CULTURE, AUTONOMY, AND NATIONHOOD

Rethinking Multicultural Citizenship

by

William Matthew Watson

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ABSTRACT

This thesis is intended as a critique of Will Kymlicka’s groundbreaking and elegant defense of a liberal theory of minority rights. It argues that although Kymlicka has succeeded in showing that a minority nation may seek and exercise minority rights while still respecting, and even furthering, the ability of its members to live autonomously, Kymlicka is mistaken when he contends that liberalism’s commitment to individual autonomy requires the liberal democratic state to provide minority nations with the self-government and language rights necessary to allow them to sustain their “societal cultures.”

Specifically, it is argued that Kymlicka’s autonomy-based argument for according self-government and language rights to national minorities fails to pay sufficient regard to both the fact that the personal costs associated with leaving one’s culture will vary depending on the individual and the cultures involved, and the fact that some national minorities, in order to sustain themselves as distinct societal cultures, will require not only external protections from the actions of the cultural majority, but also the ability to impose liberty-infringing preservationist measures against their own members. Further, since, as I argue, individual autonomy does not actually require that one has continued access to one’s societal culture, it is suggested that both granting and refusing a minority nation the means to sustain its societal culture could be in keeping with a liberal conception of justice, depending on the particular circumstances of the groups at issue. Consequently, the thesis concludes that the question of how to accommodate national minorities should be determined on a case-by-case basis.
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CHAPTER ONE:

INTRODUCTION

In Will Kymlicka’s 1995 tour de force, *Multicultural Citizenship*, he offers a defense of a liberal theory of minority rights that is both novel and fascinating for the way in which it draws a direct link between individual freedom and access to one’s culture. The thesis of Professor Kymlicka’s book is that individuals require secure access to what he calls their “societal culture” in order to exercise autonomy, since societal cultures provide their members with the range of meaningful life-options presupposed by the notion of autonomous choice. The great contribution of this argumentative manoeuvre is that it brings to the forefront a question that has, perhaps surprisingly, been vastly underexplored by liberal theory: what are the preconditions (most especially the cultural preconditions) of individual freedom and autonomy? However, while I think Kymlicka has done a great service to liberal political theory in raising this important question, I believe the answer he provides is ultimately unsatisfactory.

Specifically, this essay will attempt to refute Kymlicka’s contention that liberalism’s commitment to individual autonomy requires the liberal democratic state to provide minority nations with the self-government and language rights necessary to allow them to sustain their societal cultures. Instead, it is argued that, from time to time, the scales may tip in favour of denying a national minority the means to sustain its societal culture, since the personal costs of leaving one’s culture and integrating into another can vary greatly depending on the individual and the cultures involved, and since some national minorities will only be capable of preserving themselves as distinct cultural
communities by resorting to measures that significantly limit the autonomy of their members.

To be clear, I think Kymlicka has actually succeeded in showing that a minority nation may seek and exercise minority rights while still respecting, and even furthering, the ability of its members to live autonomously. This observation, that such group-differentiated rights do not inherently conflict with liberalism, is both insightful and hugely important, and it lifted the debate over multiculturalism to a higher plane of sophistication. However, I will endeavour to show that Kymlicka is mistaken when he writes that, as a matter of justice, the liberal state “should aim at ensuring that all national groups have the opportunity to sustain themselves as a distinct culture, if they so choose.”

To this end, Chapter Two will endeavour to show that societal cultures do not uniquely provide the social context, or the “shared vocabulary of tradition and convention”, as Kymlicka, borrowing from Ronald Dworkin, puts it, which is required for individuals to make meaningful choices among life-options. Instead, Chapter Two will insist that cultural groupings both smaller and larger in scope than Kymlicka’s societal cultures can play this autonomy-facilitating role.

In Chapter Three, I argue, contra Kymlicka, that members of minority societal cultures do not have a reasonable general expectation that they will be able to remain in their culture. I conclude that although, as Kymlicka suggests, “most people, most of the time, have a deep bond to their own culture,” because the personal costs associated with

2 Ibid., at 76 and 83. (Citing Ronald Dworkin, A Matter of Principle (London: Harvard University Press, 1985), at 228.)
3 Supra note 1, at 90.
leaving a cultural community are *variable* – depending on the person and cultures involved, and the gradualness of one’s exit – Kymlicka’s apparent belief that these costs will *always* be unacceptably high is overly categorical.

Chapter Four then examines the demand that minority societal cultures be given the means to sustain themselves, and suggests that while providing certain national minorities with self-government and language rights may be required as a matter of liberal justice in particular circumstances, this will not be true of all national minority groups in all cases. The chapter finds that these sorts of rights, which Kymlicka labels “external protections,”

\[4\] will not always be sufficient to preserve minority cultures as distinct societal cultures, and that sustaining a minority culture from erosion can require measures that significantly undermine the autonomy of both members and outsiders. The chapter then lays out the theme of the essay, arguing that since individual autonomy does not actually require that one have access to one’s societal culture, determining whether a given national minority ought to be accorded the minority rights necessary for the group to sustain their societal culture should involve a contextual weighing of, on the one hand, the personal costs members of that culture would face if they were forced to integrate into a new societal culture, and, on the other hand, the potentially illiberal measures that could be necessary to preserve the societal culture from disintegration.

