

KYMLICKA ON CULTURAL RIGHTS AND LIBERALISM¹

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ABSTRACT

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Kymlicka's *Liberalism, Community, and Culture* originated a highly influential argument about the ethical foundations of minority cultural rights. The argument is explained and assessed in its original context and in the more developed form it took in his later book, *Multicultural Citizenship*. In its original version the argument was seriously underspecified, but the later version cleared up some problems only to create others. Minority cultural rights were either classed as the rights to self-government of national minorities or the rights of immigrants to integration into the receiving society, a form of incorporation that welcomes the retention of hyphenated cultural identities. The argument still left ample room to doubt that nationality suffices to justify self-government and that reasons derived from the value of multicultural integration could really support immigrant rights. Alan Patten's recent book, *Equal Recognition*, goes far to remedy these shortcomings while remaining firmly within the liberal paradigm of cultural rights that Kymlicka established with his first book.

KEYWORDS: multiculturalism, recognition, identity, Alan Patten, Will Kymlicka

IZVLEČEK

Kymlicka o kulturnih pravicah in liberalizmu

Will Kymlicka je v knjigi *Liberalism, Community and Culture* prvi zagovarjal zelo vpliven argument o etičnih temeljih kulturnih pravic manjšin. Ta argument je dodatno pojasnil in ocenil v svoji poznejši knjigi *Multicultural Citizenship*. V prvotni različici je bil argument precej nedodelan, novejša različica pa je razrešila nekatere težave, vendar za ceno nastanka nekaterih drugih. Manjšinske kulturne pravice so bodisi opredeljene kot pravice do samostojnega upravljanja narodnih manjšin ali kot pravice priseljencev do vključevanja v priseljensko družbo na način, ki upošteva ohranitev kulturnih identitet. Argument še vedno pušča dovolj prostora za dvom, ali nacionalnost v zadostni meri utemeljuje samoupravo ter ali razlogi, ki izhajajo iz multikulturne vključenosti, lahko podpirajo pravice priseljencev. Zadnja knjiga Alana Pattena *Equal Recognition* gre v odpravi teh pomanjkljivosti še dlje, kljub temu pa trdno ostaja v liberalni paradigmi kulturnih pravic, ki jih je s svojo prvo knjigo utemeljil Kymlicka.

KLJUČNE BESEDE: multikulturalizem, priznanje, identiteta, Alan Patten, Will Kymlicka

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I

I first read *Liberalism, Community, and Culture* very soon after its publication, and it impressed me more deeply than any book I had read by a living political philosopher since Dworkin's *Taking Rights Seriously* a decade earlier (Kymlicka 1989). But after twenty-five years, even excellent scholarly books are apt to hold diminishing interest as academic progress makes their contents increasingly *passé*. Returning to *Liberalism* in recent months, however, I found the book every bit as fresh and stimulating as I did on that first reading.

Although "multiculturalism" does not even figure in its index, arguments sketched in *Liberalism* about the nature of culture and its relevance to political morality would ground the theory of multicultural citizenship that Kymlicka developed in subsequent work. My main purpose here is to probe the strength of the foundation and to say something about its abiding relevance to philosophical arguments about cultural rights. For that reason I concentrate on the tantalizingly brief parts of the text where the relevant arguments are made, as well as some passages in *Multicultural Citizenship* that advance the line of thought they initiate (Kymlicka 1995). Finally, I say a little about Alan Patten's recent book, *Equal Recognition*, which seems to me by far the most important contribution to the liberal theory of cultural rights since Kymlicka's path-breaking work and also a testament to his continuing influence (Patten 2014). Patten's book is certainly original, but it also adheres closely to the particular liberal paradigm that Kymlicka established.

II

Liberalism, Community, and Culture has to be understood in the context in which it was written. The collapse of the European colonial projects during the middle decades of the twentieth century spurred belated public awareness in Western democracies of the immense cultural destruction, along with more palpable harms, that colonialism had wrought. And with the emergence of identity politics in the aftermath of America's civil rights movement, the appeal to cultural rights as a shield against social exclusion and stigma emerged in the political vernacular of many countries in the West. "Culture" became a valorized abstraction for a certain style of leftist politics, to be invoked when traditional but socially marginal communities were under threat from the assimilative powers of the state or international capitalism. By the same token, "assimilation" became a dirty word that suggested betrayal and complicity in oppression.²

The big question for political philosophy that arose from these developments was whether arguments expressed in the new vocabulary amounted to a breach with the received principles of liberal democrat politics, a departure to be extolled or denounced according to one's attitude to them, or whether their partisans could at least sometimes be understood as extending these principles to the particular historical circumstances of contemporary states. Kymlicka's project is to develop an account of cultural rights that locates them within the tradition he calls "modern liberalism," which he associates with Mill, Hobhouse, Green, Dewey, and more recently, Rawls and Dworkin. What unites the tradition is the attempt to ground principles of political justice in the equal respect and consideration owed to all who are subject to the authority of the state (Kymlicka 1989: 10–19).

