

Theories of Multiculturalism

An Introduction

George Crowder

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Liberal Rights to Culture: Kymlicka's Theory

In the last chapter I argued that, contrary to popular opinion, cultural relativism is a poor basis for multiculturalism. Human capabilities theory, although more promising, is a work in progress to which I shall return in Chapter 7. What alternatives are there? Here we should turn to the thinker widely acknowledged to be the leading theorist of multiculturalism, the Canadian writer Will Kymlicka.¹ Kymlicka's seminal status in the literature has already been noted in the Introduction. He is also important because, as a self-consciously liberal theorist, he constructs a direct link between multiculturalism and liberal democracy, the political system in which multiculturalist principles and policies have in fact emerged over the last forty years. Kymlicka's position is to some extent a rationalization of those principles and policies. It might even be said to represent something of a dominant or 'consensus' view both politically and philosophically (Kymlicka 1998b) – hence, again, a useful point from which to orientate contrasting and opposing views.

It follows that in order to understand Kymlicka it will help to place his theory in the context of liberal thinking about cultural accommodation more generally. For that purpose I begin by setting out the central commitments of liberalism in general, outlining the principal ways in which liberal theorists have dealt with multiple cultures in the past, especially through principles of toleration and neutrality. I will then be in a better position to highlight the distinctive features of Kymlicka's multiculturalist argument before turning to the critical issues it raises.

Liberalism, Toleration and Neutrality

The liberal political tradition is both a natural ally of multiculturalism and in tension with it. Although dedicated to accommodating different ways of life, liberalism does this within a framework that also places limits on cultural accommodation. Whether this means that liberalism is in the end more of a friend or more of an enemy of multiculturalism is a question that will recur throughout the rest of this book.

Liberals disagree with one another about many things, but they have in common the following broad themes.² First, they place an especial emphasis on the value of individual liberty. Although the precise meaning of liberty is given a range of interpretations by different liberals, the basic idea is that people live well when they are free to decide for themselves how to live. As J. S. Mill writes, 'it is the privilege and proper condition of a human being, arrived at the maturity of his faculties, to use and interpret experience in his own way' (Mill 1859 [1974]: 122).

Second, the most fundamental reason why liberals stress the importance of individual liberty is that they see human beings as *capable* of making their own decisions about how to live. All normal adults possess a fundamental capacity for moral autonomy – in Kant's version they are capable of using their reason to discover and follow the moral rules that enable them to live in co-operation with others. Further, all normal human beings possess this capacity equally: liberals believe that among human beings there is a fundamental equality of moral worth. Consequently, a basic liberal principle that applies to the treatment of all human beings everywhere is what is often called 'respect for persons'. To take Kant's version again, one should treat a person 'never simply as a means, but always at the same time as an end' – that is, as a being capable of moral autonomy (Kant 1785 [1956]: 96). It is not ethically permissible to use people merely as the instruments of our purposes in the way slaves, for example, are treated as 'animate tools' (Aristotle n.d [1962]: 31). Rather, we must always treat normal adults as capable of forming their own legitimate purposes.

From the liberal commitment to liberty and equality of moral worth follows a third basic principle: 'limited government'. If the moral status of persons has to be acknowledged by respecting their liberty, then government or the state, although necessary for social order, cannot be absolute in its authority. The state's authority must be 'limited' in the sense that it recognizes and respects its people's

basic freedoms. These are often (although not always) conceived as individual 'rights', or claims to a certain minimum standard of acceptable treatment that is binding on everyone concerned, including the state, whatever current politics or public opinion may say. In the phrase made famous by Ronald Dworkin, rights are 'trumps' (Dworkin 1984). Rights include human rights, claimed by people in virtue of their common humanity rather than citizenship of any particular country.

Where exactly the line falls between legitimate state authority and the rights and liberties of individuals is a controversial question on which even fellow-liberals disagree. The disagreement becomes a major parting of liberal ways in relation to a fourth liberal theme, private property. All liberals accept the institution of private property as a legitimate expression of individual liberty. For most, this entails, under modern conditions, a shared commitment to capitalism, or private property in industry and commerce. However, liberal opinion divides over the question of how strong the defence of property must be in relation to other goals, such as the relief of poverty. On the one hand, 'classical' liberals – such as Adam Smith (1776), Friedrich Hayek (1944) and Robert Nozick (1974) – hold that property rights are sacrosanct. People are entitled to conduct and profit from their own business affairs as they choose, unimpeded by government interference (*laissez-faire*) and taxed only at a level necessary to maintain public security and defence (the 'minimal state').

On the other hand, 'egalitarian' liberals – who include T. H. Green (1881), L. T. Hobhouse (1911), John Rawls (1971) and Ronald Dworkin (1981) – argue that genuine freedom for the individual requires more than *laissez-faire* and the minimal state. Real liberty is not merely 'negative' non-interference but also a 'positive' (or effective) capacity to act, one that may require access to resources beyond those that one is able to acquire through market competition.³ Success in the market is in large part a matter of good or bad fortune, since people are often disadvantaged for market competition by factors beyond their control, including accidents of birth, lack of family resources, unemployment, ill health and poor education. A just state that genuinely respects the equal moral worth of its citizenry will be prepared to provide the less fortunate with opportunities they would not have through the market alone, opportunities funded by taxes levied on those who are luckier in the natural and social lottery. This, of course, is the thinking behind the modern welfare state. The divide between the larger- and smaller-state, or higher- and lower-taxing liberals, is an abiding feature of contemporary liberal-democratic politics.