Chapter Five examines what I label two “all things considered” arguments against liberal multiculturalism. Firstly, the chapter examines the charge that multiculturalism unduly “essentializes” cultures, concluding that while there is some merit to this concern, the essentializing tendencies of liberal multiculturalism are not sufficient reason to reject multicultural accommodations altogether. Secondly, the chapter asks whether

\[4\] See ibid., at 35-44.
Kymlicka’s recommendation that the liberal state provide political autonomy to territorially-concentrated national minorities, but not to non-national minority cultures, is either *per se* unfair to the latter groups, or else threatens to allow the minority nation to mistreat and exclude its internal minorities. It is argued that Kymlicka’s differential recommendations for how national minority and immigrant groups should be accommodated by the state are appropriate, and do not unfairly discriminate against non-national groups. However, despite Kymlicka’s admirable support for what he calls “poly-ethnic rights,” the chapter suggests that the fact that sustaining a minority societal culture may sometimes require concerted state efforts to discourage members from exiting, combined with Kymlicka’s thickly culturalist vision of nationhood, leaves us with reason to fear that Kymlicka’s favoured version of multiculturalism could burden internal minorities with a disproportionate share of the costs of cultural preservation.

Building on this concern, Chapter Six explores an alternative conception of national identity that grounds national membership not in ethnic or cultural characteristics, but in participation in the political community’s ongoing public debate. It is argued that such a culturally inclusive conception of the public sphere, although it would not preclude the possibility that there might still exist compelling reasons of justice in favour of granting political autonomy to national minorities, could serve to mitigate much of the unfairness that members of cultural minorities face in having to integrate into the majority group’s cultural life in order to secure meaningful contexts of individual choice. However, the chapter ultimately concludes that even if such a culturally open public sphere were achieved, this would not alter the fact that some national minorities may need to resort to illiberal means to preserve their distinct societal cultures.

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5 Ibid., at 30.
Chapter Seven then examines the real-word case of Quebec, and asks whether liberal justice requires that Quebec enjoy the language and self-government rights it needs to sustain its French societal culture. The chapter suggests that although some of the means that the Quebec government has found necessary to preserve its distinct societal culture represent significant deviations from liberal norms of individual choice and democratic contestation, liberals should accept these deviations as necessary to ensure that individual Quebecers are not asked to pay too high a price to secure their autonomy.

Finally, in Chapter Eight, I argue that even if Kymlicka only intended his account of societal culture as a normative model for the pursuit of liberal egalitarian justice (as opposed to a kind of Kantian transcendental deduction of the preconditions of autonomy, or a valid ethnographic generalization about the context in which actual individuals exercise autonomy), in light of the fact that the personal hardships involved in switching cultures are variable, and the measures required to sustain minority societal cultures potentially illiberal, we should not regard the provision of self-government rights to minority nations as required, in all times and places, by a liberal egalitarian conception of justice.
CHAPTER TWO:

CULTURAL MEMBERSHIP AND INDIVIDUAL AUTONOMY

To understand Kymlicka’s liberal theory of minority rights, it is important to understand what he has in mind when he writes of ‘societal culture’, and how he regards these cultures as related to the liberal goal of ensuring individual autonomy. Essentially, Kymlicka’s concept of societal culture draws a distinction between different cultural units according to their scope. So, for instance, Kymlicka does not argue that individual freedom requires that people have secure access to every cultural community to which they belong. Rather, as the term itself suggests, the “sort of culture” he focuses on “is a societal culture – that is, a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres. These cultures tend to be territorially concentrated, and based on a shared language." Further, to give his reader a clear understanding of what a societal culture looks like, he links societal culture with the more familiar concept of the ‘nation’: “just as societal cultures are almost invariably national cultures, so nations are almost invariably societal cultures.”

Now, as will become clearer below, I think Kymlicka’s argument that societal cultures provide their members with an array of meaningful life-options, and that these options are required for the exercise of individual autonomy, is sound. What I wish to dispute in this chapter, however, is the notion that societal cultures are the only cultural

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6 Ibid., at 76. (Emphasis in original.)
7 Ibid., at 80.
units that facilitate autonomy in this way. Specifically, I believe that many individuals belong to cultural groupings that are smaller and more localized than societal cultures (and some even identify with larger transnational affiliations), and that many of these non-societal cultures too provide meaningful contexts of choice for their members. To clarify the point, it may be helpful to underline where Kymlicka and I appear to part company by examining two facially similar passages from Multicultural Citizenship. For instance, I think Kymlicka makes an important observation when he writes that “freedom involves making choices amongst various options, and our societal culture not only provides these options, but also makes them meaningful to us.” What I reject, and what I argue does not follow from the quotation above, is the claim Kymlicka makes further on on the same page: “it is only through having access to a societal culture that people have access to a range of meaningful options.” In other words, I believe that even if an individual’s context of choice is a function of her relationships with the cultural communities to which she belongs, “for most persons,” as Jacob Levy has noted, “there exist several cultural communities with which he or she has this kind of relationship.”