A basic assumption of the modern liberal tradition is that each of us seeks to achieve a good life, though we often differ irreconcilably about what that life comprises. Nevertheless, we can agree that certain things are necessary to pursue whatever idea of the good we happen to have – roughly, "primary

2 The very word "assimilation" has taken on such invidious overtones in Western Europe that it is now almost universally eschewed. See Kastoryano (2002: 30–31). On the other side of the Atlantic after the 1960s, assimilation came to be seen "as an ethnocentric and patronizing imposition on minority peoples struggling to retain their cultural and ethnic integrity." (Alba and Nee 2007: 124)

goods” in Rawls’s vocabulary. These sustain the capability to choose our ends in life and also to revise them should we come to see our choices to be mistaken. Kymlicka argues that recent liberal philosophers, while accepting this general view of how justice and the good are connected, tend to treat a secure cultural setting for individual choice as an unacknowledged primary good. That is bad news for cultural minorities for whom the availability of such a setting is by no means assured. The injustice of their plight is rendered invisible by theories that assume they differ in no morally relevant respect from majorities (Kymlicka 1989: 10–19, 162–179).

The obviously cogent claim here is that our ability to pursue the good as we see it must depend on *some* sort of adequate cultural framework that government might protect, neglect, or in the very worst case, destroy. Kymlicka’s is also the kind of argument to which modern liberals (and their classical precursors) will necessarily appeal because it derives exclusively from the basic interests of human beings who are subject to political authority. The possibility that cultural practices have a value that is not reducible to the interests of particular human beings, a possibility dear to the hearts of some anti-liberals, is irrelevant to modern liberalism. The argument also coheres with what Kymlicka and some others have taken to be an entailment of their egalitarianism – viz., the idea that equal concern for all must be neutral concern for the many different conceptions of the good that people permissibly endorse within limits set by others’ rights: “[G]overnments are not allowed to use controversial judgments about the nature of human excellence or perfection in deciding how to promote the conditions of individual freedom.” (Kymlicka 1995: 80) Finally, the example to which Kymlicka repeatedly recurs of a people deprived of the necessary cultural framework for choice – aboriginal Canadians – is without doubt intuitively evocative. But the evocativeness of the example comes with certain disadvantages as well.

The oppression experienced by aboriginal Canadians has been so massively over-determined that strong moral intuitions about the case require some unraveling. Their oppression includes wholesale theft of land, coercive assimilation under the guise of educational opportunity, treaties that were exploitative or else fitfully or never upheld, social stigmatization on a massive scale, and widespread violation of their rights to liberty and equal treatment. We do not need to posit distinct cultural rights in order to recognize multiple egregious wrongs done to them since the arrival of Europeans in North America, though a reasonable surmise is that had the wrongs not been done, or if they could somehow be rectified at a stroke, the cultural infrastructure of aboriginal communities would be in much better shape than it is now.

Kymlicka says that a culture’s distinctive good consists in the fact that it “provides meaningful options for us and [aids] our ability to judge for ourselves the value of our life plans” (Kymlicka 1989). But liberty and educational opportunity, traditional items on the liberal list of primary goods, confer that good as well, and it is not clear from the argument in *Liberalism* just what the remaining deprivation would be if these were fully provided as justice requires. Much the same problem arises with the link between self-respect and cultural rights to which Kymlicka refers (Kymlicka 1989: 165–166). No doubt the combination of extreme poverty, poor educational opportunity, and social stigmatization that have long afflicted aboriginal communities in Canada erode the self-respect of youth. If these wrongs were corrected, some residual frailty in their self-respect could well require distinct cultural rights in order to be remedied. But we need more detailed argumentation than Kymlicka supplies in *Liberalism* to know that such a requirement in fact holds.

The cause of justice for aboriginal peoples also includes claims to national self-determination that are compelling in light of a history of colonization and persistent misgovernment by Canadian federal authorities. In the rhetoric of aboriginal justice, the case for self-determination is braided together with claims about the value of cultural preservation, and that creates some temptation to reduce the one to the other. Yet the self-determination of a people and its cultural preservation are not the same thing. Conceptions of culture and collective self-government that stay close to how the concepts actually work in our political vernacular would have to permit us to say that people aspire to govern themselves for cultural among other reasons, and that if and when they achieve it, cultural preservation is only

one among other many ends they may pursue. Whether a given people will exercise whatever powers of self-government they have to preserve their culture is always an open question. Suppose we could know that the cultural distinctiveness of one of Canada's First Nations would very likely fare worse with greater rather than less power to rule themselves. The case for their having greater powers as a matter of right would not collapse; in fact, I am not sure it would be diminished much.³

This gap between cultural and other reasons of self-government is obscured somewhat by Kymlicka's conceptual apparatus in *Liberalism*. For he seems in one important passage to define the sense in which cultural preservation matters to liberal justice so narrowly that mere demographic continuity suffices to preserve a culture:

It is of sovereign importance to this argument that the cultural structure is being recognized as a *context of choice* . . . In one common usage, culture refers to the character of a historical community. On this view, changes in the norms, values, and their attendant institution in one's community (e.g. membership in churches, political parties, etc.) would amount to the loss of one's culture. However, I use culture in a very different sense, to refer to the cultural community, cultural structure itself. On this view the cultural community continues to exist even when its members are free to modify the character of the culture should they find its traditional ways of life no longer worthwhile. (Kymlicka 1989: 166–167)

The example that he gives of this phenomenon is the Quiet Revolution during the 1960s in Québec. This was a period of rapid and intense cultural change that permanently altered Québec's educational, political, and religious character. Still, the cultural community that existed prior to these changes still existed after them. Kymlicka does not specify the criteria for the persistence of a cultural community. But one might infer from the text that once a distinctive community persists over a certain span of time, he believes that whatever happens to its character during that time is irrelevant to the persistence of culture in the sense that liberal theory should privilege. That cannot be right.