What is the relation between liberalism thus understood and culture? More precisely, to what extent is a liberal society able to accommodate multiple cultures, and to satisfy the demands of multiculturalism?

There are good reasons why liberalism seems well suited to this task. Historically, liberal thinking originated in Europe as a response to the sixteenth- and seventeenth-century Wars of Religion in which Catholics and Protestants each tried to force their version of Christianity on the other. In the wake of the wholesale destruction and suffering caused by these conflicts, thinkers such as Pierre Bayle (1702 [1991]) and John Locke (1689 [1991]) championed a move towards religious toleration, arguing that in matters of religion people inevitably disagree and that enforcement of belief is not only cruel but also futile. The more sensible and humane course is to leave individuals to decide their religious affiliations for themselves and to authorize the state to enforce only those rules of conduct on which agreement can reasonably be expected. A distinction thus arises between a 'public' realm in which the state is entitled to enforce its rules, and a 'private' sphere in which individuals are free to pursue their own beliefs and values.

Originating in the field of religion, the liberal regime of toleration was gradually extended to other areas of morality in which right and wrong are subject to reasonable disagreement. By the mid nineteenth century J. S. Mill was advocating the principle that there should be no state or public interference with the actions of individuals unless they are causing 'harm' to others (Mill 1859 [1974]: ch. 1). Mill defended a 'sphere of liberty', including freedoms of thought, expression and association, as entitled to absolute protection.

It would seem no great step to argue that not only religious and personal but also cultural differences should be included within this private category. When there is reasonable disagreement over the merits of different cultural practices, there would appear to be a *prima facie* case for liberal toleration.

In practice, liberal toleration 'privatizes' minority cultures (Barry 2001: 24–32). The majority or dominant culture is typically expressed in the public institutions of a society through the choice of an official language, public holidays and ceremonies and so on. Minority languages, beliefs and values are not interfered with as long as they are kept within the home or maintained by private associations or clubs.

The accommodation of cultural difference is taken a step beyond privatization by one of the standard themes of contemporary liberal thought, 'state neutrality'. This is the idea 'that government must be

neutral on what might be called the question of the good life' (Dworkin 1981: 191). The state should be impartial in its treatment of different conceptions of how one ought to live, including not only religious conceptions but also personal and cultural accounts.

Much of the theory of state neutrality can be traced to John Rawls (1971; 1993). For Rawls, the merits of rival conceptions of the good are reasonably disputed by different groups, and modern societies usually contain a plurality of such groups. Consequently, no modern society can justly be governed according to a single, substantial conception of the good, since that will always be reasonably rejected by those who disagree with it. Rather, the modern pluralist state should enforce only a 'thin' framework of rules that Rawls labels 'the right', which all reasonable citizens can accept. The right is 'prior to the good' both in the sense that it overrides the good when the two conflict and in the sense that the right must be defined independently of any particular substantial conception of the good. Consequently, reasonable people can and ought to accept the right as a neutral framework of rules within which their various notions of the good can coexist peacefully. The content of the right is filled in by Rawls's famous theory of 'justice as fairness', where the principles of justice are chosen by the parties to a hypothetical 'original position' that models impartiality.

As a scheme for accommodating differences liberal neutrality goes beyond toleration or privatization. Toleration is consistent with a society's being dominated politically by a single culture or conception of the good, usually that of the majority, as long as this does not interfere with minority beliefs and practices pursued in private. This was in fact the pattern of most liberal societies until the advent of multiculturalism, and to some extent it remains the norm even today. Neutrality, by contrast, requires that no particular culture or conception of the good be politically dominant. In Rawls's language, the right should be independent of the good. The state and its framework of basic rules will be completely even-handed among different cultures, even that of the majority.

However, two issues arise immediately. First, is liberal neutrality the same thing as multiculturalism? Second, is liberal neutrality possible?

Many critics of liberalism would answer no to both these questions, and for the same reason. Some cultures, they would argue, cannot be accommodated by any form of liberalism because such cultures reject fundamental liberal values and assumptions. All four items on my list of basic liberal commitments – the primacy of individual liberty, equal respect for persons, limited government and

private property – would be disputed by one culture or another. No recognizably liberal system, however 'thin', can accommodate all such cultural views. Moreover, if that is true then strict state neutrality would seem to be impossible because any genuinely liberal framework will always reflect a distinctively liberal understanding of human nature and the human good. As some critics put it, the neutral right turns out to depend on a substantial good after all.⁴

How can liberals respond to this problem? In the course of this book I shall consider several replies. One is worth broaching straight away, however, because it raises basic issues to which I shall be returning. This is that liberalism might accommodate illiberal cultures or cultural practices by making exceptions in their favour. To take an example mentioned in the Introduction, a Sikh who has to wear a turban for religious or cultural reasons might be exempted from laws requiring that helmets be worn by motorcyclists.

Some liberals would not be happy with this solution because, they would say, it flies in the face of the basic liberal commitment to equality (see e.g. Barry 2001). If persons are to be respected equally, then it seems to follow that the state ought to treat them equally. Further, equal treatment seems to require that people be treated identically. For example, all citizens should have exactly the same rights to vote and to due process of law. There should be no privileges for certain classes of people and no arbitrary disqualifications, as there are in aristocratic or racist societies.