The criticism that I am making here has been forcefully put forward by Joseph Carens. As Carens notes, “[i]nstead of claiming (as is plausible) that the language and national culture of the place where one lives will normally play an important role in shaping the sorts of choices one faces, Kymlicka presents societal culture as if it were the sole and comprehensive determinant of one’s context of choice. Societal culture is what

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8 Ibid., at 83.
9 Ibid. (Emphasis added.)
10 Jacob Levy, The Multiculturalism of Fear (Toronto: Oxford University Press, 2000), at 71. (Emphasis added.)
makes freedom possible.”¹¹ To see how Kymlicka, in picking out nations as uniquely providing the contexts of choice required for autonomy, unduly privileges societal cultures over non-societal cultural identity groups, consider the specific way in which Kymlicka understands societal cultures to create contexts of choice. According to Kymlicka, for example, “societal cultures involve ‘a shared vocabulary of tradition and convention’ which underlies a full range of social practices and institutions. To understand the meaning of a social practice, therefore, requires understanding this ‘shared vocabulary’ – that is, understanding the language and history which constitute that vocabulary.”¹² Consequently, since making judgments about social practices is a part of life, “[u]nderstanding these cultural narratives is a precondition of making intelligent judgments about how to lead our lives.”¹³

But, one might ask, why should we think cultural affiliations that are smaller or larger than societal cultures might also provide their members with a context of choice? I submit that the better question is: why shouldn’t we think this? Do ethnic communities, religious groups, political organizations, transnational bodies and so on not involve their own ‘shared vocabularies of tradition and convention,’ just as societal cultures do? Do they not possess ‘cultural narratives’ of their own? I think it is clear that they do. In other words, these non-societal cultures have their own respective shared vocabularies which help their members to understand the meaning of a range of social practices and choose between them.

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¹² Kymlicka, *supra* note 1, at 83. (Citing Ronald Dworkin, *supra* note 2, at 228.)
¹³ Kymlicka, *supra* note 1, at 83.
So why does Kymlicka appear to overlook this important sociological fact? One possible explanation is that Kymlicka feels justified in downplaying or ignoring the role of non-societal cultures in providing contexts of choice for their members because these non-societal cultural groups (at least all those that are smaller than national in scope) are themselves contained within a larger societal culture. So, for instance, if I belong to a Chinese immigrant community in Richmond, BC, I may feel that my understandings of the relative worth of various social practices, my views on which occupations are the most prestigious or worthwhile, and my beliefs about the importance of higher education, for instance, are all shaped by what the cultural narrative that informs my community has to say about these activities. In other words, I may feel that it is my membership in this immigrant community – according to Kymlicka a community that, by definition, is not a societal culture\(^\text{14}\) – that allows me access to the sort of shared vocabulary I rely on in order to understand (at least some of) the social practices among which I must choose.

The way in which Kymlicka might respond to this assertion is to argue that one’s immigrant community is part of a wider English-Canadian societal culture, and that the sort of options that are made meaningful to Chinese Canadians in Richmond, say, are not simply thrown up by that local community. Rather, the rebuttal might go, the options that are ostensibly made meaningful by such immigrant cultures are in fact only meaningful insofar as they are rendered so by the larger societal culture.

In essence, this sort of argument denies the efficacy of non-societal cultures when it comes to providing contexts of choice. Specifically, it says that while a given immigrant community may appear to make meaningful a range of options when its shared social vocabulary implies that options X and Y are worthwhile while Z is trivial, the real

\(^{14}\) Ibid., at 10-1, 14-5, 19-20.
work of identifying the meaning and utility of X, Y, and Z has been done beforehand by
the shared vocabulary of the wider societal culture, such that the cultural narrative of the
immigrant community could never have cast X as trivial or Z as worthwhile, for instance.
Nor, for that matter, *ex hypothesi*, could any of X, Y, or Z appear as options at all within
the immigrant society if they were not options that were made intelligible by the wider
societal culture.

Now, it is no doubt true that many non-societal cultural groups will be contained
within, and likely influenced by, a given societal culture. As we saw above, for instance,
societal cultures are by definition expansive entities, providing members “with
meaningful ways of life *across the full range of human activities, … encompassing both
public and private spheres*.”\(^{15}\) However, the cultural narrative of a non-societal cultural
group may understand certain social practices in a different way than does the
encompassing societal culture. Furthermore, a non-national cultural community may
make meaningful certain practices about which the larger societal culture is simply silent.
In both of these ways, then, a non-societal culture can provide its members with a
different range of options than that created by the societal culture.

