any cultural and religious group as illiberal entities, but some as non-liberal entities having *some* illiberal values and practices that could be harmful to some of their individual members.

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[13] Walzer, *On Toleration*, p. xii.
[14] Charles Taylor, 'The politics of recognition', in Amy Gutmann ed., *Multiculturalism and 'the Politics of Recognition'*, Princeton, N.J.: Princeton University Press, 1992, pp. 66 and 72.

III

The question we shall be concerned with is, then, the question of what a liberal society's attitude should be towards some minority practices that are seen offensive against its values. There are two liberal answers to this question: while the autonomy-based toleration, which we saw in chapter 1 as a basic view of Enlightenment Liberalism, would endorse some restrictions on those minority groups in the name of protecting individual autonomy, the diversity-based toleration, by which Reformation Liberalism is marked off, would suggest that the state should leave them alone as long as individuals' right to exit the community is secured.

Let us tackle these liberal approaches in turn, beginning with the autonomy-based liberal view. According to this view, accommodating minority practices is limited to the extent that these groups ensure and do not restrict their members' right to question, revise or abandon cultural values and practices. In this account, a strong connection between toleration and individual autonomy is established; namely, the liberal understanding of toleration is grounded in respect for individual autonomy. "What distinguishes liberal *tolerance*", Kymlicka argues, "is precisely its commitment to individual autonomy –that is, the idea that individuals should be free to assess and potentially revise their existing ends."[15] He injects this individualistic understanding of toleration into the context of minority group rights. According to him, the rights of minority groups to live in accordance with their cultural and religious values and practices are limited to the extent that these groups should *tolerate* "individual freedom of choice." And this is, for him, exactly what the liberal commitment to individual autonomy requires; that is, such a "choice-centred"

[15] Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Oxford University Press, 1995, p. 158.

understanding of toleration is derived from the value of individual autonomy.[16] Hence, the underlying principle of toleration regarding minority rights is that it "limits the power of illiberal groups to restrict the liberty of their members, as well as the power of illiberal states to restrict the liberty of collective [life]."[17] "Minority rights", Kymlicka maintains, "should not allow one group to dominate other groups; and they should not enable a group to oppress its own members."[18] In this sense, "a liberal theory can accept special rights for a minority culture against the larger community so as to ensure equality of circumstances between them. But it will not justify (except under extreme circumstances) special rights for a culture against its own members."[19] In these "extreme circumstances", such rights as recognizing "education exemptions for the Amish" and "theocratic government for the Pueblo Indians", are "compromise[s] of, but not instantiation[s] of liberal principles, because they violate a fundamental principle of freedom of conscience", he argues.[20]

We exemplified autonomy-based toleration with Kymlicka's view. To be sure, his view is genuinely liberal, given that the moral and political ontology of liberalism is based on individual autonomy. Yet, it is refutable on two grounds. Although it offers some insights that suggest that there should be some *limits* to cultural rights, it does not ensure cultural diversity. Second, it is not compatible with some other liberal principles.

Justification of a group's right to its culture, we argued in chapter 1, cannot *merely* be correlated to valuing individual choices and autonomy, since cultures involve a variety of

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[16] Will Kymlicka and Ruth Rubio Marin, 'Liberalism and minority rights: an interview', *Ratio Juris*, vol. 12 (2), 1999, pp. 150-151.
[17] Kymlicka, *Multicultural Citizenship*, p. 158.
[18] Ibid., p. 194.
[19] Will Kymlicka, 'The rights of minority cultures: Reply to Kukathas', *Political Theory*, 1992, vol. 20 (1), p. 142.

constituent elements each of which has a unique contribution to individual lives in different ways. Thus, each culture has different conceptions of individual flourishing. In this sense, we argued, since no culture is superior to others as long as they provide their adherents with a context of identity and meaning, and as long as they are not oppressive, non-liberal cultures have a justified claim to their cultural values and practices.

However, Kymlicka thinks that a culture which does not value individual autonomy, or does not regard it as a *general* value, is necessarily oppressive to its individuals. To prevent this, he suggests the liberalisation of such a culture. In his view, this does not imply assimilation. "Our aim", he argues, "should be not to assimilate the minority culture, but rather to liberalise it, so that it can become the sort of 'society of free and equal citizens' which liberalism aims at."[21] This is, he maintains, "a task that liberals face in every country": "finding a way to liberalise a cultural community without destroying it."[22]

This suggestion is neither multicultural nor liberal. Given that multiculturalism calls for a view that accepts the distinctive otherness of different cultures, it is not multicultural because it does implicitly involve the assimilation of non-liberal cultures. The main point that Kymlicka misses is that a liberal society itself is based on a certain cultural background, which, like any other community, creates a particular cultural identity and a certain conception of the good, though it is not shared by all its constitutive groups. In other words, the values constituting liberalism are not clearly separable from the culture by which a liberal society is marked off. So, liberalisation of non-liberal cultures would basically

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[20] Will Kymlicka, 'Two models of pluralism and tolerance', in David Heyd ed., *Toleration: An Elusive Virtue*, 1996, Princeton, N.J.: Princeton University Press, p. 96.
[21] Will Kymlicka, 'Do we need a liberal theory of minority rights', *Constellations*, vol. 4, (1), 1997, p. [illegible]
[22] Will Kymlicka, *Liberalism, Community, and Culture*, Oxford: Oxford University Press, 1989, p. 170

mean that they should have a *liberal culture*, rather than maintain their distinctiveness. Secondly, his suggestion is not compatible with the liberal principle of non-interference. Accepting that different cultures provide different conceptions for their members of how to lead their lives, that liberalism does not commit itself to a certain conception of the good life, and that it avoids imposing a certain conception of the good life requires a liberal society to provide enough room for non-liberal conceptions of the good. Insisting on a liberal understanding of individual autonomy, and regarding it as the only basis for toleration would, as Kukathas notes, have an implication of "perpetuation or reproduction of a liberal social order, but at the risk of intolerance and moral dogmatism."[23] A liberal society should therefore accept non-liberal conceptions of the good life to avoid holding such a "moral dogmatism". Such an acceptance is not only as a matter of principle, but it would also provide a ground for a liberal society on which it would have an opportunity to take a critical look at its own values. This is another requirement of a principle involved in liberalism, that no value is exempt from reassessment and criticism. (We shall soon say more about that last point)

However, that a liberal commitment to individual autonomy cannot provide a sufficient affirmation of cultural diversity does not mean that such an affirmation cannot be derived from individual welfare. That is, autonomy-based liberalism is right on the ground that there should be some limits to cultural diversity. Yet, these limits cannot be derived from a liberal understanding of individual autonomy, but from more fundamental individual interests. Before expanding this argument, let us turn to the second liberal view, diversity-based toleration, which we shall exemplify with Kukathas's arguments.

[23] Kukathas, 'Cultural toleration', p. 78.