But must equal treatment mean identical treatment in every case? Suppose that a disabled person in a wheelchair wants to use the local library. Does equal treatment require that she enter the building by using the same steep set of steps as everyone else? Surely not. The deeper meaning of equal treatment is that people should be treated 'as equals' – that is, they should be treated as having the same moral status as others, and as entitled to the same degree of consideration. They are entitled to 'equal concern and respect' (Dworkin 1977: 180). To treat people with equal concern and respect is not necessarily to treat them identically; it may mean treating them differently if the circumstances require it.

To put it another way, although the goal of equal treatment may raise a presumption in favour of identical treatment, that presumption is rebuttable. The basic idea of equal treatment is not that people must always be treated in the same way no matter what; it is that people should be treated in the same way unless there is good reason to treat them differently. When it comes to public library access, for example, there is no good reason to treat whites differently from blacks or men differently from women, but there may be good reason

to make special arrangements for the disabled person who has difficulty with the steps.

The principle that differentiated treatment may be justified is a standard feature of egalitarian liberalism, and it provides an entry-point for multiculturalism. The egalitarian defence of public welfare entitlements is based on the claim that people's circumstances are different, entitling those who are unfairly disadvantaged by their social and economic situation to be compensated through a tax system funded by those who are not. If so, might there not be similar public obligations when people suffer unfair disadvantage because of their cultural circumstances? This is one line of inquiry taken up by Kymlicka.

Kymlicka's Case for Cultural Rights

Kymlicka's key innovation is to construct, most notably in *Liberalism, Community, and Culture* (1989) and *Multicultural Citizenship* (1995a), a systematic case for multiculturalism on a liberal basis. Like all liberals, he emphasizes universal values of individual liberty, the equal moral worth of all human beings, human rights, limited government and private property. Further, in the tradition of egalitarian liberalism, he interprets these values as requiring the active intervention of the state for their advancement rather than a laissez-faire reliance on individual enterprise. A just society will attempt to compensate people for the worst effects of undeserved disadvantage. Thus far Kymlicka is an orthodox egalitarian liberal in the mould of Rawls and Dworkin.

Where he parts company with these predecessors is in his insistence on a more active role for the state in sustaining minority cultures. The traditional liberal policy of passive toleration should be replaced or supplemented by a more active policy in which the state accords minority cultural groups positive recognition and assistance. He justifies this view by appealing to the two fundamental values of egalitarian liberalism: equality and liberty.

On equal treatment, Kymlicka develops the line of thought opened up at the end of the last section. Just as equal treatment requires compensation for undeserved *economic* disadvantage, Kymlicka argues that so too does equal treatment demand compensation for undeserved *cultural* disadvantage.

In making this case, Kymlicka sees himself as correcting some long-standing prejudices in liberal thought. Traditional liberal thinkers, even within the more egalitarian stream, have tended to be hostile

to treating cultural groups differently for two reasons (Kymlicka 1989: 140–1). First, liberals have tended to equate 'group' rights with 'collective' rights, which immediately threaten to undermine the rights of the individual. Second, the liberal tradition has been wary of importing cultural and ethnic particularity into political thinking because this has so often been associated with irrational and unjust discrimination, such as the racial segregation practised in the past in the southern United States and apartheid South Africa.

For Kymlicka, these traditional liberal suspicions are too sweeping, and amount to throwing the baby out with the bathwater. Liberals are justified in being concerned about attributing rights to groups as such, since a group 'has no moral existence or claims of its own' (Kymlicka 1989: 140). A group or community is valuable only so far as it benefits its members. But by the same token, Kymlicka argues, a group that benefits its members is valuable to them in that instrumental sense. Consequently, although a group itself has no rights, it makes sense to say that its individual members have rights to the survival of the group if it serves their well-being. Kymlicka's 'group rights' are the rights of individuals, and are thus consistent with traditional liberal concerns.

As for the worry that politicizing group differences is synonymous with inequality and injustice, Kymlicka argues that this is not always so. On the contrary, there are cases where recognition of cultural difference, far from denigrating a group, is necessary to compensate its members for undeserved disadvantage. Moreover, to make this point is not to depart from the fundamental liberal concern for equality but to express that concern more fully, since it takes into account circumstances that are highly relevant to questions of respect and fairness.

To give every Canadian equal citizenship rights without regard to race or ethnicity, given the vulnerability of aboriginal communities to the decisions of the non-aboriginal majority, does not seem to treat Indians and Inuit with equal respect. For it ignores a potentially devastating problem faced by aboriginal people but not by English-Canadians – the loss of cultural membership. (Kymlicka 1989: 151)

Not all differential treatment of citizens is bad; it depends on the reasons for the different treatment. For Kymlicka, this basic point nullifies the traditional liberal hostility to all special claims made on the basis of group affiliation. As long as such claims are backed by good reasons, they are quite consistent with, indeed required by, liberal equality.⁵

The other fundamental liberal commitment that Kymlicka reinterprets in the direction of cultural rights is individual liberty. To the basic liberal concern for freedom egalitarians liberals add an insistence on the economic conditions for freedom, and to that insistence Kymlicka adds attention to the cultural conditions for freedom. For Kymlicka, individual freedom is most fundamentally the capacity people have 'to choose their own plan of life' (Kymlicka 1995a: 80). This is a strong sense of freedom, often called 'personal autonomy', in which people are able not only 'to choose a conception of the good life' but also 'to reconsider that decision, and adopt a new and hopefully better plan of life'. Autonomous people are capable not only of choosing how to live but also of reflecting critically on that choice and revising it. This is the kind of freedom celebrated, for example, by Mill in his notion of 'individuality' (Mill 1859 [1974]: ch. 3).⁶