For example, it may be the case that the context of choice for members of Chinese
immigrant communities in the lower mainland of BC is substantively different, as regards
post-secondary education, from the context of choice created by the broader English-
Canadian societal culture, since the immigrant community may give this pursuit a
different meaning or value than it can be said to possess in the societal culture as a whole.
Furthermore, to view the options made meaningful by non-societal cultures as completely
derivative of the societal culture within which they are contained, makes it seem, in

\(^{15}\) Ibid., at 76. (Emphasis added.)
Joseph Carens words, “as though all those who belong to a societal culture have the same cultural options and possibilities.”¹⁶ We can see just how implausible this scenario is when we consider religion. We know, for example, that there are many Jewish and Muslim Canadians within both the English-Canadian and Québécois societal cultures. And it would seem that religious freedom is highly valued by the ‘shared vocabularies of tradition and convention’ of both of these societal cultures. However, as Carens asks rhetorically:

…could anyone say that it is the societal culture of Quebec or Canada that makes Judaism or Islam (or even Christianity) ‘meaningful to us?’ To be sure, Jews and Muslims use French or English for some (though not all) communications about religious matters, but to describe this as what makes the religious practices meaningful to believers would be missing something important.¹⁷

I think Carens has hit the nail on the head here: fasting during Ramadan, to take one example, is clearly meaningful to Muslim Quebecers not because it is part of the shared social vocabulary of the Québécois societal culture – it is not – but rather because this practice is a part of the shared vocabulary of a non-societal culture to which they belong – i.e. the community of Muslim believers.¹⁸

There is a sense, then, in which Kymlicka’s theory removes from view all of the smaller, more localized cultural groups found within the societal culture. For example, while Kymlicka invokes contemporary Québécois culture to illustrate that a national minority’s societal culture can be very liberal and heterogeneous, in the sense that the range of meaningful options that members may choose from can be vast, it remains the

¹⁶ Carens, supra note 11, at 70.
¹⁷ Ibid.
¹⁸ In case we still wish to insist that fasting during Ramadan is in fact part of the shared vocabulary of any liberal society that protects freedom of conscience, consider Carens again: “It may be plausible to say that everyone (including immigrants) can belong to a societal culture in a thin sense (shared language and liberal rights) but it is not plausible to characterize such a thin societal culture as providing people with the context that makes choices meaningful” (ibid., at 72).
case that what’s doing all the work in providing these options for individual members is
the societal culture writ large. So, while my options may be many, they all spring from
the same well-source. What gets left out of the picture, then, is the notion that cultural
units smaller than the societal culture could have any independent efficacy when it comes
to providing their members with options for choice. Now, given that Kymlicka
appreciates that many societal cultures are decidedly heterogeneous, with the result that
individual people will inevitably be differently situated within the societal culture,19 I
would not wish, with Joseph Carens, for instance, to accuse Kymlicka of homogenizing
culture.20 However, there does seem to be some undue consolidation at work in his
account of how individuals are provided with life-options.

In the result, it seems implausible that Kymlicka would feel justified in ignoring
the potential role of non-societal cultural groupings in providing their members with the
raw material for individual choice simply because these smaller affiliations are found
within a larger societal culture. A more likely explanation, I think, is that Kymlicka is
operating on the unstated assumption that whereas societal cultures provide meaningful
options for choice, our more localized communities only have a role to play when it
comes to explaining why we choose as we do. So, for instance, it is part of Kymlicka’s
understanding of societal cultures that they need not imply anything about the specific
ends and values that are chosen by members – if they did, a liberal theory of minority

19 See supra note 1, at 18, 87-9, 92-3, 102-5.
20 Carens writes, I think rather uncharitably, that “Kymlicka’s discussion of societal culture as a context of
choice homogenizes culture, excluding many of the other cultural differences within states that ought to fall
within the range of his concerns” (supra note 11, at 69). (Emphasis in original.) For similar critiques of
Kymlicka’s alleged homogenization of culture, see Seyla Benhabib, The Claims of Culture: Equality and
Diversity in the Global Era (Princeton: Princeton University Press, 2002), at 59-67; Helder De Schutter,
“Towards a Hybrid Theory of Multinational Justice”, in Stephen Tierney, ed. Accommodating Cultural
Diversity (Burlington, Vermont: Ashgate Publishing Limited, 2007), at 45-50; and, to a lesser extent,
Kwame Anthony Appiah, The Ethics of Identity (Princeton: Princeton University Press, 2005), at 100, 132,
136.
rights could not advocate for their preservation by the state. In other words, societal cultures cannot explain why people choose X over Y. Here, and only here, I think, is where Kymlicka believes smaller-scale cultural groups come in: “[i]n many cases, [people’s actual life choices] will be explained by reference to their particular location within a societal culture, such as their particular family, neighbourhood, church, ethnic group, etc.”

However, as we saw above, one’s membership in a sub-societal cultural group does not just explain how one chooses (i.e. whether one chooses X or Y), it may also impact on one’s context of choice (i.e. how one understands the meaning and value of X and Y). So, for instance, suppose that when I travelled to New Zealand I read in a travel guide that tourists often choose to abseil and go zorbing, but I was given only the scantest description of what these activities actually consisted in. Now, suppose that I met one of the several authors who contributed to the guide book, and she told me that zorbing is claustrophobia inducing, and that in addition to zorbing and abseiling many tourists also opt to visit a kiwi farm. Assuming the travel guide stands in the place of a societal culture, with the individual author akin to one’s particular location within the societal culture, it seems that the two sources of information have given me two distinct contexts of choice. For instance, after reading the travel book, I was presented with options A and Z. By contrast, after speaking with the author, not only am I confronted with an additional option, K, which was not part of the ‘vocabulary’ of the guide book, but my context of choice as regards A and Z is also substantively different than it would have been had I not spoken to the author, since my understanding of Z as an option has undergone a significant change.