Consider a revealing contrast to the Quiet Revolution. The community that existed within the borders of China prior to the Cultural Revolution was the same one that struggled back to stability in its aftermath. The big, obvious difference between the cases is that in Québec social change was channeled through a set of political, economic and other institutions that were flexible and resilient enough to maintain social peace. In China there was massive institutional breakdown across the board. Thus without a sufficiently thick and flexible cultural framework of public and private institutions, Quebecers would not have had an enabling context of choice that endured through cultural tumult; instead, their fate would have been something like those who were unfortunate enough to endure the chaos of the Cultural Revolution. But that means we need to care about the persistence of a substantial cultural *content* and not just the perpetuation of a demographically continuous community. The character of a community is not irrelevant to the persistence of its culture. Kymlicka's own allusion to

3 In the recent Scottish referendum, moral revulsion after years of Tory (aka English) assaults on the welfare state seem to have been at least as big a consideration for many who favored independence as any reasons that would be ordinarily classified as "cultural." The Northern League in Italy flaunt their loyalty to local traditions in seeking greater regional autonomy, but the prospect of keeping more taxes for the North is an independent and perhaps more potent source of attraction for many supporters. And a commitment to cultural preservation or revival had relatively little to do with Ireland becoming a republic. The country has also become far more culturally akin to England in the decades since it won independence than it ever was during centuries of British colonialism. Although some Irish people bemoan that change as a fatal cultural decline, most view it with indifference or approval. Cultural preservation is just very low on their list of priorities, which is not to say they care any less about maintaining Ireland's political independence than their more culturally nostalgic compatriots. No doubt the daily maintenance of common institutions and a still vivid sense of shared history will be enough to ensure that the Irish retain a certain cultural distinctiveness. But to equate the retention with their self-determination would entail a very eccentric use of "cultural distinctiveness."

cultural “structure” in the above passage certainly suggests some awareness of this, and the awareness becomes much more explicit in the concept of a “societal culture” that emerges in subsequent work.

The overall case that Kymlicka made for minority cultural rights in *Liberalism* is intriguing but underspecified. If culture belongs on the list of primary goods, we need a better understanding of its relation to other goods on the list, and that is not forthcoming in the book. Does the distinctive value of culture require us to re-think our conceptions of educational opportunity, for example, so that their equal conferral on cultural majorities and minorities will often entail differential educational provision? Or should we think of culture (in part or whole?) as an irreducibly distinct good whose fair distribution cannot be determined merely by ascertaining the optimal distribution of freedom, educational opportunity and the like, however these standard primary goods are interpreted? The question is of more than pedantic interest because our capacity to enact and revise a conception of the good plainly relies on more than culture, and without a clear sense of how culture fits with the standard items on the liberal list of justice-relevant goods, the upshot of Kymlicka’s argument at the level of substantive policy is elusive. To my knowledge at least, this remains a lacuna in the liberal theory of cultural rights.

The second point at which Kymlicka’s argument was underspecified was in its account of the persistence conditions of culture. Liberal politics certainly cannot be indiscriminate in its opposition to cultural change. But if liberals must acknowledge minority cultural rights, a reasonable assumption might be that their point is to fortify vulnerable minority cultures against decline. For reasons I have already rehearsed, Kymlicka’s barely sketched distinction between cultural content and community does not enable us to distinguish between mere change and decline. A more plausible distinction would be the centerpiece of Kymlicka’s next and most famous book.

III

The notion of a “societal culture” is the key concept in the theory of multiculturalism that Kymlicka presents in *Multicultural Citizenship*. In fact, we might as well abbreviate this awkward phrase to “society” since societies are exactly what Kymlicka has in mind.⁴ An adequately stable society is one that “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.” (Kymlicka 1995: 76) What constitutes a given society are the particular shared institutions that organize “the full range of human activities,” institutions that can endure across long periods of time even as conduct within their parameters brings about much change. Societies also tend to be territorially concentrated and marked by a common language; the intensity and complexity of social cooperation that each requires would likely not be possible otherwise. “The capacity and motivation to form and maintain such a distinct culture is characteristic of ‘nations’ or ‘peoples’ . . . Societal cultures, then, tend to be national cultures.” (Kymlicka 1995: 80) Almost all modern states are also multi-national, and the right of national minorities to maintain their societies within such states is the normatively central claim in Kymlicka’s theory. That is to say, national minorities can rightfully claim sufficient authority within the structure of the state to enable them to control their future. Without that right, the integrative pressures exerted by the majority will inevitably erode the institutions of the minority society, however scrupulous the state is in avoiding discrimination.

Besides the rights of national minorities, Kymlicka acknowledges a category of cultural rights that can be claimed uniquely by immigrants (Kymlicka 1995: 95–101). To emigrate is to leave one society to make one’s future as a member of another. Learning to adapt to the new society may be an emotionally and cognitively taxing process, especially for older immigrants, and if the expectation of the receiving society is that newcomers will completely abandon their prior cultural practices on arrival, adaptation

4 Kymlicka’s concept of societal culture is borrowed from the analysis of society in Copp (1992).

can be experienced as deeply degrading. That moral cost is also unnecessary because immigrants can be effectively integrated into the major institutions of the receiving society without being completely assimilated. They (and their descendants) can be permitted, even encouraged to retain ancestral traditions and the like provided these do not compromise immigrants' full participation in the public institutions of the receiving society.