IV

The main concern of this view is, as we noted in chapter 1, not the protection of the culture in question, but to maintain the liberal principle of *non-interference*, which in turn secures individual freedom. In this view, any sort of state intervention in minority practices is rejected. Kukathas, for example, has explicitly developed such a notion of toleration on that ground. The toleration he suggests is based on the rejection of any "established authority" which could represent a "common standpoint of morality". Unlike autonomy-based toleration, he develops an *independent* principle of toleration, which, for him, is the core value of liberalism. Autonomy based toleration, he writes, "begin by assuming that there is a common established standpoint. From that point onwards, differing views are treated as dissenting from the received view, and tolerance is not possible since relations with dissenters are conducted on the basis of the principles implicit in the established standpoint."[24] Thus, he argues, "we should be wary of conceding to established authorities the right to intervene in the "intolerable" practices of minorities because there is little assurance that the power will not be abused."[25] A liberal state therefore should not be viewed as an authority (or a power) representing a certain standpoint of morality. It is an "association of associations"[26] of different groups holding different conceptions of morality. In this sense, there is no single authoritative group in a liberal society tolerating others, but many groups tolerating each other. And illiberal minority groups that violate their individuals' rights have a right to maintain their illiberal values and practices. "Even in cases where there is clear evidence of terrible practices", he maintains, "there is good

[24] Ibid., p. 81.
[25] Ibid., p. 88.
[26] Ibid., p. 94.

reason not to give established authority the right to intervene", since "while power tends to corrupt, absolute power corrupts absolutely".[27]

Kukathas defends a sort of toleration which aims at accommodating rather different and even incompatible ways of life. Indeed, it ensures cultural diversity although its main concern is to secure individual freedom. As we noted in Chapter 1, his suggestion is based on two presumptions, that a cultural group is a *voluntary association*, and that since it is a voluntary association, individuals have an essential right to *exit* the community. Given that, the right of exit becomes a key point in his argument that the state should take a hands off approach to illiberal practices. Ensuring the right of individuals to leave the community when they do not wish to live with its terms provides a legitimate ground for any form of cultural group to exist, because, he argues, it establishes "a balance between the claims of the individual and the interests of the community."[28] In this sense, what a liberal state should do is to leave these groups alone insofar as individuals have the essential right to exit the community. "Just as dissenters should be free to dissociate themselves from beliefs and practices", he argues, "so should communities be able to dissociate themselves form those who do not wish to conform to their ways, and whom they cannot, in good conscience, tolerate".[29]

Thus, Kukathas's view on minority cultural groups has two dimensions; on the one hand, it allows any sort of community to exist and impose any restrictions on the freedom of its members; on the other hand, it suggests that members have an essential right to exit the community, which would reduce the scope of the community's unjust treatment of

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[27] Ibid., p. 89.
[28] Chandran Kukathas, 'Are there any cultural rights', *Political Theory*, vol. 20 (1), 1992, p. 117.

individuals. And all the liberal state should do about its minority groups is to secure the right of individuals to exit their groups.[30]

Kukathas' case for cultural toleration is refutable on two grounds; first, his rejection of any "established moral standpoint" is neither a plausible nor realistic argument to be held, since, as Walzer argues, "every ... society develops a common moral standpoint, a set of shared understandings"[31]. Secondly, the right of exit from the community does not ensure individual freedom in all cases. Like any other society, a liberal society, as we noted, has a specific cultural structure, which reflects a particular history and ways of life. It has, like any other community, a right to maintain its own distinctive culture that presents a particular moral understanding. Given the fact that a liberal society itself is based on a certain cultural background which creates a particular cultural identity, accommodation of all incompatible minority practices within this liberal cultural structure may require that it be changed. Such a demand, that a liberal society should accommodate all such cultural practices even at the cost of changing its very liberal cultural identity, would be neither realistic nor plausible. As Parekh puts it, "it cannot [meet all demands] beyond a certain point without losing its coherence and causing widespread disorientation and resentment."[32] Of course this does not mean that it should remain unchanged and ignore all cultural needs and demands of minority groups. On the contrary, it should, as we shall see, critically reassess, and at some point revise and change some of its cultural and moral assumptions towards some minority practices.

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[29] Kukathas, 'Cultural toleration', p. 90.
[30] Kukathas, Are there any cultural rights, p. 134.
[31] Michael Walzer, 'Response to Kukathas', in Ian Shapiro and Will Kymlicka ed., *Ethnicity and Group Rights*, Nomos, vol. 39, 1997, New York: New York University Press, p. 108.

Against this, Kukathas would say that there is nothing in his argument that suggests that a liberal society, as a voluntary cultural association, should abandon its own specific cultural identity. Rather, he would argue that there must be some space for other cultural groups, too, to exercise their autonomy to the extent that they *withdraw* from the liberal culture insofar as they ensure the right of their individuals to exit from the community. However, this argument suffers two flaws. First, it could be valid for national minorities, but not for ethnoreligious groups, since they do not satisfy the conditions we stated in chapters 3 and 4.[33] In this sense, Kukathas's understanding of toleration can at best be seen to hold between states which do not share a common history and culture. "International society", as Michael Walzer notes, "is a regime of that sort, a maximally tolerant regime, where all the presumably intolerable practices that Kukathas lists are in fact tolerated." Even in here, as he maintains, "there are limits, at least in principle, that reflect ... a certain moral convergence or settlement" on the basis of "*humanitarian intervention*, whose standing in the lawbooks suggests that massacre and ethnic cleansing, while they may in fact be permitted, are not strictly speaking tolerated."[34]

Secondly, although the aim of this view is to secure individual freedom, it is a quite weak ground to secure it. It involves three limitations. Kukathas himself recognizes the first two limitations; namely, the availability of a wider society for individuals[35], and individuals' ability to be able to leave their community[36]. Even if we assume that the wider society that