21 Will Kymlicka, “Re some writing”, Email to the author. October 18, 2008.
This analogy, I believe, reaffirms the proposition that one’s non-societal cultural community may assign certain options different meanings than they are given by the broader societal culture, and may even provide some life-options that are simply not thrown up by the societal culture. To be sure, the sort of options provided by a non-national community need not be entirely at odds with those created by the surrounding societal culture (although a few may be), but the point is that the meaningfulness of many of those options for members will be determined by the shared vocabulary of this smaller-scale community, not that of the wider societal culture.

The upshot of the foregoing, I submit, is that we should acknowledge that the respective roles of societal cultures and smaller-scale identities in providing meaningful life-options to individuals are complex and variable. As Joseph Carens, focusing on the interaction between societal cultures and immigrant communities, diagnoses the situation:

Immigrants bring with them from their cultures of origin various values, conceptions and commitments that shape the meaningfulness of the options open to them, sometimes in ways quite different from other members of society. Of course, Kymlicka does not really want to deny this, but if he brought it clearly into view he could not maintain the fiction that the societal culture creates the context of choice for individuals (as opposed to the more modest claim that it helps to shape their context of choice).²²

I want to insist, in fact, that the options made meaningful by a given culture do not exhaust the range of meaningful options among which an individual member of that culture may choose. So, for example, just as members of ethnic or religious groups may take up life-options made meaningful by these cultural communities – even where they are not meaningful within, or are simply alien to, the wider societal culture – so too can people choose to live out options that are not provided by their smaller-scale cultural

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²² Supra note 11, at 71.
communities.\textsuperscript{23} Put differently, while our contexts of choice may be partly constituted by options imparted by our societal culture, they may also be informed by options made meaningful to us only through our membership in cultural communities smaller than the nation. The lesson here is, again, that the manner in which an individual’s context of choice is formed is not a simple thing: contexts of choice cannot be identified simply by reference to the ‘social vocabulary’ of the individual’s societal culture, nor to that of any one of his other cultural commitments. In short, there is no one-to-one relationship between one’s life-options and any of one’s particular cultural memberships.

\textbf{Culture and Oxygen:}

So where does this leave us? That is, what follows from the fact that some non-national cultural groups, and not just Kymlicka’s societal cultures, can provide meaningful contexts of choice for their members? It is true, for instance, that Kymlicka’s theory of minority rights picks out this function as what makes a culture worthy of state support. Thus, in recognizing that some non-societal cultures also carry out this function, it may seem that we are presented with at least the beginnings of an argument for why these latter groups should also be accorded self-government rights. However, I take the similarities between societal cultures and non-societal cultures in this respect as pointing in the opposite direction – that is, not as bolstering the claims of non-societal cultures to

\textsuperscript{23} One way in which this could occur is if a member of such a community rejected some of the norms of her non-societal cultural group and opted to live out certain social practices that were only made meaningful options for her by the broader societal culture. Another possibility is that she might embrace options thrown up by neither the societal culture nor her own sub-societal culture, but by a third (and potentially hybrid) cultural community.
state support, but rather, at least *prima facie*, as undermining the claims of societal cultures to the same.

For example, while Kymlicka believes that “[g]iven the connection between choice and culture,” people have a right to “be able to live and work in their own culture,” he argues that “this right can be waived, and immigration is one way of waiving one’s right.” Consequently, Kymlicka defends the decisions of most Western democracies “not to give immigrants the legal status and resources needed to become national minorities” – that is to have their own societal cultures. Now, I will have a lot more to say below about whether people actually have a right to live in their culture, as well as whether the mere act of emigrating can be taken as waiving it. For now, however, notice that Kymlicka is not saying – and, as a liberal, could not say – that immigrants have waived their right to be autonomous agents. Clearly, Kymlicka, for whom autonomy is rightly the liberal’s central value, believes that immigrants can be autonomous despite not having access to their native societal cultures.

Why is Kymlicka confident that immigrants can still be autonomous even in the absence of a societal culture to call their own? The answer is not that he believes their non-societal cultural ethnic community can be relied on to create the context of choice that the societal culture provides for the rest of the population, since, as we saw, Kymlicka considers non-societal cultures to be incapable of doing this. Instead, the reason Kymlicka does not worry for the autonomy of immigrants is because he believes they can secure this good through integration: “the context of choice for immigrants, unlike national minorities, primarily involves equal access to the mainstream

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24 Supra note 1, at 96.
25 Ibid.
26 Ibid., at 95.
culture(s).” 27 That is, since the mainstream societal culture is open to newcomers, immigrants, while they do not have access to the societal culture of their homeland, do have access to a societal culture they can ‘call their own’ after all.

I think Kymlicka is right to stress that immigrants can have meaningful options provided to them by the wider societal culture, and that they do not require the recreation of their ancestral societal cultures to be free. However, to recap, the way in which contexts of choice come into being is complex: the context of choice for an individual immigrant may be a peculiar amalgam created by particular features of the (non-societal) culture of his ethnic community, or of the societal culture of the old country, interacting with and butting up against the values and traditions that characterize the societal culture of his new home. Kymlicka is thus mistaken in assuming that the autonomy of these individuals is secured solely by the societal culture into which they integrate. That is, he is wrong to assume that integration must be total, in the sense that all the meaningful options confronting an individual immigrant will be provided by the societal culture, with the person’s ethnic community only influencing which of these options she will end up embracing. 28 As it happens, the freedom of such a person is often secured by virtue of their having a range of life-options given meaning by both of their cultural communities.