The paired concepts of society and nationality gives Kymlicka a much clearer way of explaining the sense in which the pursuit and revision of our life plans depend on an enabling societal context than the hurriedly made distinction between the character and continuity of a cultural community in *Liberalism*. But even if "the capacity and motivation to form and maintain" societies is characteristic of nations, it does not follow immediately that those who embrace some minority national identity can thereby justly claim a right to national self-government. The problem is to show how the individual interest in nationality is pervasive and morally weighty enough to generate a collective right to self-government. The most obvious source of doubt is this: being able to enact and revise a satisfactory conception of the good in a society in which one has little or no sense of common nationality with fellow citizens is not a rare condition, even for those who never emigrated, nor is it always experienced as a deprivation. There may be a way of getting from premises about the autonomy of individuals to conclusions about a collective right to national self-determination but it would take a much longer path of inference than any Kymlicka traces in *Multicultural Citizenship* or its predecessor.

Once again, Kymlicka's conceptual apparatus may obscure as much as it illuminates. In the first place, the unfortunate conflation of cultural rights with the self-government of peoples is now explicit and almost complete. The concession to immigrants' multicultural rights is an addendum to the argument for minority national rights and, as I argue below, there may be less to the concession than meets the eye. The distinction between minority and majority nations is certainly an important one that was badly neglected in much twentieth century liberal philosophy, and the concept of a society usefully draws attention to the boundary between the two. But culture qua society cannot coherently apply to the vast cultural differences within many contemporary liberal societies, especially but not only those most shaped by immigration. Nor can it capture the cultural convergence between societies that globalization has induced. The point is not that Kymlicka is unaware of these things; he certainly is. But I am not sure he sufficiently registers how contemporary migration and globalization may signal a weakening of national attachments in some cases. I also doubt that integration-derived rights for immigrants can throw much light on the unruly intra-societal political claims that are now made in the name of culture.

Kymlicka stresses the steep learning curve that must be managed by migrants who leave their national home to build a life in some other society. But the curve is not so daunting for educated migrants nowadays, given the globalization of culture. When I came to work at Stanford University from Canada, I found myself living in a suburban neighborhood quite like the one I had just left, shopping in stores that were just other branches of the ones I had been accustomed to using, and having much the same academic conversations in just the same language with students and colleagues who were barely distinguishable from their Canadian counterparts. I was now living in a new society, but there was remarkably little discontinuity between my cultural experiences in the two societies. No one would dream of saying that Canada and the U.S.A. do not comprise distinct societies, although they bear innumerable close resemblances and are nested within an increasingly integrated North American (and global) Anglophone culture.

No doubt the ease with which I was able to move from one society to another is far from typical of today's migrants. But I think Kymlicka certainly overstates the case about even the least fortunate among them when he compares migrants to medieval monks taking a vow of poverty as they abandon their secular status. In countries such as Ireland, with a very long history of raising children for lives abroad, I think this will seem far too one-sided an image. The decision to migrate may be a difficult one, but only in some cases is it experienced as a permanent hardship. And in places where poverty is very

bad and future prospect bleak, Kymlicka's comparison will seem the exact opposite of the truth. For people in such places the monk's vow of poverty is much more like the decision to stay put.

Intra-societal cultural differences also pose difficulties. Compare my experience of immigration to the USA to what might happen to a Latina who is admitted to Stanford from a rural community a hundred miles away. Her ancestors have lived in California for many generations. Yet she might well experience a serious rupture of identity as she forsakes one established cultural community for another while traveling a very short distance within a single, but exceptionally diverse society. She is not an immigrant, and she does not necessarily want minority national status for any group to which she belongs. If she demands respect for her particular culture, Kymlicka's theory cannot make sense of what she says.

He does present another interesting argument for the rights of national minorities in *MC*, one that explicitly engages with the concept of identity. He quotes Margalit and Raz:

Identification is more secure, less likely to be threatened, if it does not depend on accomplishment. 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 (Kymlicka 1995: 89; Margalit, Raz 1994: 447–449).

But failures of belonging are common among even the more privileged of those who live as members of national majorities or autonomous minorities in liberal states. So self-determining nationhood, even in combination with a secure context of choice, is not sufficient for the relevant good. And it is plainly unnecessary. The facets of personal identity that yield a full sense of belonging in the world need not implicate societal membership; religion, family, friendship, or other things can amply fill that particular hole. That said, I think identity is likely a necessary concept to any satisfactory liberal theory of cultural rights. I take this point up in the following section.

The addition of special cultural rights for immigrants in *Multicultural Citizenship* creates other difficulties. The particular rights that Kymlicka specifies are quite limited in scope, and their rationale is not to provide an enabling context for choice; the receiving society will do that well enough (Kymlicka 1995). Their point is to facilitate immigrants' integration without the wholesale erasure of whatever cultural baggage they bring with them from their country of origin. Two particular problems are evident here.