Why is freedom in this sense so valuable? Kymlicka argues that it is necessary if we are to be sure that we are leading a truly good life, or as sure as we can be that we are living the kind of life we really want to live. The best life for a human being is one that we lead 'from the inside' – a life we live because we really want to live that way (Kymlicka 1995a: 81). But we have to recognize that our beliefs in this respect are 'fallible and revisable': we can get things wrong, and if that is so we want to put things right so far as that is possible. To live well, then, we need freedom, the kind of freedom that enables us to choose and to revise our choices. Further, there is a link here with self-respect: to respect ourselves, we need to be sure our goals are worth pursuing. Since freedom as autonomy enables us to confirm whether this is so, autonomy is essential to self-respect (Kymlicka 1989: 164).

To enjoy individual autonomy, we have to enjoy the conditions for it. Fundamental to these conditions for freedom is membership of a flourishing, or at any rate viable, culture. It is our cultural heritage that enables us to make sense of the choices before us, and to choose among them in a way that makes sense to us. 'Our language and history are the media through which we come to an awareness of the options available to us, and their significance; and this is a precondition of making intelligent judgements about how to lead our lives' (Kymlicka 1989: 165; see also 1995a: 82–4). Our cultural inheritance is a kind of map with which we can navigate through the various opportunities and challenges with which life confronts us.

Cultural membership is valuable, therefore, because it provides us with a necessary context for our choices. As a necessary condition for freedom as autonomy, cultural membership is also essential to self-respect. Indeed, cultural membership is, for these reasons, a

'primary good' in Rawls's sense – it is an essential means to any good life (Kymlicka 1989: 166).

If culture is valuable because it provides a context for choice and a basis for self-respect, we might ask whether it matters *which* culture people take as their context, and consequently whether it matters if their society promotes only one such cultural context. In other words, how does Kymlicka's account of the value of cultural membership amount to a multiculturalist view: why is it not consistent with monoculturalism?

Kymlicka's answer is that, for most of us, it is our own culture – the culture we are brought up in – that matters most in this way. Most people do not change their cultural affiliations readily (Kymlicka 1995a: 84–5). Changing one's culture is not like changing one's job; people tend to remain within the culture that formed them. It is true that some 'people do genuinely move between cultures. But this is rarer, and more difficult', and even then one's own culture is always, at least, a starting point (Kymlicka 1995a: 85). More common is the experience of revising and selecting among different streams or aspects of one's culture, but this presupposes rather than denies the need for one's own culture. If people generally do best within their native culture, then it is likely that a modern society, containing people from different cultural backgrounds, will need to accommodate or encourage more than one such culture.

This explains why Kymlicka does not rely on an argument for multiculturalism that many liberal-minded people find immediately attractive: that there is value in cultural diversity itself. The reason often given for that claim is that the presence of multiple cultures in our society adds to the richness of our lives by increasing the options we can choose from when we are deciding how to live.⁷ But if Kymlicka is right, we should be wary of talking about cultures as if they were supermarket items among which we can choose at will. He concludes that, although 'there is some truth' in the cultural diversity argument, 'it is a mistake to put too much weight on it' (Kymlicka 1995a: 121).⁸

To sum up, Kymlicka's argument from equality is that equal treatment may require special compensation for minority cultural groups, and his argument from liberty is that cultural membership, and more specifically membership of one's own culture, is essential to individual freedom and therefore to well-being.

The next question is, how are these goals to be secured? Kymlicka believes that this is a task for the state. Just as, on the standard egalitarian-liberal view, the state has a duty to ensure the economic conditions for real individual freedom, so too the state has an

obligation to guarantee, as far as possible, the cultural conditions for that freedom. But someone might object that although it may be true that cultural membership is important, it does not follow automatically that cultures must be protected by the state. Conceivably, it might be argued, the importance of cultures is consistent with the traditional liberal toleration or privatization view, which simply calls for the state to leave people alone to make their own decisions in this regard.

Kymlicka calls this the 'benign neglect' approach, and he argues that it is inevitably harmful to vulnerable cultural minorities such as indigenous groups. Simply to say that groups like these should compete in 'the cultural market-place' along with other groups is unfairly to ignore their real circumstances, since these groups are automatically at a disadvantage in such a competition. In the Canadian case, for example,

unlike the dominant French or English cultures, the very existence of aboriginal cultural communities is vulnerable to the decisions of the non-aboriginal majority around them. They could be outbid or outvoted on resources crucial to the survival of their communities, a possibility that members of the majority cultures simply do not face. As a result, they have to spend their resources on securing the cultural membership which makes sense of their lives, something which non-aboriginal peoples get for free. (Kymlicka 1989: 187)

Members of the dominant culture get their culture for free, as it were, simply because of its dominance – they see their beliefs and values reflected in all of the institutions and practices around them (media, entertainment, public holidays and so on). Indigenous cultures have to swim against this tide just in order to survive.

Hence the need for state intervention on behalf of cultural rights. Hence, too, Kymlicka's answer to the common objection that special minority rights are inegalitarian privileges. The disadvantaged position of indigenous groups is the result not of their choices, but of unchosen circumstances for which they are not responsible. 'Rather than subsidizing or privileging their choices, the special measures demanded by aboriginal people serve to correct an advantage that non-aboriginal people have before anyone makes their choices' (Kymlicka 1989: 189).