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[32] Bhikhu Parekh, 'Equality in a multicultural society', *Citizenship Studies*, vol. 2 (3), 1998.
[33] Two significant conditions needs to be restated; first, they are not territorially concentrated groups, and second, they, with the few exemptions like the Amish, do not want to withdraw themselves from the larger society. Rather, they want to participate in it with their own terms.
[34] Michael Walzer, 'Response to Kukathas' pp. 106-107.
[35] Kukathas, 'Are there any cultural rights', p. 134.
[36] Kukathas, 'Cultural rights again: a rejoinder to Kymlicka', *Political Theory*, 1992, vol. 20 (4), p. 677

is open to individuals is available, most individuals simply cannot leave their community.[37] Sawitri Sharso in his article writes about a tragic case of a Hindustani woman who was maltreated by her husband, and committed suicide. A research for the Dutch court revealed three underlying reasons that caused her to take her life: "(a) that her culture required of the victim that she obeyed and stayed with her husband, (b) that she was not able to act against this cultural norm, and (c) that her husband knew this and had acted on this knowledge."[38] This gives us the third limitation which is more substantial. The exercise of the right of exit does require the relevant individuals to be aware of available options for them, which in turn requires the relevant community to provide an adequate range of options for its members to exercise their individual freedom. But this is not the case for the cultural and religious groups we are concerned with here. In other words, ensuring the right of exit requires the relevant community to provide a proper space for its members to be able to exercise this right. This may not be the case for those illiberal communities, given that they do not ensure guaranteeing such rights as freedom of speech and mobility. Matthew Festenstein, for example, argues that since the relevance of the right of exit to "the other typical liberal rights, such as freedom of speech, or mobility, or the right to property" is not clear in Kukathas' view, the right of exit becomes "ineffective". To make it effective, as he notes, "the state should be entitled to intervene in setting the terms of association", which is not envisaged in Kukathas' view of voluntary association.[39] In this sense, even if we follow Kukathas' argument that cultural groups are voluntary associations, which we rejected in Chapter 1, and thus have a right not to be interfered, it is, as Gilbert argues, "self-

[37] This is not to say that recognition of the right of exit cannot ensure individual freedom. Indeed, in some cases it could be sufficient enough to secure individual freedom. Yet, it cannot be accepted as an applicable principle that could be valid for all cases.

[38] Sawitri Saharso, 'Female autonomy and cultural imperative: two hearts beating together', in Kymlicka and Norman eds., *Citizenship in Diverse Societies*,Oxford: Oxford University Press, 2000, pp. 224-225.

defeating." That is, "on the one hand he regards cultural groups as voluntary association; but on the other he denies a right to the conditions for making a rational choice of membership. Without these the right of exit which supposedly safeguards individual freedom may be purely nominal, and continued membership of a cultural group may be in practice involuntary."[40]

V

We have through our discussion of Kymlicka and Kukathas arrived at a disturbing situation. On the one hand, given that individual autonomy is a fundamental value to which liberalism commits itself, imposing liberal values on non-liberal groups in the name of securing individual autonomy would not only be an *intolerant* attitude, but also an *assimilationist* attitude. On the other hand, given that toleration (and thus non-interference) is one of the fundamental values to which liberalism commits itself, suggesting an unlimited toleration for them at the expense of individual welfare would in fact undermine the principle and application of toleration itself. In other words, tolerating intolerant agents would not serve the main purpose of the principle of toleration, that secures peaceful co-existence of differences. Rather, it would, as we said, undermine that principle and its application on which the stability of a liberal-democratic regime is based.

Here we could hold two views: First, we may argue that "the toleration which protects [freedom] will be possible only if others can be assumed to value such a freedom"[41]; namely, "without a public opinion committed to the belief in a *right* to toleration, toleration

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[39] Matthew Festenstein, 'Cultural diversity and the limits of liberalism', in Noël O'Sullivan ed., *Political Theory in Transition*, London: Routledge, 2000, pp. 73-74.
[40] Paul Gilbert, *Peoples, Cultures and Nations in Political Philosophy*, Edinburgh: Edinburgh University Press, 2000, p. 176.

is insecure".[42] In this sense, "it is the work of democratic citizens."[43] On the other hand, since "each [culture and tradition] has its own standards of reasoning", "we can have no good reason to decide in favor of any one rather than of the others."[44] We may therefore conclude our discussion by saying that there are cultures so different that establishing cross-cultural moral standards between them is virtually impossible. And since liberalism itself is culturally specific and requires a liberal community to sustain itself, it "is not a possible meeting ground for all cultures, but is the political expression of one range of cultures, and quite incompatible with other ranges".[45]

The view we stated above contains some truth. However, the second view we would like to hold is that the existence of non-liberal cultural and religious groups in liberal societies is *de facto*, and these societies not only as liberal societies but also as *multicultural* societies *have to* sustain their stability. Such stability, too, requires that the relevant groups have some agreement on some fundamental arrangements, but such agreements do not need to be viewed as *given*; rather they should be seen as ideal of a multicultural society *to be achieved*.

The arrangement to be achieved needs to be filtered through "actual communication" of the relevant parties, through which they could arrive at a mutually acceptable arrangement. This, as we shall note later, requires the relevant parties to engage in a democratic-public dialogue, through which they can "communicate", rather than express, their "concrete

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[41] Ibid., pp. 90-91.
[42] Alan Ryan, 'The liberal community', in John W. Chapman and Ian Shapiro eds., *Democratic Community*, *Nomos*, vol. 35, New York: New York University Press, 1993, p. 107.
[43] Walzer, *On Toleration*, p. xi.
[44] Alisdair MacIntyre, *Whose Justice? Which Rationality?*, London: Duckworth, 1988, p. 351.
[45] Taylor, 'The politics of recognition', p. 62.

needs, interests, and differences."[46] Such liberal values as freedom of expression and association provide necessary tools for such communication, and in this sense, liberalism can be viewed as a necessary starting point for tackling the problems of multicultural societies. However, it will not be a whole response to those problems, as long as it presupposes some *culture-oriented* liberal views and values. What is needed, in Monique Deveaux's words, is to abandon presupposing "'pre-deliberative' norms or values—values which could exclude citizens who do not adhere to mainstream social and moral views."[47] Of course, this is not to say that there are not any recognized, or to be recognized, principles on which the relevant groups are expected to agree. In some cases, as we shall see, some fundamental individual interests should be taken for granted, and violation of them should not be tolerated. Yet, in some other cases a liberal society's initial reaction towards the minority practice, which supposedly offends some values with which it identifies itself, should not be to reject it out of hand. Given that liberal society does not only consist of liberals but also of such groups as racists, sexists and conservatives, we may

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[46] Monique Deveaux, *Cultural Pluralism and Dilemmas of Justice*, Ithaca: Cornell University Press, 2001, p. 172. The idea that the relevant parties should engage in a democratic public dialogue has been strongly endorsed by the proponents of "deliberative democracy". Broadly speaking, the deliberative conception of democracy puts "public reasoning" at the center of political legitimacy. In this account, democratic legitimacy is based on the opportunity of the relevant parties to participate in an effective dialogue through which they can reach a mutually acceptable agreement on the relevant arrangements. In this sense, "the attraction of deliberative democracy" as James Bohman notes, is "its promise to go beyond the limits of liberalism [and republicanism] and to recapture the stronger democratic ideal that government should embody the 'will of the people' formed through the public reasoning of citizens". (James Bohman, 'The coming of age of deliberative democracy', *The Journal of Political Philosophy*, vol. 6 (4), 1998, p. 401). Generally speaking, many deliberative theorists limit deliberation to the political sphere in which *rational argumentation* is seen as the core of the communication. See, for example, Joshua Cohen, 'Procedure and Substance in Deliberative Democracy, in Seyla Benhabib ed. *Democracy and Difference: Contesting the Boundaries of the Political*, Princeton, N.J: Princeton University Press, 1996; Jurgen Habermas, 'Three normative models of democracy', in Seyla Benhabib ed., Ibid.; James Bohman, 'Democracy and cultural pluralism', *Political Theory*, vol. 23 (2), 1995, pp. 253-79. This view, however, has been attacked on the ground that rational argumentation would exclude other kinds of communication, i.e., "cultural forms of communications". See, for example, Iris Marion Young who argues that "in a communicative democracy" communication should also involve "greeting", "rhetoric" and "storytelling". 'Communication and the other: beyond deliberative democracy' in her *Intersecting Voices: Dilemmas of Gender, Political Philosophy, and Policy*, Princeton, N.J: Princeton University Press, 1997; For a similar view see Seyla Benhabib, 'Toward a deliberative model of democratic legitimacy', in her ed., *Democracy and Difference*; John S. Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics and Contestations*, Oxford: Oxford University Press, 2000, Ch. 3.