First, as many others have noted, the asymmetry between the rights of national minorities and the much sparser rights of immigrants is not easy to reconcile with the principle that citizens in both categories are owed equal consideration and respect. If the good of a secure context of choice and sense of belonging is adequately provided by policies that merely facilitate the integration of immigrants into the receiving society, why cannot the same good be made available to a national minority by helping them incorporate into the majority nation? Alternatively, if the relevant goods cannot be conferred through such policies, why cannot immigrants also lay claim to the rights of national minorities? Kymlicka's answer in *Multicultural Citizenship* relies heavily on the claim that emigration – setting aside the big, special problem of refugees – is a voluntary choice. Immigrants to a multicultural society could have stayed where they were if they were sufficiently averse to integrating into another society. But much the same could be said about many members of national minorities under pressure to assimilate to a majority society whenever they have some opportunity to go elsewhere: they could leave if the prospect of integrating was repugnant to them. Voluntary choice cannot sustain a distinction between strong rights to self-government for nations and thin, integration-promoting rights for immigrants.

Kymlicka has correctly pointed out that the modest expectations of contemporary migrants to liberal democracies differ, as a matter of obvious empirical fact, from those of established national minorities. They want a fair opportunity to integrate into the receiving society; they do not propose to colonize it incrementally by creating one of their own on its territory (Kymlicka 1995: 95–96). But the

question is about legitimate expectations, and a reasonable hypothesis about why immigrants typically ask for little is that the process of adaptive preference-formation moderates their claims.⁵ In that case, the legitimacy of their expectations would be questionable. Prospective immigrants know they are never unambivalently welcomed in the receiving society, and keeping their expectations modest makes them far more likely to get in and win acceptance than those who would present themselves as colonists. Furthermore, once they arrive, the prevailing assumption that “good” immigrants will integrate as rapidly as possible creates a standard of conformity and ample pressure to internalize it. Alternatively, the expectations of national minorities are typically formed in a context of much greater collective strength, with institutions of their own and with a long history of presence within the state and at least intermittently peaceful coexistence with their compatriots. The question is how we might establish the legitimacy of these divergent expectations because the empirical fact of divergence does not entail their legitimacy.

Furthermore, framing the supportive policies that Kymlicka would favor for immigrants in terms of individual rights is misleading if their justification derives only from the end of integration. The most natural way to think about integration is as a desirable goal of state policy, akin to reducing our carbon footprint or attracting private economic investment to poor regions. Such goals are to be pursued as best as we can without infringing on people’s rights, and immigrant integration is plausibly deemed to be among them. After all, immigrants who fail to integrate will to that extent fail to contribute to the common good; they are apt to become a burden on public resources, a stimulus to xenophobia, and in very rare cases, even a threat to their fellow citizens. So the desirability of integration as a public goal seems unassailable.

In the case of such public policy goals, we frequently revise how we pursue them in light of new knowledge. Given what we know now about the kind of multicultural policies that Kymlicka favors for immigrants, it does seem that they expedite the process of integration in comparison to alternatives that are less supportive of immigrants’ culture (Bloemraad 2006). But our knowledge in this area is still quite modest, and with a richer, more detailed understanding of the effects of multicultural policies, they might be shown to promote integration well in some circumstances but not in others, or to work well for some kinds of immigrants but not for others. In fact, a more recent study by Bloemraad suggests that the integrative potency of multicultural policies may dissipate as early as the second generation (Bloemraad 2014). Should we then withdraw or reduce multicultural rights in cases where their efficacy as vehicles of integration is known to be relatively weak? The correct answer surely is that if immigrants have a *right* to certain kinds of cultural protection and support from the state, they have a valid claim to these things even if respect for the right fails to contribute to some laudable public end. If that is true, then the basis of their rights cannot be the goal of integration.

IV

Kymlicka’s name appears frequently in Patten’s *Equal Recognition*, typically to register some disagreement. But I think the disagreements belie a deeper common ground. Patten offers a precise and detailed argument that moves from premises about the equal respect due to individual agents to conclusions about the cultural rights that must be ascribed to them under certain social conditions. That is essentially Kymlicka’s project. Patten prefers to speak of a fair opportunity for self-determination rather than equal respect for autonomous agents, but my best guess is that the difference in diction does not reflect much interesting theoretical divergence.

5 Adaptive preferences are formed (not necessarily consciously) in reaction to what is perceived as possible (e.g., by virtue of others’ unjust expectations). See Elster 1985: 109–140.

According to Patten, liberal justice implies that the state has strong but defeasible reason to be neutral toward the different conceptions of the good to which citizens subscribe. Neutrality cannot be achieved in many cases other than by instituting minority cultural rights, and when that is so, the reason to be neutral is often strong enough to outweigh whatever opposing reasons might be marshaled against them (Patten 2014: 104). Patten's argumentation is never less than meticulous, and I cannot attempt to do justice to his version of multiculturalism here. But I want to indicate something of the promise of his approach by showing how it might converge with much of what is plausible in Kymlicka's theory while evading some of its pitfalls.