What exactly are the 'special measures' that form the substance of these rights? The general rationale is that these are measures designed to provide minority groups with redress for unfair disadvantage. What form of redress is appropriate will depend on the nature of the disadvantage in the particular case. For example, monetary

compensation is unlikely to be adequate, since 'having money for the pursuit of one's ends is of little help if the price involves giving up the context within which those ends are worth pursuing' (Kymlicka 1989: 193). Kymlicka mentions many more promising possibilities, including 'territorial autonomy, veto rights, guaranteed representation in central institutions, land claims, and language rights' (Kymlicka 1995a: 109).⁹

Two Qualifications

A significant development in Kymlicka's thinking occurred with the publication of *Multicultural Citizenship* in 1995. In the earlier *Liberalism, Community, and Culture*, he seemed to regard all cultural minorities as suffering from much the same kind of disadvantage, and consequently as entitled to the same rights. This position was criticized for failing to acknowledge the special circumstances of indigenous minorities compared with immigrant groups (Danley 1991).

Subsequently, in *Multicultural Citizenship*, Kymlicka introduces a key distinction between two kinds of cultural minority: 'national' and 'ethnic'. 'National' minorities prominently include indigenous peoples and regional groups like the Québécois and the Basques. Such minorities have been incorporated into modern states 'through conquest, colonization, or federation', but they have never relinquished their claims to a 'societal culture' of their own (Kymlicka 1995a: 79). A 'societal' culture involves 'not just shared memories or values, but also common institutions and practices' that embody those memories and values across 'most areas of human activity' – 'in schools, media, economy, government, etc.' (Kymlicka 1995a: 76). Where such cultures have been absorbed into larger societies they have often struggled hard to preserve their distinct existence, with the result that in many places 'their status as self-governing, "domestic dependent nations" is now more firmly recognized' (Kymlicka 1995a: 79).

By contrast, 'ethnic' minorities are immigrant groups whose members have chosen to become part of a new society. In doing so, they usually bring their beliefs and values with them, embedded in 'their language and historical narratives', but they tacitly agree to leave behind the institutions and 'social practices which this vocabulary originally referred to and made sense of' (Kymlicka 1995a: 77). That is, they leave behind their fully societal culture. They may no longer be

expected to assimilate entirely to the norms and customs of the dominant culture, and indeed are encouraged to maintain some aspects of

their ethnic particularity. But this commitment to "multiculturalism" or "polyethnicity" is a shift in how immigrants integrate into the dominant culture, not whether they integrate. (Kymlicka 1995a: 78)

While 'assimilation' implies a more or less complete identification with the dominant culture, 'integration' suggests a more relaxed approach in which a group fits into the dominant pattern, but in its own way. Nevertheless, the acceptability of integration in the case of ethnic minorities contrasts strongly with the entitlement of national minorities to lead, in some substantial sense, an independent existence.

It follows that national and ethnic minorities are entitled to different kinds of rights. The rights of national or indigenous minorities are much stronger: rights to the preservation of the full societal culture, the institutions and practices that they never agreed to abandon. These are essentially rights of self-determination, including, as appropriate to the case in hand, group representation and various forms and degrees of self-government.¹⁰

Ethnic or immigrant minorities have much weaker entitlements, which Kymlicka labels 'polyethnic rights', essentially designed to assist their integration. These claims are not negligible, since they may include anti-discrimination measures, legal exemptions (for example, for Jews and Muslims from Sunday closing laws and humane slaughter requirements), and support for, or at least toleration of, education in the group's mother tongue (Kymlicka 1995a: 96–7). Still, Kymlicka's polyethnic rights are clearly in a very different and subordinate category compared with the self-determination rights he ascribes to national indigenous minorities.

Kymlicka's heightened emphasis on national (including indigenous) claims sharpens an issue that will concern many people about his whole enterprise – indeed, the whole notion of special group or cultural rights. What justification can there be for preserving groups whose values and practices are deeply illiberal? In traditional cultures, such as those of indigenous groups, liberal ideals such as individual liberty and equality of moral worth tend not to be highly valued. Such cultures typically endorse restrictive and inegalitarian attitudes to moral and religious requirements, the source and scope of political authority, forms of punishment, distribution of knowledge, freedom of expression and the nature and social role of women and children.

Nor are these norms confined to indigenous societies; they are common to many cultures that remain deeply influenced by local traditions or by the more fundamentalist or conservative versions of

the world religions (Okin 1999: 21). Yet these are often the very groups on whose behalf claims for special minority rights are made within liberal democracies. Is it not the case that to recognize such special rights is in effect to accept and endorse the continuation of illiberal, patriarchal and harmful traditions and practices?

Kymlicka is well aware of this problem. His answer is to introduce another major qualification into his theory of cultural rights: 'as a general rule, liberals should not prevent illiberal nations from maintaining their societal culture, but should promote the liberalization of these cultures' (Kymlicka 1995a: 95). Special cultural rights will not protect illiberal cultures – or at any rate the illiberal components of cultures. On the contrary, Kymlicka's case for cultural rights implies that the liberal state is entitled to intervene in illiberal cultures in order to liberalize them: to protect the basic civil and political liberties of a group's members, and to promote their capacity for personal autonomy.