Now, it is true that such a hybrid context of choice is in fact, in its own way, a particular context of choice, derived from a particular amalgam of cultural commitments. 29 But it is not the case that this hypothetical individual’s freedom therefore requires that she have secure access to her hybrid culture, just as neither the wider societal

27 Ibid., at 114. See also ibid., at 95-8.
28 This is the only sense in which I wish to criticize Kymlicka for assuming integration ought to be ‘total.’ As his defence of poly-ethnic rights (supra note 1, at 30-1, 96-8, 113-5, 177-81) shows, he emphatically does not regard integration as requiring immigrants to cast aside all their ethnic particularity in order to become fully integrated citizens.
29 See Levy, supra note 10, at 7.
cultural nor the culture of her ethnic group is actually strictly necessary to secure her freedom. Thus, while, when it comes to promoting individual autonomy, Kymlicka has provided good reasons why the liberal should view culture as a resource, it does not appear to be as scarce a resource as Kymlicka supposes.

The crucial point here is that autonomy is about having an adequate range of meaningful options such that the individual can be a self-directing person, or, in Kymlicka’s felicitous phrasing, can “lead [their] life from the inside, in accordance with [their] own beliefs about what gives value to life.” And, as Kymlicka has shown, culture is intimately connected with individual freedom, since our beliefs about the value of different ways of life are in large part a function of the value ascribed to these practices by our cultures. What this reveals is that individual freedom requires that we have access to the sort of ‘shared vocabularies of tradition and convention’ that allow us to understand and evaluate life-options, but it does not follow that we need access to any particular vocabulary. For the vast majority of people at least, it cannot be said that they can only be free within one particular cultural milieu, societal or otherwise: all that is required is that they be ‘cultured’ – in a completely literal sense. As one of Kymlicka’s critics, John Tomasi, has written:

[i]f it is the mere existence of ‘one’s own’ culture that is [a] good, then each individual person… has that good, and each has it equally. Taken existentially, cultural membership is a primary good only in the same uninteresting sense as is,

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30 Kymlicka, supra note 1, at 81.
31 Now, it is true, according to this Kymlickian argument, that we need access to a cultural life that provides us with ‘meaningful’ options. It could be argued, then, that where the cultural differences between one’s original societal culture and that of the majority are vast – as, for example, differences between indigenous and settler societies appear to have been – having access to meaningful options does in fact require having access to one’s original culture, since the options thrown up by the settler societal culture will be so foreign as not to appear meaningful. I would concede this theoretical point, while noting that in the real world, and particularly from the perspective of members of non-Aboriginal homeland minorities, as opposed to pre-Contact indigenous communities, it is highly unlikely that the majority culture will appear so opaque that these individuals will be unable to understand the meaning of the life-options it presents.
say, oxygen: since (practically) no one is differentially advantaged with respect to that good, it generates no special rights.\textsuperscript{32}

Thus, if the Québécois societal culture were washed away by the assimilative forces of Anglo-American culture, individual Québécois would still be possessed of some cultural structure or other.\textsuperscript{33} And they would likewise be possessed of the raw material of autonomy so long as they were provided with a range of meaningful options by the new societal culture in which they found themselves, or by a hybrid cultural context composed of aspects of both the larger culture and their old Québécois culture.

Another of Kymlicka’s critics, Kwame Anthony Appiah, puts the matter this way: “the problem with grand claims for the necessity of culture is that we can’t readily imagine an alternative. It’s like \textit{form}: you can’t not have it.”\textsuperscript{34} Thus, as Appiah notes, if culture has the necessary connection with individual freedom that Kymlicka suggests it does, then the real evil to be avoided, for those concerned with autonomy, is being without any culture at all – that is, “being a hermit.”\textsuperscript{35} Now, this may seem like a strange interpretation of Kymlicka’s work. Surely Kymlicka has not expended so much mental energy merely to warn about the evils of social isolation? And it is true, of course, that he is animated chiefly by much weightier concerns about autonomy, equality, remedying exclusion and disadvantage, and the like. However, as Jacob Levy notes:

\begin{quote}
Nationalism and policies of minority cultural preservation gain the most plausibility when the alternative to some particular national or cultural community
\end{quote}

\textsuperscript{32} John Tomasi, “Kymlicka, Liberalism and Respect for Cultural Minorities”, \textit{Ethics}, 105 (April 1995), at 589.

\textsuperscript{33} It may be that the personal costs of adapting to this new cultural structure will, for at least some Québécois, be so severe that the state ought not to ask them to undergo such hardship. This argument, which is very much a distinct one from the argument that all Québécois \textit{need} access to the Québécois societal culture in order to be free, will occupy much of our energies below.

\textsuperscript{34} Appiah, \textit{supra} note 20, at 41. (Emphasis in original.)