State neutrality on Patten's account is not a basic principle of liberal politics; it is an entailment of fair opportunity for self-determination. When the state observes neutrality, citizens can select, pursue or revise their life-plans by choosing among the range of values that are properly eligible for adoption under a liberal regime, and they can do this without their choices being unfairly tilted in one direction or another by the state. State neutrality can take different forms, and the one that underpins many cultural rights is what Patten calls "evenhanded entanglement": "the main idea ... is for the state to remain actively involved in providing and/or regulating particular goods and activities that are of special importance to some conceptions of the good and not others, but to do so in a pluralistic fashion such that a roughly equivalent form of regulation or provision is applied to various rival conceptions." (119) Patten's usefully low-key example is the "pluralistic" supply of public recreational facilities: parks, playgrounds, swimming pools, ice rinks, baseball and football fields, etc. The uncontroversial public rationale for doing this is to improve public health and encourage neighborliness. Yet by maintaining such services, local government is directly "entangled" in meeting the recreational preferences of people in the community. Neutrality means that authorities should be "evenhanded" in their accommodation of the relevant preferences, Patten would argue, and that requires something other than doing whatever the majority wants. A majoritarian rule could mean that minorities get no recreational options that attract them from a substantial public investment, and that would hardly be fair. Of course, if enthusiasts for skating or hockey are few, the case for building an expensive rink cuts no ice, so to speak. Then again, if a facility can be conveniently and cheaply adapted from time to time for the few devotees of some exotic sport, the case for doing so is strong. And if modest investment in options that would be alluring to substantial minorities is feasible, the argument for accommodation will be even stronger. The right ideal is to furnish a range of opportunities in physical recreation so that as many people as possible can find something to their liking.

But government could meet the requirement for neutrality more simply by abstaining altogether from involvement in the sponsorship of recreational facilities, and if it did abstain, no one could seriously claim that their rights had been violated. Why then cannot a culturally diverse state abstain from cultural entanglements without triggering valid minority claims about the violation of their rights? Kymlicka's answer to that question has been that on a range of critically important issues the state simply cannot be culturally neutral. Patten's answer is slightly different and (I think) better:⁶ the only way the state can achieve or at least approximate neutrality on a range of matters that all culturally diverse states must address is through some strategy of evenhanded entanglement.

Public institutions are necessarily "formatted" in ways that instantiate cultural partiality: decisions have to be made within the state about the boundaries of sub-state governmental institutions and how authority is to be distributed among them, and these decisions may be more or less responsive to the aspirations of minorities who have a big stake in the outcome; officials must communicate with the public in one or a very few natural languages, and to that extent, there will be at least *de facto* official languages none of which are the native language of some citizens; public holidays will be well-aligned with

6 Kymlicka's argument stresses the adverse consequences for national minorities that flow from decisions about official languages and the like that are determined solely by the majority's culture (Kymlicka 1995: 112–115). But non-neutral consequences for any social group cannot by itself show a policy to be unfair.

one or more religious calendars, but certainly not all; the history and art of some groups will figure in school curricula but not everyone will find a place there. Further, the ways in which the state disfavors certain cultures through institutional formatting are liable to be experienced by citizens as disrespectful of who they are, and not merely as disappointing or annoying. That is so because our identities (in a morally salient sense)⁷ are apt to be implicated in our national sentiments, our ability to communicate in our native language with public officials, our opportunity to celebrate holy days marked by our religion, our assurance that public schools fairly represent who we are, and so on.

The “equal recognition” espoused by Patten requires that the state accommodates identity-based preferences in the formatting of its institutions on a pro-rated basis. Proration is necessary for the same reason that public expenditure on a new municipal ice-rink for a handful of avid skaters cannot be justified. The costs involved in cultural accommodation would be prohibitive if every language favored by a few citizens were made an official language. But equal recognition is violated, for example, if sizeable linguistic minorities are denied *any* public accommodation despite the feasibility of doing so at modest cost.

This is a merely a rough summary of the central argument in *Equal Recognition*, but it is enough to show both why the book advances our understanding of cultural rights in liberal theory and how it retains much of the spirit and substance of Kymlicka’s work. For one thing, Patten gives us a much more contextually sensitive principle for assigning cultural rights than the bifurcated categories of national self-government and immigrant integration. Any claim on the support or protection of the state that applies to the formatting of public institutions and is grounded in identity in the relevant sense is at least a candidate for accommodation on the basis of equal recognition. Whether it comes from a national minority or immigrant group is irrelevant, strictly speaking.

One advantage of Patten’s theory is that the strength of the argument it yields for self-government is indexed to the place of national sentiment in the identity of the minority in whose behalf the argument is made. Where such sentiment is generally feeble, for example, but serves as a convenient pretext for regional resource hoarding, Patten can explain why the argument would be correspondingly weak. I doubt that that conclusion would be repugnant to Kymlicka, but nothing in his theory can really explain the variable moral weight that different claims in behalf of national minorities might have. The centrality of nationhood to modern identity in Kymlicka’s theory is taken to be a hard fact from which the right to self-government can be directly inferred. But Patten re-casts that point as a more plausible conditional: *if* the cultural attachments of a given community have mutated into a strong and pervasively distinct national identity, then we have a cultural case for self-government. Of course, there’s a vital question here at the level of application about just how strong and pervasive the sentiment has to be for it to yield a right to self-determination, and one might expect a lot of reasonable disagreement about when the point is reached.