The reason for this is that Kymlicka's central justification for cultural rights, according to Kymlicka, is the value of cultural membership as a context for autonomous choice. That justification reaches its limit in cases where a culture ceases to support but rather undermines the conditions for personal autonomy. Cultural rights should protect minority groups from the 'external' decisions of majorities, but not from the 'internal' dissent of their own members (Kymlicka 1995a: 35). To allow internal dissent, and still more to authorize liberalization by the state, is to allow and even encourage a culture to change, but change is not the same as destruction. We should distinguish the protection of 'the community as such' from people's 'particular preferred version of what sort of *character* the community should have' (Kymlicka 1989: 168).

Kymlicka gives the example of the Pueblo Indians in the United States, who have 'in effect, established a theocratic government that discriminates against those members who do not share the tribal religion' (Kymlicka 1995a: 40). For example, housing benefits are denied to those members of the Pueblo community who have converted to Christianity. Kymlicka rejects Pueblo majority claims that prohibiting members from changing their religious affiliation is necessary in order to safeguard the future of their culture. Cultural rights should protect minority cultures from the dictates of powerful individuals and groups outside of the community; they should not prevent people within the community from acting in accordance with their conscience and changing their religious affiliation. Freedom of religion does not destroy the culture, but merely allows it to change in accordance with the desires of its members (Kymlicka 1989: 196).

In general, Kymlicka argues, it is misleading to divide the world into essentially 'liberal' societies on the one hand and 'illiberal' on the other, as if liberalization were appropriate only to the first and not the second. Rather, the extent to which any culture counts as liberal is a matter of degree, and can change over time. Today's liberal societies were not always liberal. 'The task of liberal reform remains incomplete in every society' (Kymlicka 1989: 94).

Critical Issues

Kymlicka's theory of minority cultural rights has attracted a wide range of criticism.¹¹ Some of the major issues will be postponed to later chapters. These include Kymlicka's notion of equal treatment (Chapter 3), his emphasis on national identity (Chapter 4) and his acceptance of a liberal framework (Chapter 5). In this section I consider two main topics: his treatment of illiberal minorities, and his appeal to individual autonomy.

Illiberal Groups

As noted already, one of the most difficult problems for Kymlicka's theory (or any liberal theory) is how to deal with minorities that have substantially illiberal characteristics. Some critics complain that Kymlicka concedes too much to such groups, allowing them to tyrannize over their own people, as we shall see when we discuss Brian Barry and Susan Okin in the next chapter. Others fault him for treating illiberal groups too restrictively, making them over in the image of liberals like himself.

Chandran Kukathas falls very definitely into the second camp. Writing from a classical liberal or libertarian perspective, Kukathas generally advocates minimal state intervention and maximal negative liberty for individual citizens. For Kukathas, Kymlicka's approach is excessively and unnecessarily interfering. This is true 'both from a liberal point of view and from the perspective of someone concerned with the interests of cultural minorities' (Kukathas 1992: 120).

From the perspective of non-liberal cultural minorities, Kukathas argues, Kymlicka's liberalizing policy gives such cultures too little. The insistence on the universal value of individual autonomy leads to unacceptable state interference with the cultures concerned, since many do not value autonomy highly. As a result, Kymlicka's policy would amount to the imposition on these cultures of an ideal that is

alien to them and likely to undermine them, or at least to subject them to a 'reshaping' that is contrary to 'the terms set by their own practices' (Kukathas 1992: 122). Kymlicka gives with one hand and takes away with the other.

From a liberal point of view, according to Kukathas, Kymlicka's special rights are simply unnecessary for the adequate accommodation of cultural minorities. There is no need to go beyond orthodox conceptions of 'individual liberty or individual rights' to do justice to cultural minorities (Kukathas 1992: 107). Moreover, these liberties and rights should be interpreted in the strictly negative sense favoured by classical liberals, as individual entitlements to non-interference. The classical liberal ideal of individual freedom of association – and its corollary, the freedom to exit from a group – is all that is required. If individuals feel that they are being treated oppressively by their group, they can simply leave.

In this connection Kukathas emphasizes that cultural groups are, contrary to the claims of defenders of cultural preservation (as he sees it) like Kymlicka, fluid and constantly changing. They 'may be regarded as voluntary associations' in the sense that their survival depends on the extent to which their members continue to 'recognize as legitimate the terms of association and the authority that upholds them' (Kukathas 1992: 116). 'The basis of the community's authority is not any right of the culture to perpetuation, or even existence, but the acquiescence of its members' (Kukathas 1992: 117). Liberals should not respect cultures themselves, but only people's decisions either to stay in their cultures or to leave. Cultures just are the embodiment of all these decisions.

In short, for Kukathas, the duty of the liberal state towards cultural groups (whether minority or majority) is nothing more or less than to leave them alone. His view may be summed up as 'cultural laissez-faire'. This involves neither interference nor protection; the sole task for the state will be to secure individuals' freedom to associate and to exit from their associations. Seen from this perspective, Kymlicka's special rights look like artificial and futile devices intended to regulate what need not and ought not to be regulated, and to secure what individuals can already secure for themselves.

Kukathas takes this view a step further in *The Liberal Archipelago* (2003), which elaborates his positive vision of the desirable multicultural society. Such a society consists 'of different communities operating in a sea of mutual toleration' (Kukathas 2003: 8). The state has no overriding function or authority at all. It is merely one island among others, one community with which people may partially

identity, just as they may identify with others. Its sole function appears to be to enforce freedom of association – or more accurately, disassociation. Goals of social unity and national identity, often used to justify stronger states, are regarded by Kukathas as greatly overrated, neither necessary nor desirable in the formation of a political society. Rather, the good society is akin to international society: 'a society of multiple authorities operating under a de facto regime of mutual toleration' (Kukathas 2003: 27). The good society is one in which groups simply leave one another alone.