\textsuperscript{35} Ibid., at 127. Appiah continues, on the same page: “At bottom, the case for [cultural] membership is just the case against being a hermit. And precious little of the misfortune in our world has to do with that uncommon condition.”
is imagined to be either undifferentiated humanity or alienated individualism. In fact, however, the alternative is often some other community to which persons also have some attachment.\textsuperscript{36}

\textsuperscript{36} Levy, \textit{supra} note 10, at 71.
CHAPTER THREE:

THE COSTS OF FOREGOING ONE’S CULTURAL MEMBERSHIP

Guilty as Charged?

Having found that secure, continued access to one’s societal culture is not strictly required in order to exercise individual autonomy, it seems that in order to determine whether a given national minority ought to be accorded self-government and language rights we will have to inquire into the particular circumstances of the individuals and cultures at issue – and, in particular, into the sorts of contexts of choice that we could expect members of the minority societal culture would come to possess if their original culture were to decay. Here, I think the sentiment expressed by Jacob Levy at the conclusion of the previous chapter is valuable as a sort of caution, warning those writing about multiculturalism and minority rights to avoid being consumed by abstractions, and instead to take a more contextual look at the actual, complex cultural commitments of individual people. However, it has to be asked whether Kymlicka, the theorist whose work is the target of critique in this paper, is actually guilty of assuming that if minority societal cultures were to erode, their members would be left in a state of Kafkaesque alienation, or else be forced to assimilate into a larger homogenous cultural bloc. And I don’t think it is clear that he is.

For instance, Kymlicka does not suggest that cultures are always vastly different from each other, such that the members of one can never leave their culture for another.\(^{37}\)

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\(^{37}\) To the contrary, for instance, he writes, “It would be implausible to say that people are never able to switch cultures” (supra note 1, at 84).
When he writes of the Quiet Revolution in Quebec, for example, he allows that the liberalization of Québécois culture has made it more similar to that of English Canada, and all other liberal cultures, for that matter: “members are less and less likely to share the same substantive conception of the good, and more and more likely to share basic values with people in other liberal cultures.”  

In fact, Kymlicka’s argument for why certain cultural structures should be protected by the state does not really focus on how members of minority cultures will fare if these structures are allowed to decay. For instance, Kymlicka does not rule out the possibility that some of these individuals could muddle through and successfully integrate into a new societal culture. Instead, he argues that they shouldn’t have to. That is, Kymlicka is concerned primarily to show not that individuals will languish if asked to leave their culture, but that making this demand in the first place is unjustified.

In arguing that it is unfair to require individuals to leave their cultures, Kymlicka is attempting to respond directly to the criticism, levelled above, that even if one’s ability to make meaningful choices presupposes access to a culture, no one needs access to his or her own culture. The way in which Kymlicka responds to this critique is to admit that his critics must be right when they say that, in Jeremy Waldron’s phrasing, people do not “need their rootedness in the particular culture in which they and their ancestors were

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38 Ibid., at 87.
39 Nor does he assume that the only culture these individuals could find a place in would be ‘undifferentiated humanity.’ (However, Kymlicka does suggest, it should be admitted, that “[i]n some cases, where differences in social organization and technological development are vast, successful integration may be almost impossible for some members of the minority” (supra note 1, at 85). (Emphasis added.))
40 Kymlicka acknowledges that this is his aim, for instance, in note 12 at 214 of Multicultural Citizenship (supra note 1).
reared in the way that they need food, clothing, and shelter….”

However, Kymlicka argues that the bare fact that it is possible to leave one’s culture does not really tell us much about whether we should ever have to do so. Essentially, Kymlicka’s argument here is based on the compelling idea that people may legitimately expect to be provided with a certain good even if they do not need this good in Waldron’s very strong sense of the word. Specifically, Kymlicka asserts that “the choice to leave one’s culture can be seen as analogous to the choice to take a vow of perpetual poverty,” in the sense that while “[i]t is not impossible to live in poverty,… [l]iberals rightly assume that the desire for nonsubsistence resources is so normal – and the costs of foregoing them so high for most people’s way of life – that people cannot reasonably be expected to go without such resources, even if a few people voluntarily choose to do so.”

Consequently, says Kymlicka:

…in developing a theory of justice, we should treat access to one’s culture as something that people can be expected to want, whatever their more particular conception of the good. Leaving one’s culture, while possible, is best seen as renouncing something to which one is reasonably entitled. This is a claim, not about the limits of human possibility, but about reasonable expectations.