reasonably say that liberals should confront these groups, and explain why they reject their views, rather than dismissing them out of hand. Likewise, they also need, through a democratic-public dialogue, to face minority practices, some of which could be so compelling that they may require liberal society to reassess and change some of its cultural assumptions about the relevant minority practices.

So, what we have grasped from Kymlicka's and Kukathas' views are two arguments: first, there should be some limits to cultural practices. Yet, these limits cannot be derived from a liberal understanding of individual autonomy, but from some fundamental individual interests and rights. Second, every community develops an established way of life; so does a liberal community. However, no established way of life is absolute, and thus is subject to criticism, reassessment and change. In what follows we shall try to apply these arguments to some concrete cases.

VI

There should be some limits to cultural rights to the extent that they do not undermine fundamental individual interests. That is, the limits of cultural rights we would like to draw should be marked by some fundamental individual interests and rights, violation of which should not be tolerated by the dominant society. Female circumcision is obviously such a cultural practice. It is the collective name given to several different traditional practices that involve the cutting of female genitals. The procedure is commonly performed on young girls as well as on women before the marriage or after the pregnancy. It is widespread in many parts of Africa as well as the Muslim populations of Indonesia and Malaysia.

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[47] Deveaux, *Cultural Pluralism and Dilemmas of Justice*, p. 142.

Although female circumcision is identified with Islam in some African countries, and defended by some Muslims, it is, as Rahman and Toubia notes, cultural, not a religious practice. "The practice predates the arrival of Christianity and Islam in Africa and it is not a requirement of either religion. In fact, [it] is practiced by Jews, Christians, Muslims and indigenous religious groups in Africa".[48] In western countries including Canada, the United States and New Zealand, the estimated number of women immigrants from the countries in which female circumcision is practiced is over one million.[49]

There are different types of female circumcisions. Yet, they can be divided broadly into four types:

> **Circumcision** [or clitoridectomy], or cutting of the prepuce or hood of the clitoris, known in Muslim countries as Sunna (tradition)
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> **Excision**, meaning the cutting of the clitoris and of all or part of the labia minora.
>
> **Infibulation**, the cutting of the clitoris, labia minora and at least the anterior two-thirds and often the whole of the medial part of the labia majora. The two sides of the vulva are then pinned together by silk or catgut sutures, or with thorns, thus obliterating the vaginal introitus except for a very small opening, preserved by the insertion of a tiny piece of wood or a reed for the passage of urine or menstrual blood.

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[48] Anika Rahman and Nahid Toubia, *Female Genital Mutilation: A Guide to Laws and Policies Worldwide*, London: Zed Books, 2000, p. 6.

[49] For a detailed account of immigrant population from these countries in the West see. Rahman and Toubia. *Female Genital Mutilation* pp. 102-241.

Intermediate, meaning the removal of the clitoris and some parts of the labia minora or the whole of it. Sometimes slices of the labia majora are removed and stitched.[50]

Since sexuality is socially constructed, the underlying motives behind female circumcision could differ from society to society. It may be performed as "a rite of passage from childhood to adulthood, during which time the girl is equipped with skills for handling marriage, husband and children." In some societies, it is perceived as a way to curtail premarital sex and preserve virginity, because "a family or clan's honor depends on a girl's virginity or sexual restraint", which is the case in Egypt, Sudan and Somalia, for example. In some other societies, like Kenya and Uganda, it is "performed to reduce the woman's sexual demands on her husband, thus allowing him to have several wives."[51]

However, the basic rationale involved in the practice is to control women's sexuality, to a great extent, in favour of men. It undermines their independent sexuality in the sense that they can only be mother and spouse, and thus subordinates their role in society. Moreover, "a major consequence of the operation is that the sexual enjoyment of the woman concerned is inevitably gravely impaired in an irreversible manner and she may experience far greater hazards in childbirth."[52] Thus, cutting healthy genital organs for no medical reasons itself should be regarded as a violation of girl's right to physical integrity. Physical

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[50] 'Female genital mutilation: proposals for change', *Minority Rights Group International*, vol. 3, 1992, p. 7
[51] Rahman and Toubia, *Female Genital Mutilation*, pp. 5-6.
[52] Sebastian Poulter, *English Law and Ethnic Minority Customs*, London: Butterworths, 1986, p. 154.

and psychological consequences depend on the gravity of circumcision. There is however no doubt that risks to physical health are very likely.[53]

Given such negative social implications and obvious health risks involved in the practice, there is a legitimate ground for liberal states to ban it. First of all, it violates a number of recognized human rights. It is "cruel" and "degrading treatment", contrary to Article 5 of the Universal Declaration of Human Rights, which states that "no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment". Second, it is a violent practice. Given that "the term violence against women means any act of gender-based violence that results in, or is likely result in, physical, sexual or psychological harm or suffering to women..."[54], especially the second and the third forms of circumcisions should be regarded as "gender-based" practices that violate and harm physical integrity of women. "Violence against women", as article 2(a) of the Declaration makes it clear, "shall be understood to encompass ... female genital mutilation and other traditional practice harmful to women."

A cultural and religious group's interests in performing its cultural and religious practices should, therefore, be assessed and valued in relation to some other fundamental human interests and rights; and not only liberal states but also any other states should take these interests for granted in their treatment of members. Saying that any other states should take these interests and rights for granted does not mean to suggest the presupposition or imposition of liberal values on other societies. Rather, it is to say that, since these human

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[53] For a detailed account of physical and psychological consequences of the practice which are grave see, 'Female genital mutilation: proposals for change', *Minority Rights Group International*, vol. 3, 1992, pp. 8-10.

interests and rights are culturally neutral to the extent that they are necessary conditions for individual self-development, thus they should not be considered as rights associated only with liberalism, but as rights that belongs to all human beings, which should be taken for granted.