Kymlicka is not short of replies, however. First, he would argue, as before, that some state intervention is necessary not to preserve cultures unchanged but to sustain them as dynamic contexts for choice. The alternative is the 'benign neglect' that leaves vulnerable groups alone with their undeserved circumstances of disadvantage.

Second, Kymlicka would insist that his requirement of liberalization need not be as damaging to minority cultures as Kukathas claims. For one thing, liberalization need not be coercive, and in most cases coercion would be unwise. Alternatives range from simply 'speaking out' against intra-group injustice, to 'offering various incentives for liberal reforms', and promoting 'international mechanisms for protecting human rights' (Kymlicka 1995a: 168, 169). This is not wholly convincing, since Kymlicka also rightly notes that there are certain basic rights violations that a liberal state cannot countenance – murder, arbitrary arrest and so forth (Kymlicka 1992: 142). The use of coercive measures to correct these fundamental injustices would seem an unavoidable last resort.

Even so, Kymlicka can again make the point that not all social change is destruction: the 'character' of a culture can be distinguished from 'the community as such', and changes in the former do not necessarily mean the dismantling of the latter. This argument is perhaps more convincing in some cases than in others. British culture no doubt remained recognizably British after the decriminalization of homosexuality in the 1960s, but whether the Pueblo culture could be said to survive the introduction of freedom of religion is another matter. Kymlicka himself concedes, as we saw, that such cases raise difficult choices that must be faced honestly.

His stronger reply to Kukathas is that, whatever its costs may be, liberalization is necessary because the alternative is to leave the members of illiberal groups vulnerable to those groups' internal restrictions. A liberal state must stand up for the civil and political liberties of all its citizens.

Further, Kukathas's reposte that individuals are adequately protected from their groups by a right of exit is highly questionable. Such

a right might be sufficient for the purpose if it was demanding enough – if it guaranteed that people were really able to leave their groups. But Kukathas believes, in line with his libertarian background, that a genuine freedom to exit requires only negative liberty, or the absence of coercion, together with the existence of a free market society for people to exit into (Kukathas 1992: 134). Kymlicka sees this as 'a bizarre view of what gives individuals a substantial right to leave', since it is consistent with their being 'deprived of literacy, education, or the freedom to learn about the outside world' (Kymlicka 1992: 143). Without an effective right of exit, Kukathas's model society promises to be not so much an archipelago of liberties as a 'mosaic of tyrannies' (Green 1995: 270).¹²

One way of summing up the dispute between Kymlicka and Kukathas is in terms of conflicting values: Kymlicka champions individual autonomy; Kukathas favours toleration. Since autonomy and toleration both appear to be basic liberal goods, one might conclude that Kymlicka and Kukathas simply represent different aspects of the liberal tradition that are ultimately in tension with one another.

This interpretation would be resisted by both parties. Each would claim that his preferred value is more fundamental to the liberal outlook. Kukathas sees liberalism as ultimately about toleration, or not interfering with the way other people choose to live. Kymlicka would respond that a distinctively *liberal* form of toleration rests on the value of personal autonomy. That is because liberal toleration is specifically about 'individual freedom of conscience', the idea that *individuals* should be free to go their own way (Kymlicka 1995a: 156). This contrasts with the kind of group-based toleration advocated by Kukathas. This has a precedent in the 'millet system' of the Ottoman Empire, in which different religious groups were allowed, with some qualifications, to govern themselves. The trouble is that millet-style toleration of groups is compatible with the suppression of individual conscience and dissent within the group. 'The millet system', Kymlicka writes, 'was, in effect, a federation of theocracies. It was a deeply conservative and patriarchal society, antithetical to the ideals of personal liberty endorsed by liberals from Locke to Kant and Mill' (Kymlicka 1995a: 157). For Kymlicka, Kukathas's group toleration is a contemporary version of the millet system, it is not a liberal form of toleration at all. A genuinely liberal form of toleration involves an appreciation of the importance of group membership to individual well-being, but it also presupposes the value of personal autonomy and justifies the defence of individuals against attempts by groups to restrict that autonomy.

The Role of Autonomy

The role of personal autonomy in Kymlicka's theory is a target for several critics besides Kukathas. One line of objection questions Kymlicka's account of the relation between autonomy and culture. Recall that, according to Kymlicka, cultural membership is valuable because a person's autonomy is made possible by her cultural context. Some critics charge that this gets things the wrong way round: for liberals it should be personal autonomy that determines cultural membership rather than culture that conditions autonomy (Levey 1997; Gill 2001). Some cultures will not provide any contextual support for personal autonomy because they do not value it. We should choose our cultural affiliations, or at least these should be subject to critical revision.

Kymlicka does not altogether disagree with this point. He tries to accommodate it, but it does complicate his position. On the one hand he agrees that a person's identity is not simply determined by the culture in which she is brought up, and that she can question its orthodoxies through critical thinking. On the other hand, he still wants to say that a person's original culture plays a special role in providing a context for her autonomy, and that is one of his principal arguments for cultural rights. Combining these thoughts is tricky. Presumably, one's original culture is a necessary starting point from which to make sense of one's choices, but that does not explain how one becomes autonomous in the first place (since some cultures are not encouraging in this way), or why it should be so important to maintain a cultural context that an autonomous person may well repudiate.