Immigrant rights are also put on a more robust and morally apt footing in *Equal Recognition*. If the increased presence of immigrants in our schools, for example, warrants revisions to curricula that adequately reflect the history and traditions of prominent new ethnic groups in our midst, equal recognition would supply that warrant not because the proposed curricular change promotes integration but because respect for the identity of those within such groups requires no less.

7 “I think of a preference as identity related when it has two main characteristics. First the preference is connected in a particular way with the other beliefs and preferences that make up a person’s conception of the good. The preference is informed by, or an expression of, the fact that the preference holder identifies with a particular group or community, and values that identification to at least some degree. Second, the satisfaction, or at least the equal treatment, of the preference matters to the holder in a special way. It would be an especially serious setback for the person if the preference went unsatisfied, and/or if the state treated it unfavorably.” (Patten 2015: 157) This seems to me a particularly clear and plausible way of connecting identity related preferences with the expectation that the democratic state will treat us equally.

But the contextual sensitivity of equal recognition also means that it grounds a substantially more limited accommodation of cultural diversity than some would hope for. The limitation is a consequence of the fact that equal recognition is a defeasible principle of political morality subject to the constraint of proration. I do not say that defeasibility and proration trivialize cultural rights; I merely suggest that they indicate a more precarious place for them in the determination of public policy than Patten (and perhaps Kymlicka) would be ready to acknowledge.

Patten stresses the fact that even when equal recognition must yield to more morally pressing reasons in public policy, the moral loss we thereby incur is one we are obliged to redress in the future. He acknowledges the liberal nationalist worry that the imperative of nation-building might sometimes tell against the case for minority cultural rights. But he is sanguine that the strategies of liberal nation-building can over time secure a sufficiently cohesive nation without sacrificing equal recognition. All that may well be true, but I suspect that other considerations will commonly and rightly crowd out equal recognition in the all-things-considered determination of public policy.

The point I want to make about defeasibility is banal but easily forgotten the further we get from actually making or assessing the tradeoffs that are inescapable in real world policy-making. Consider some of the initiatives that might with some show of reason be espoused in the name of equal recognition in education: bilingual schooling for the children of immigrants to provide access to a curriculum that would otherwise be largely intellectually opaque; bilingual schooling for linguistic minorities to ensure the retention of ancestral languages that are widely cherished; new curricula for schools – with the new textbooks and other resources that this implies – that fairly represent the social presence of new minorities; state-sponsored religious instruction (or separate denominational schooling) that bestows on new minorities educational privileges hitherto enjoyed only by long established faith communities . . . and so on.

Arguments for equal recognition in these circumstances will almost inevitably be in contingent conflict with other rights-based arguments that have at least as much moral respectability. The case for more investment in the education of the disabled or for policies that mitigate the effects of poverty on educational opportunity can certainly claim that status. And of course, the argument for maintaining, much less increasing public spending on education can be countered by other rights-based arguments about healthcare, foreign aid and the like. Rights are the heavy artillery in the arsenal of moral argument, or so says Loren Lomasky (Lomasky 1985). But valid rights claims do not confer much advantage when those with rival policy priorities all have very big guns.

Reasons morally important enough to defeat equal recognition in the first place are unlikely to lose their relevance and weight in future instances of decision-making; in fact, they are likely to be applicable whenever the obligation to redress the earlier defeat applies. I would guess that the most common scenario in which a policy recommended by equal recognition rightly loses out to an alternative is when the public resources needed to implement it are better spent on alternative worthy purposes, such as improvements to universal healthcare, antipoverty projects, foreign aid, etc. Whatever the obligation might be to correct the moral loss that occurs when recognition is defeated, it cannot mean that we could engineer our political circumstances so that powerful countervailing reasons will not be adduced against the principle later on. The imperatives of securing universal healthcare, etc. just will not go away.

Proration is a constraint that applies at a more basic stage in determining whether there is a right in the first place. Patten says almost nothing about how it is supposed to work. But it is presumably bad news for some small minorities with costly claims against the state, and unless an immigrant community has somehow already created a more or less institutionally complete society of its own, it is hard to see how they could reasonably lay claim to the immense resources necessary to create one if all claims are subject to proration. This has the important implication that proration could explain why immigrants' modest cultural claims are *rightly* modest in scope, regardless of whether mechanisms of adaptive preference shape them.

A final point of comparison between Kymlicka and Patten might be the place each gives the idea of cultural loss within normative theory. I noted earlier that “culture” is more or less swallowed up by “society” in Kymlicka’s theory. One unfortunate consequence of that conceptual move is that it inflates the importance of cultural loss. The disintegration of whole societies is something none of us could regard with equanimity, given the immense difficulty of rebuilding them when they have been severely damaged. (The examples that come to my mind are in failed or very weak states.) But the loss of cultural practices is another matter entirely, even when they are central to some formerly cherished way of life. Whether such losses turn out to have normative political relevance will be an open question, but we merely suppress the question if we fail to register them as cultural loss so long as the society in which they are embedded endures.

In Patten’s case, even though he devotes a great deal of highly ingenious argumentation to the question of what constitutes a culture early in the book, the argument I summarized above makes no reference to cultural loss whatever; its fulcrum is the idea that identity is implicated in a morally privileged sense in certain claims that minorities make against the state. Patten would argue that culture is still deeply relevant here because what minorities typically claim is some accommodation that will help a vulnerable culture or cultural practice to survive in a more or less adverse social environment. It is because the identity of the claimants is so tightly bound up with cultural survival that the concept of culture remains (implicitly) central to the argument, or so he seems to think.