Female circumcision is obviously the kind of cultural practice to be abolished regardless of its cultural or religious significance. As article 5 of the 'Convention on the Elimination of all Forms of Discrimination Against Women, 1979' puts it, "states parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."[55] In this sense, whatever the cultural or religious significance of female circumcision is, it cannot be accepted because it basically causes irreversible, permanent physical harm to women, and is a source of sexual inferiority for them. Hence, at least from the vantage point of liberalism, there should be a general moral condemnation of female circumcision on the grounds that it violates physical integrity of women, and that it is based on gender inequality.

On the other hand, it may be argued that since the mildest form of female circumcision, *sunna*, does not involve greater health risks than male circumcision, and since "we already

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[54] United Nations General Assembly, Decleration on the Elimination of Violence Against Women, 1993, Article 1.

[55] Our argument that some cultural and religious practices should be assessed in relation to some fundamental human interests and rights becomes more obvious as far as children concerned, simply because they cannot make informed decisions about the relevant practice that will affect them for the rest of their lives. In this sense, states are more obliged to protect them from irreversible harm that female circumcision causes, even at the expense of tradition or culture. See, on this, *Convention on the Rights of Child*, 1989, Article 24 (3), which makes it clear that "States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."

make accommodations for [male circumcision] that are very similar but culturally more familiar [to female circumcision]", it should be allowed.[56] Doriane L. Coleman cites Somalian women's attempt in Seattle, in the United States, to have their daughters circumcised.

> Harborview Medical Center did not categorically reject the repeated requests of the immigrant mothers who asked to have both their girls and boys circumcised. Instead it listened to the women, heard them say that the circumcisions would take place with or without the doctors' participation, and worked out a compromise with the immigrants: the hospital would perform a "simple, symbolic cut" amounting to a mere "nick" –enough to draw blood. ... The procedure was never performed because some prominent opponents of FGM, who generally take a categorical position against any form of the traditional practice, launched a successful campaign against the hospital's efforts.[57]

Indeed, it is hard to reject such a form of circumcision; the health risks involved in it are considerably small, and the satisfaction of cultural concerns could be great. Yet, we reject it on two grounds. First, there may not be comprehensive measures to ensure only this form of circumcision. As Sebastian Poulter, citing the experience of legislation in Sudan, writes:

> In 1946 infibulation (Pharanoic circumcision) was banned there through an amendment to the penal code, while leaving *sunna* circumcision untouched. However, the effect of this was that in practice many parents arranged with

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[56] Joseph Carens, *Culture, Citizenship, and Community: A Contextual Exploration of Justice as Evenhandedness*, Oxford: Oxford University Press, 2000, p. 118.
[57] Doriane L. Coleman, 'The Seattle compromise: multicultural sensitivity and Americanisation' *Duke Law Journal*, 1998, vol. 47 (717), pp. 736-737.

midwives for their daughters to undergo an 'intermediate' type of operation, which was far more extensive and damaging than *sunna* circumcision...[58]

As can be seen, an effective ban on the cruellest forms of the practice would require baning all forms of it, even the mildest form. Secondly, equating *sunna* with male circumcision misses underlying social messages that female circumcision involves, which is not the case for male circumcision.[59] "Male circumcision affirms manhood with its superior social status and associations to virility. Female circumcision is explicitly intended to show a woman her confined role in society and restrain her sexual desires."[60] Coleman cites a Somali refugee couple as saying, "we were taught that this was a way of ensuring a girl's good behavior. ... It prevents them from running wild. Women should be meek, simple and quite, not aggressive and outgoing. This is something we just accept."[61] As can be seen, the social message in female circumcision is clear; it condones and strengthens the patriarchal structure of the relevant tradition at the expense of women's sexuality, which in turn reinforces their inferiority. Thus, the principle of the equality of sexes, through which some fundamental human interests are satisfied equally, does provide a legitimate ground for a liberal state to ban it.[62] The justification of banning such practices is not derived from the values of a particular culture, but from some fundamental human interests and rights. Since they are culturally neutral and fundamental conditions for individual self-development, they

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[58] Sebastian Poulter, *English Law and Ethnic Minority Customs*, p. 159.
[59] It should however be noted that we do not mean to make a case for male circumcision. That it is not as severe as many forms of female circumcision does not mean that it cannot be assessed in relation to human rights principles.
[60] Rahman and Toubia, *Female Genital Mutilation*, p. 5.
[61] Coleman, 'The Seattle compromise', p. 741.
[62] However, even if banning female circumcision is legitimate, it should be obtained through participation of the relevant minority group. That is, although the state has a legitimate ground to ban it, it is after all the relevant community and its members to abandon the practice. In this sense, these groups should, through community-based organizations, be encouraged to go through an open-minded discussion over the practice.

cannot be violated in the name of culture or religion. That is, although the autonomy of a culture does require non-interference, and it is a significant human interest to be taken into account, the right of a group to its cultural values and practices should be constrained by a general principle that they do not undermine fundamental human interests and rights, which are necessary conditions for individual well-being.

VII

To be sure, appealing to universal human rights can only solve few conflicts, since, as Parekh notes, "they deal with the most basic aspect of human life about which there is generally little serious disagreements."[63] Yet, what we were concerned above was exactly some cultural practices that could obviously be rejected on the basis of these rights. That is, minority practices, we argued, are accommodated within the constraints of some fundamental individual interests and rights. On the other hand, there are many grey areas arising when some minority groups, for example, demand that their children be exempt from mandatory education in the schools; that they be entitled to take their children out of school before the legal age; that their members be bound by the traditional law of their communities rather than the general law of the state which describes the sanctions on the relevant cultural practices otherwise. In such cases, there seems to be no guiding principle that could be suggested as the limits of the accommodation of such demands. What is needed is a democratic-public dialogue between all relevant parties. This is our second argument that although there is a common established way of life in a liberal society, it is not exempt from reassessment and change, as well as that of the minority. The acceptance

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Such discussion should include all relevant parties; particularly young women, who are the most vulnerable members of those groups.