Another issue is whether Kymlicka is wise to appeal so strongly to the value of individual autonomy in the first place. The dispute between Kymlicka and Kukathas on this matter is part of a wider debate about the foundations of liberalism. Another important contribution to that debate, suggesting a criticism of Kymlicka by implication, is made by John Rawls in his later work. In *Political Liberalism* (1993), Rawls argues that modern societies are characterized by the coexistence of a plurality of rival conceptions of the good life about which people may reasonably disagree. Liberal political thought should attempt to accommodate this reasonable pluralism instead of taking up a belligerent position within it. Rather than presented as a 'comprehensive' conception of the good, provoking reasonable disagreement, liberalism should be interpreted as a position that people can accept for purely 'political' purposes, in the public realm, while maintaining their own conception of the good in private.

In these terms Rawls would categorize Kymlicka's theory as harmfully comprehensive, since it is explicitly grounded in a controversial account of the good life based on personal autonomy. This kind of liberalism is too 'sectarian', according to Rawls (1985: 246), because the fact of modern pluralism is such that many citizens of liberal democracies belong to groups that value personal autonomy much less than allegiance to religious or traditional authority. In order to reach out to these non-liberal citizens, liberals must justify their principles and institutions only for the limited purposes of political consensus rather than as expressing the truth in all spheres of life. Kymlicka fails to limit his claims in this desirable way.

Kymlicka responds that Rawlsian political liberalism is incoherent. 'The problem is to explain why anyone would accept the ideal of autonomy in political contexts unless they also accepted it more generally' (Kymlicka 1995a: 160). Rawls imagines that the same people who reject autonomy in their private lives, because they see themselves as inextricably identified with their beliefs, can also affirm the possibility and value of autonomy when they are acting as citizens. 'For Rawls, people are communitarians in private life, and liberals in public life.' But people cannot realistically be expected to divide up their moral sensibilities in this way. Either they will accept personal autonomy comprehensively or not at all. If liberals want to defend civil and political rights, that defence must be comprehensive.

Kymlicka illustrates this point with the much-cited US case of *Wisconsin v. Yoder*, involving the Old Order Amish community. The Amish are an ultra-conservative Christian religious minority who prefer to live apart from mainstream American society. In *Yoder*, they were drawn into the legal system because of the decision of Amish parents to withdraw their children from school at the age of fourteen years rather than sixteen as required by state law. The purpose of this early cessation of education, according to Kymlicka, was to limit the children's knowledge of what takes place in the world beyond the confines of their own community, and thereby to reduce the possibility of the children's choosing to leave the community (Kymlicka 1995a: 162). But the US Supreme Court decided in favour of the Amish parents and against the state on the ground of freedom of religion.

Kymlicka rejects that decision, since the Amish policy was designed to prevent the critical questioning and revision of beliefs – that is, it diminished personal autonomy. His point against Rawls is that, although political liberalism would require that education for autonomy be respected by the community in the public forum – since in

that context this is a 'political value' that overrides the community's comprehensive values – the community is unlikely to do so if it does not respect autonomy as valuable in other spheres of life. Rawls's purely political approach, although in principle it would defend autonomy in this case, is unworkable. If autonomy is to be secured within the Amish community, it must be accepted comprehensively; merely to propose it as acceptable for political purposes against the grain of community sentiment is bound to provoke resistance.¹³

In general, then, Kymlicka sees Rawls's political liberalism as a half-measure that will neither satisfy the non-liberal groups it is designed to placate nor adequately defend the liberal ideals it is supposed to uphold. People who do not accept personal autonomy comprehensively are unlikely to accept it politically. Conversely, if people are expected to accept autonomy politically, they need to be persuaded of its comprehensive value. The traditional liberal task of arguing the case for personal autonomy is a difficult one, and inevitably brings liberals into intellectual conflict with non-liberals. But the task must be faced.

Summary

The traditional liberal approach to minority cultures is one of toleration or 'privatization', in which the state guarantees minority groups the freedom to practise their own culture in private. Subject to the maintenance of basic civil liberties, the traditional liberal state neither impedes such cultures nor assists them. Kymlicka departs from this policy by arguing that special rights for minority cultural groups are justified as a logical development of the egalitarian-liberal principle that people ought, where possible, to be compensated for undeserved disadvantage. Membership of a viable culture is one of the primary goods that contribute to individual well-being because people's culture provides a necessary context for their autonomous choices. Minority groups are in a weaker position than the majority when it comes to maintaining their culture. This is not such a problem in the case of migrant groups, which have effectively chosen to integrate into a new society, but it points to a major injustice towards indigenous and other 'national' minorities, whose absorption is typically involuntary. While migrants can still claim 'polyethnic' rights to help with their integration, national groups are entitled to much stronger rights of self-determination. However, Kymlicka also places a major qualification on these conclusions, which is that no group is entitled to deny its members their basic civil and political liberties or to stifle

dissent within the group. On the contrary, the same argument that grounds group rights – namely the value of cultures as contexts for individual autonomy – also justifies state-sponsored liberalization of illiberal practices. The many critical issues raised by Kymlicka's view include complaints that his approach is unnecessarily interventionist and that his appeal to the value of individual autonomy is too sectarian. Further issues will emerge in subsequent chapters.