I am doubtful about this. Proration surely means that the cultural claims of the smallest, most vulnerable cultures are more susceptible than others to being downgraded if not dismissed entirely. At least that is likely to be true when substantial ongoing costs would be incurred by the state if it were to provide the requested accommodation. That would seem an unfortunate implication for a theory that purports to be centrally concerned with the survival of vulnerable cultures. On the other hand, if proration is discarded, equal recognition ceases to be a politically realistic or normatively attractive principle: strictly equal recognition for all cultures regardless of size is scarcely imaginable in any society with more than very modest levels of cultural diversity. But I am inclined to think that questions about cultural survival are irrelevant to liberal multiculturalism for reasons that parallel the irrelevance of questions about religious survival.

When people exercise their religious liberties, they often do so in the effort to ensure that their own faith is sustained into the future. But the reason why liberal states respect religious liberty is not necessarily the same as what motivates the individuals whose liberty it is. The state protects that liberty because religion is central to the moral identity of citizens, and so long as it exists as a social practice, some people will be unable to live a subjectively tolerable, much less a good life, unless they are free to live openly in light of their faith. But it does not follow that the state has an interest in the survival of any religious faith. That will be up to the decisions of individuals exercising their rights under a just political dispensation; in Patten’s terms, it will be up to the self-determination of citizens under fair background conditions. If a particular religion is dying out, that warrants no special solicitude on the part of the state. Of course, if dying out is a consequence of religious persecution, the state must intervene to correct that wrong. Whether or not the correction is enough to revive the religion is nothing to point. I do not see how the logic of cultural rights in liberal theory could be any different if Patten is right about their normative grounds.

That comparison between religion and culture in liberal theory leads me to a more speculative point. Religion is without doubt an important concept to some areas of philosophical inquiry. Still, does it really matter in liberal theory so long as we do not stray much from ordinary usage? If someone asks for an exemption from some legal duty on dubiously religious grounds, for example, the principles that warrant the exemption will indeed be crucial to an adequate conception of liberal justice. But I think we muddle the problem if we think that the meaning of “religion” in disputed cases is centrally at issue in efforts to identify and apply the necessary principles. If what is claimed as a “religious” exemption has just the same normative salience in the claimant’s conception of the good as garden variety religion

has in the life of a typical believer, then for all it matters we can substitute “chopped liver” for “religion”: the case for accommodation will have just as much or as little merit as it would if the same exemption were claimed in the name of some paradigmatic religion. I suspect that parallel claims about culture and cultural rights may be true. Very little of consequence to our political morality may ride on theoretical disputes about the meaning of “culture”. At the very least, we can surely say that rights do not get some extra jolt of importance just because they are “cultural” rather than something else.

The place of minority cultural rights in liberal theory that I have tried to make visible in this essay might be a bit more modest than Kymlicka would commend, though I am not even sure of that. But it is certainly far more robust than the likes of David Cameron and Angela Merkel have been willing to countenance in their unfortunate diatribes against multiculturalism. It is sad that our philosophical understanding of minority cultural rights has advanced so far, through his and now Patten’s good offices, while our vernacular political discourse is still so often corrupted by absurd caricatures of what such rights would signify.

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POVZETEK

KYMLICKA O KULTURNIH PRAVICAH IN LIBERALIZMU

Eamonn CALLAN

Will Kymlicka je v knjigi *Liberalism, Community and Culture* prvi zagovarjal zelo vpliven argument o etičnih temeljih kulturnih pravic manjšin. Ta argument je dodatno pojasnil in ocenil v svoji poznejši knjigi *Multicultural Citizenship*. V prvotni različici je bil argument precej nedodelan, novejša različica pa je razrešila nekatere težave, vendar za ceno nastanka nekaterih drugih. Manjšinske kulturne pravice so bodisi opredeljene kot pravice do samostojnega upravljanja narodnih manjšin ali kot pravice priseljencev do vključevanja v priseljenško družbo na način, ki upošteva ohranitev kulturnih identitet. Argument še vedno pušča dovolj prostora za dvom, ali nacionalnost v zadostni meri utemeljuje samoupravo ter ali razlogi, ki izhajajo iz multikulturne vključenosti, lahko podpirajo pravice priseljencev. Temeljni cilj pričujočega prispevka je analizirati samo utemeljitev manjšinskih kulturnih pravic v okviru liberalnega pojmovanja multikulturalizma. V uvodnem delu se osredotočam na posamezne izseke iz knjige *Liberalism, Community and Culture* ter nekatere odlomke iz knjige *Multicultural Citizenship*. V sklepnem delu prispevka analiziram vpliv dela Willa Kymlicke v nekaterih sodobnih pojmovanjih pripoznanja, npr. v knjigi *Equal Recognition* Alana Pattena, ki je najpomembnejši sodobni prispevek k liberalni teoriji kulturnih pravic. V omenjeni knjigi avtor sicer odpravi nekatere od pomanjkljivosti standardnega pojmovanja manjšinskih kulturnih pravic, kljub temu pa ostaja trdno umeščena v liberalno paradigmo kulturnih pravic, ki jih je s svojo prvo knjigo utemeljil Will Kymlicka.