[63] Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, Basingstoke: Macmillan, 2000, p. 266.

that the values with which a society identifies itself are not beyond criticism, and thus subject to reassessment and change could provide a significant ground for them to engage in a democratic-public dialogue. Such a dialogue could enable the relevant parties to have a critical outlook to their values. It, as Parekh notes, "forces each party to become conscious of its values and reasons for holding them..."[64]

Some authors suggest a deepening of liberal democratic politics through which political norms should be more open to democratic challenge, contestation and negotiation than the common liberal thought has presupposed so far, and political institutions should be more inclusive to the extent that minority groups' interests and needs should be listened to and debated without taking the majority's political and cultural norms and values for granted. Monique Deveaux, for example, derives her argument from Jurgen Habermas's discourse ethical conception that suggests "unconstrained public dialogue" through which democratic norms and institutions are open to "contestation and revision", and from deliberative democracy that "denotes an approach to democratic theory in which norms and institutions are open to challenge and debate and derive their legitimacy from the actual agreement of citizens."[65] Suggesting the term "deliberative liberalism", she rightly argues that "a reformed and expanded liberalism", which deepens its democratic norms and practices by including more deliberation and dialogue of diverse cultural, religious and ethical views in the decision-making process, "can meet the challenges posed by the justice claims of cultural minorities."[66] This reformed and expanded liberalism would, as she notes, abandon "Rawlsian-style conceptions of public reasoning for supposing that reason can unify and subsume diverse ethical perspectives", and reject "the idea that fair principles and

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[64] Ibid., p. 271.
[65] Deveaux, *Cultural Pluralism and Dilemmas of Justice*, pp. 176 and 141.

procedures ... can be determined merely by appealing to a single, rational moral viewpoint."[67] In other words, it would eliminate unwarranted appeals to contestable, presupposed moral and political norms. If there are to be agreements on moral and political norms, they should be reached through democratic public dialogue and deliberation of all the relevant groups.

To be sure, democratic-public dialogue, as noted above, does require a certain quality of citizens; it requires tolerance of difference, and "tolerance", as Galston notes, "cannot be sustained without critical reflection on ways of life, including one's own."[68] That is, it could be possible only and only if the relevant parties are ready to make some reasonable compromises. Given that, no dialogue can be fruitful if they attach themselves to their conceptions of the good as the only truths, and are not willing to understand others' conceptions of the good. Thus, in some cases democratic-public dialogue may require the relevant parties to *distance* themselves from their religious and cultural peculiarities. This is not easy to achieve. As Anne Phillips argues, "part of the anxiety generated by fundamentalism – whether it is of a religious or political variety – is that it makes it impossible for its adherents to engage in [democratic] process, for even in principle they cannot treat their beliefs as detached."[69] However, accepting that adherents of, for example, religious groups do not attach themselves to their religious beliefs and practices in the same way and degree, that such a distance does not require them abandon their communal identities in public life altogether - as orthodox liberalism suggests-, and that they should at some stages of the dialogue deploy their religious convictions to have their arguments

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[66] Ibid., pp. 168-169 and 188.
[67] Ibid., pp. 163 and 147.
[68] William A. Galston, 'Two concepts of liberalism', *Ethics*, 1995, vol., 105 (3), p. 524.
[69] Anne Phillips, *Engendering Democracy*, University Park, Pa: Pennsylvania State University, 1991, p. 57.

understood properly, there could be a ground for them to engage in a democratic-public dialogue through which they could see the merits and demerits of their perspectives towards the disputed matter.

Likewise the dominant group, liberal society, too, should be willing to understand and accommodate minority practices. In some cases, it may be required to revise and change some rules and regulations, which could enable minority groups to live in accordance with their cultural and religious nexus. Such a stance requires that it does not view its established way of life as the only truth, accept that it could have some (cultural) prejudices, and is ready to abandon them. Kymlicka's quotation from the debate over the hijab in Quebec schools can be usefully mentioned in terms of showing how that debate changed some prejudices of the dominant society about another religion.[70]

> When this issue first arose, many Quebecers automatically assumed that all Muslims were fundamentalists opposed to sexual equality; or that all Muslims who supported the hijab also supported clitorectomy and talaq divorces, and perhaps even supported Iranian terrorism and the death sentence against Salman Rushdie. These stereotypes about Muslims were all present in the back of many people's minds, and the debate over the hijab provided an opportunity for them to emerge. The result, in the early stages of the debate, was almost certainly harmful and painful to Muslims, who must have felt that they were destined to be permanent outsiders, defined as the ultimate 'other' to Quebec's modern, pluralist, secular society.

[70] It could be interesting to note that the case Kymlicka argues for does not support his original position that establishes a strong connection between the right to culture and individual autonomy.

> But the debate progressed, and the final result was actually to challenge these stereotypes. Quebecers learned not to equate Islam with fundamentalism. They learned that not all Muslims support keeping women locked up all day in the house; not all Muslims support talaq divorces and clitoridectomy; not all Muslims support killing authors who criticize Islam. In fact, they learned that very few Muslims in Quebec endorse any of these attitudes. In the end, they learned that the enemy was not Islam as such, but rather certain forms of extremism that can be found in many different cultures, including 'our own'.[71]

As can be seen, the need for public dialogue is necessary for the relevant parties to see their prejudices about the disputed practice and arrive at a mutual understanding. However, the dialogue by itself may not be effective. What implication an effective dialogue should involve is that the relevant parties should be ready to make a compromise. In the late 1980's in France, for example, when three Muslim schoolgirls insisted on wearing their headscarves at classroom, a public controversy broke out about whether they could attend school with their religious dress code, the hijab.[72] Although there have been some intensive debates on the issue, public accommodation of wearing the hijab has, to a great extent, failed. The dominant view rejected it on the grounds that it is a symbol of Islamic fundamentalism, and thus, a threat to secularity; that it is a symbol of the subordination of

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[71] Kymlicka, *Finding Our Way: Rethinking Ethnocultural Relations in Canada*, Oxford: Oxford University Press, 1998, p. 69.

[72] For a detailed discussion of this controversy see, Miriam Feldblum, 'Paradoxes in ethnic politics: the case of Franco-Maghrebis in France', *Ethnic and Racial Studies*, 1993, vol., 16, pp. 52-74; Anna Elisabetta Galeotti, 'Citizenship and equality: the place for toleration', *Political Theory*, 1993, vol. 21 (4), pp.585-605; Norma Claire Moruzzi, 'A problem with headscarves: contemporary complexities of political and social identity', *Political Theory*, 1994, vol., 22 (4), pp. 653-672.

women; and that it puts pressure on other Muslim young women in the sense that they are forced to wear it.[73]

These arguments do not provide a sufficient ground to ban the *hijab* in public institutions. First, an individuals' right to choose their dress code seems to be a liberal right. If Muslim women and schoolgirls regard wearing the *hijab* as a way of expressing their religious beliefs and identity, there cannot be objections against that practice derived from liberal principles and rights. That is, wearing the hijab could be defended in accordance with the liberal principle of noninterference; if they choose to wear the *hijab* while they are attending public schools and participating in public offices, their choices should be respected. In this sense, the state should not interfere with individuals' choices to maintain their conception of the good, and leave some religious matters to the relevant individuals on the ground that it respects individual choice. Wearing the hijab could very well be accommodated within this understanding, for otherwise denying it would imply the same totalitarian logic as some Islamic regimes requiring women follow certain dress codes against their wish.

On the other hand, it may be argued that the school girls' choice to wear the hijab should be denied because it is the outcome of parental pressure which is based on a tradition that subordinates women. It may be.[74] But, we have no means of knowing whether the decision to wear it comes from parental pressure or it is genuinely the choice of the relevant individuals. Moreover, parents' right to bring up their children in accordance with their

[73] We should note that these arguments against wearing the hijab are not genuinely liberal, but republican. Yet, one may still hold them from within liberalism as justificatory grounds for banning the hijab in public institutions.

religious beliefs does not necessarily imply parental pressure. As Galeotti puts it, "by definition, people under age are subject to family choice in matters of socialization, of culture, and of education. The liberal democratic state, as a rule, interferes only when there is evidence of harm done to the person or to society in general. It is far from evident that [wearing the hijab] would be harmful, whereas, say, Catholic symbols (e.g., necklace with the cross) are not so."[75]

As for the argument that public accommodation of wearing the hijab would encourage Islamic fundamentalism, and is thus a threat to secularity, if this argument implies that wearing the hijab should be *accepted* only to the extent that it does not aim to exclude or oppress others in the public domain, then, it is correct.[76] Yet, if it implies equating wearing the hijab with fundamentalism, then, it is wrong.[77] First of all, it is not clear what fundamentalism means.[78] Even if we equate fundamentalism, for example, with Islamization of the public institutions, it does not follow that all those wearing it are fundamentalist. In other words, even if the fears about religious fundamentalism could have some valid grounds, they are *irrelevant* to wearing the hijab. Those holding the fundamentalism argument would have to show that all members of the relevant group attach themselves to the values and practices of their group in the same way and degree, all of which involve fundamentalism. They need to show that all those wearing the hijab hold

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[74] Some other sorts of dress codes, too, that expose women body could also amount to the subordination of women in the sense that they are through media persuaded to wear them to be more attractive to *men*.

[75] Galeotti, 'Citizenship and equality' p. 587.

[76] As International Covenant on Civil and Political Rights, 1966, Article 18(3) states, "freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

[77] However, some dress codes could legitimately be banned without any conditions. It might, as Carens notes, be permissible to restrict certain forms of dress in school because of symbolic associations. For example the wearing of Nazi insignia is banned in schools in a number of states. Some schools in Los Angles have banned the wearing of colours associated with gangs." (Carens, *Culture, Citizenship, and Community*, p. 125.)

the same intolerant views as those whose views are such as tend to undermine the democratic values of a tolerant society. Such an attempt would obviously fail, since, as we noted above, individuals attach themselves to the values and practices of their group in varying degrees. Thus, if fundamentalism is to be outlawed, it should be done by different means than interfering with individuals' religious dress codes.

Moreover, those demanding that they wear the hijab in public institutions do not mean to show disrespect for the values that underline mainstream institutions in the dominant society, for otherwise they would not want to participate in them. What they demand, in Galeotti's words, is "a qualified participation in the polity"[79]; a participation in which they maintain their religious beliefs and integrity. And, allowing Muslim women to wear *hijab* in public institutions does not mean that a liberal society privileges them; rather it would, as we said in the previous chapter, mean that the state prevents them from being in a disadvantaged situation as a result of their religious beliefs, and ensures that they have the same opportunities and life chances as the other members of society.

VIII

Summary

In this chapter, our aim was not to suggest a principle that could be applied to all kinds of disputed minority practices, for there is no such a principle. The extent of accommodating such practices should therefore be determined by the kinds of moral, political and cultural values and preferences that the relevant parties hold. However, accepting that disputed minority practices should be assessed according to the specific circumstances in which they

[78] See Parekh, for example, who argues that the term fundamentalism was never clearly defined, and remained "speculative"in the French debate. (Parekh, *Rethinking Multiculturalism*, p. 253.)

arise does not mean that some practices cannot be rejected by appealing to some universally recognised human interests and rights. Since they are fundamental conditions for individual well being, they should be regarded as culturally neutral values. The rights to be granted to a minority cultural group would therefore have to be compatible with them. In this sense, while the right to culture is a significant human interest, it should be constrained by other fundamental human interests and rights.

On the other hand, there are some minority practices and values that cannot be assessed by appealing to human rights. We tried to maintain two positions to be held in assessing such minority practices that are seen offensive to the values with which a liberal society identifies itself. First, a liberal society is, we argued, culturally specific, has a particular moral understanding, and common established way of life, even if it is not shared by its all constitutive groups. It cannot therefore have equal sympathy towards all minority practices. Secondly, that a liberal society, as a cultural community, cannot have equal sympathy towards all minority practices does not mean that it should regard its liberal values as authoritative over non- liberal minority groups. That is, liberals may rightly identify their preferences to these groups, but liberal states should not impose these preferences on them. Since no established way of life is absolute, and thus subject to reassessment and criticism, accommodation of some minority practices may require liberal societies to revise and change some rules and regulations to enable these groups to live in accordance with their cultural and religious nexus to the extent that these practices do not undermine the basic stability of the liberal democratic regime.

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[79] Galeotti, 'Citizenship and equality', p. 601.

All these arguments point out the necessity of a democratic public dialogue in which the relevant parties should engage, though we do not have adequate space here to explain the notion adequately. That is, there should be an open-minded public dialogue between them, and arrive at mutually acceptable principles. There is no governing principle that can be suggested as to what the scope and degree of such a mutual agreement or compromise should be like. Yet, they should take two significant assumptions as the starting point of the dialogue; namely, the constituent groups of a multicultural society have obligations both to each other and to their individual members. In this sense, they have two obligations. First, each distinctive cultural and religious group has a valid claim to maintain their own distinctive cultural and religious existences, and thus they should respect the distinctive otherness of each other. Second, no matter how genuine a cultural or religious practice is, no group can, in the name of culture and religion, have a valid claim to dismiss, oppress or violate the human rights of their individual members. Given that fundamental human rights should not be considered as rights associated only with liberalism, but as rights that belongs to all human beings, all relevant parties then should morally take them very seriously in their treatment of their members.

Conclusion

How should a liberal society respond to the claims of different cultural and religious minority groups that their distinctive group identities should be respected and provided a public space in which those identities could be maintained and expressed? Throughout this work, we have tried to answer this question by discussing both some liberal views and some practices of liberal states regarding the issue. We have seen a considerable diversity of views within liberalism: autonomy-based liberalism, toleration-based liberalism and the liberal view that extends state neutrality to the claims of minority groups. We have seen that none of them provide a comprehensive view through which the problems of multicultural societies could satisfactorily be tackled. The benign neglect view on which liberal individualism is based, that the state should not support and undermine a particular conception of the good life for individuals, cannot be maintained in culturally diverse societies, since state decisions on culture-affecting areas *inevitably* support a particular culture, and undermine others. Hence, the view advocating state neutrality toward different cultures has rightly been challenged from within liberalism. In this sense, autonomy-based liberalism and toleration-based liberalism, on different grounds, recognize the need for cultural and religious minority groups to be provided with a public space in which they can maintain their distinctive cultural and religious values and practices. However, these liberal views also have some shortcomings, and are refutable on different grounds. Autonomy-based liberalism recognizes the value of culture in relation to individual well-being, but it does so only insofar as a culture has a function of fostering a *liberal* understanding of individual autonomy. In this sense, it fails to recognize non-liberal cultures which do not regard the liberal understanding of individual autonomy as a general value. Toleration-based liberalism overcomes this difficulty, since it implies countenancing non-liberal, even

illiberal, ways of life. However, it has also some serious limitations. First, it is highly sceptical about group-differentiated rights for minority cultures, and insists on state neutrality to the extent of holding that securing individual rights alone would enable minority groups to live in accordance with their cultural values and practices. In this way, it dismisses the need for the group differentiated rights that could actually be necessary for minority groups to maintain their distinct cultural identities. Second and relatedly, it ignores the main thrust of minority demands; that their distinct group identities should be respected and recognized at constitutional level. Third, suggesting limitless toleration for some illiberal practices that clearly violate recognized human rights and interests would, we argued, undermine the principle and application of toleration itself.

However, such values as individual autonomy, freedom, equality, freedom of association, human dignity, and critical thought on a given value, which underlie common liberal thought, do provide a proper ground on which the problems of multicultural societies could be tackled. This can be seen in the actual practices of liberal states. As we have seen, there is a growing tendency in these societies to provide a public space for the collective identities of their minority groups. That is to say, they recognize, to some extent, the need for public accommodation of the collective identities of minority groups as one of the significant conditions for achieving a fair society, and recognise that this requires a consideration that goes beyond the common rights of citizenship. Of course, they impose some limitations; depending on particular circumstances, some minority demands are neatly accommodated, but some others give rise to considerable tensions between the relevant minority practices and the majority's established way of life. This highlights the fact that the issue is practical in nature, and does not admit of an overall theory to be applied to all cases. Intercultural relations are

continuously in transition. Every relation has its unique features, problems and, thus, solutions. Given that, the scope of cultural, moral and political interactions of the relevant groups would determine the nature of the relevant arrangements.

Setting aside the most complete form of group differentiated right, namely secession, the scope of a given arrangement should be open ended, subject to change in the direction of being more sensitive to the collective identities of individuals. Since the cultural life of a group is a form of individuals' collective activity, and since every culture provides different ways of defining the spheres of the good life for the relevant individuals, and involves a variety of constituent elements, each of which makes a unique contribution to individual lives in different ways, those liberal values we mentioned should be reworked to the extent that they include recognition of the collective identities of individuals. They need to be reworked, since the realization of most of them, in a culturally diverse society, can only be possible with recognition of collective identities.

This requires a multicultural politics that rules out the expectation that cultural differences will be assimilated into the majority culture. Since individuals' distinctive collective identities matter to them, and are one of the significant sources of individual identity, meaning and choice, such a politics in a culturally diverse society will not take the cultural and moral norms of a particular group for granted. It will recognize the fact that, since the very structure of a multicultural society itself generates a kind of culture that cannot be identified by appealing to any single constituent group's culture, no constituent group of the relevant society has a right to impose its cultural and religious values, norms and practices on other groups. In this sense, it will equally take into

account the claims and needs of the relevant groups to the extent that social, political and cultural arrangements reflect the needs of all those relevant groups.

That the claims and needs of different cultural and religious groups should equally be taken into account is a requirement for accommodating equal citizenship in a multicultural society. In such a society, the principles of the moral equality of individuals, and equal consideration of their different interests cannot be fulfilled if the relevant individuals are regarded as persons detached from their distinctive cultural and religious particularities that matter to them. The commitment to equality of opportunity, we noted in Chapter 5, cannot be realised through an arrangement that suggests identical treatment for those individuals, regardless of their cultural and religious particularities. What is needed for realising those principles is to ensure their participation in the mainstream institutions on their own cultural and religious terms, as long as they have enough capacity for the relevant opportunity.

In this sense, politics in a multicultural society will recognize that the ideal of common citizenship cannot be achieved by only granting the same set of individual rights that members of the majority have. It will have an understanding that citizenship is not only a legal status that regards citizens as undifferentiated individuals, dislocating them from their collective identities, but it is also an expression of the collective identities of individuals in the public domain. It will not presuppose that members of different groups should put aside their distinctive collective identities as they participate in public institutions of the relevant society. Rather, it will, as a requirement of the ideal of citizenship in a culturally plural society, take into account the cultural and religious diversity of the relevant society. In this way, it will evolve towards establishing a more heterogeneous conception of citizenship: on the one hand it will reflect some shared

(political, social, or perhaps cultural and religious) values from which common individual citizenship can be derived; on the other hand, it will recognize the importance of group membership for such collective activities as the social, political and cultural, as well as for individual identities. This would require some differentiated group rights that will lead the larger society to modify some of its rules and regulations, which will enable the relevant minority groups to live in accordance with their own cultural and religious values and practices. Such a heterogeneous conception of citizenship is needed in a multicultural society, if members of minority groups are to be members of the state in the sense that they regard themselves as belonging to it.

Since no constitutive group in a culturally diverse society can have a pure culture, and since the fact that co-existence of different religious and cultural groups itself creates a particular culture that cannot be reduced to the culture of one single group, the ideal of citizenship in such a society requires that the relevant groups create a political atmosphere through which they aim at a negotiable conception of citizenship and identity. That is, politics in a multicultural society should reflect the cultural and religious plurality of the polity in a way that can be equally acceptable to all the relevant groups. To achieve this, we emphasised the need for a democratic-public dialogue in which they should engage. Since a change is continually taking place in the nature of cultural values and practices, and thus they should be subject to reassessment and criticism, a continuous democratic-public dialogue between and within the relevant groups would be a significant path by which they could arrive at negotiable conceptions of identity and citizenship. Such dialogue, we noted, does not require them to put aside their distinctive collective identities. Rather, it requires them not to take their cultural and moral values for granted in the course of the dialogue, and accept that they are not beyond criticism, reassessment and change. In this sense, a liberal society, as a

dominant group, would accept that it may have some cultural and moral prejudices toward minority values and practices, which need to be changed as a requirement of achieving a fair multicultural society. Liberal thought, as we noted, encompasses the necessary values and norms for that, as long as it accepts that the collective identities of individuals matter to them in the public domain, and thus abandons the presupposition that public reasoning has nothing to do with those identities.

To be sure, arguing that the relevant parties should not regard their cultural values and practices as given does not mean that there are no, at least minimally acceptable, principles or values they need to take for granted. In this sense, we emphasised universally recognised human rights and interests. Since they are not associated with a particular culture -including a liberal culture-, but are culturally neutral, necessary conditions for individual self-development, no constitutive group of a multicultural society could cite culture or religion as justificatory grounds for dismissing those rights and interests.

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