Cultures and Chryslers

So how should we respond to Kymlicka’s assertion that people have a legitimate expectation to remain in their culture? The first step, I submit, is to notice a kind of ambivalence at play in the way Kymlicka formulates our ‘legitimate expectation.’ For example, if I have a legitimate expectation to ‘remain in my culture,’ it is not clear

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42 Supra note 1, at 86. (Emphasis in original.)
43 Ibid.
whether this means I have a reasonable expectation 1) that I will not be actively forced by anyone, but especially by the state, to leave it; or 2) that I will be able to live within my culture until my last breath, provided a critical mass of its members do not voluntarily choose to forego it.\(^4^4\) The difference between these two possible readings is the difference between being entitled to expect to remain within my culture so long as it ‘remains,’ and being entitled to expect that the state will step in to ensure the culture continues to exist, short of trying to undo the voluntarily choices of other members to leave it.\(^4^5\)

I want to suggest that while everyone is entitled to expect 1), the reasonableness of 2) cannot be defended in the abstract.\(^4^6\) That is, while we do have a reasonable expectation that the state will not force us to leave our culture, nor make it particularly onerous for us to remain within it, we are not automatically entitled to expect the state,

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\(^4^4\) Here we see that cultural access is not perfectly analogous to nonsubsistence material resources, in the sense that the former inherently requires that there is some community that is being accessed – i.e. the legitimacy of my expectation to remain in my culture will depend on the actions of other members of that community. For instance, if most of my fellow citizens decide to renounce their claims to nonsubsistence resources, my entitlement to such benefits will not be diminished. On the other hand, even if I do not renounce my expectation to remain in my culture, if virtually all other members of my culture opt to leave it there may be precious little of ‘my culture’ left for me to demand access to. Thus, Kymlicka’s claim that we have a reasonable expectation to remain in our culture must be reformulated as a reasonable expectation to remain in that culture only so long as it has not been rendered unviable by the free choices of its (former) members.

\(^4^5\) To be clear, Kymlicka emphatically does not advocate that the character of any culture be guaranteed survival in perpetuity. In fact, he expressly rules this out as undermining the autonomy of individuals by taking certain ends as unrevisable givens (\textit{supra} note 1, at 104-5). However, Kymlicka does defend the provision of group-differentiated rights to minority societal cultures to ensure that these groups can preserve their cultural structure (i.e. their distinctive language and history). Now, I do not think Kymlicka would wish to deny that these minority groups should have the ability to decide \textit{not} to preserve their own cultural structures, and instead to integrate into a different societal culture – that is, I am not suggesting Kymlicka would make the (bizarre) claim that cultural structures must survive in perpetuity, regardless of the wishes of their members. However, if a minority culture were to collectively decide to forego their cultural structure in favour of another, I presume Kymlicka would look upon this as an example of the group voluntarily renouncing something to which they were entitled. My disagreement with Kymlicka, then, arises where the culture has not been roundly renounced by its members, and yet is still threatened with disintegration: he appears to believe that in these situations individual group members are automatically, as a matter of justice, entitled to state support to ensure their cultural structure abides; I do not.

\(^4^6\) As we will see below, I do not claim that Expectation 2) could never be reasonably held. Rather, I simply object to what I take to be Kymlicka’s attempt to defend the reasonableness of this expectation in the abstract, as a general matter.
whenever our cultural structure is threatened with disintegration and yet remains viable, to take measures to ensure the continued existence of this structure.

Let me explain precisely why I think, as a general matter, we are entitled to hold Expectation 1, but not Expectation 2. Firstly, it is worth noting that Kymlicka does not actually show why, in his example, people expect to be able to enjoy “a level of material resources above bare subsistence”47 in the first place. Instead, he appears to appeal to our intuition, asking us to give moral weight to these expectations because, to repeat his words, “the desire for nonsubsistence resources is so normal.”48 In contrast, I wish to suggest that the reason the state should not force anyone to leave their culture is not because people’s desire to stay within their cultural communities is perfectly natural – although I think it is – but rather because choosing to remain within one’s culture is exactly that – a choice.49 Further, it appears that even if there is no general (human) right to culture, forced cultural assimilation could not be carried out without violating a host of human rights. These include, for example, freedom of expression (were people denied the opportunity to speak in their native language), freedom of conscience (were they unable to perform spiritual ceremonies in public), and freedom of movement (were they forcibly interned, as in residential schools, for instance).50 In the end, then, just as liberals should respect culture in a generic sense as a precondition of choice, they should also

47 Supra note 1, at 86.
48 Ibid.
49 Of course, choosing to leave one’s culture will often be an exceedingly difficult decision, and it is one that most people are very reluctant to make. Moreover, many people who remain within their culture seem not to reflectively choose to do so, but rather never really consider leaving. However, it is still the case that the vast majority of people have the ability to choose to leave their culture, if they desire to do so. As Kymlicka argues against his communitarian critics, for example, even if we view cultural membership as a central feature of one’s personal identity, “it is not easy or enjoyable to revise one’s deepest ends, but it is possible, and sometimes a regrettable necessity” (supra note 1, at 91). Thus, I believe we must regard those who remain within their cultural communities as having chosen to do so, unless we have very strong evidence that they have been coerced into staying.
50 I am indebted to Mark Walters on this point.
respect particular cultures insofar as they are the *products* of the collective choices of their members.

So here we have an argument, which I expect Kymlicka would endorse, for why Expectation 1 is reasonable. But why is Expectation 2 not also reasonable? In order to answer this question, it is important not to mischaracterize Kymlicka’s argument as suggesting that people can reasonably expect to remain in a culture even in a situation where the vast majority of other members clearly no longer care to see it continue. Instead, while being open to the possibility that over time a culture could die out, Kymlicka argues that the state should act to preserve people’s ability to live within their own viable cultures because we can assume that this is what they want.

But why would a cultural structure need such protection? If its members truly wished to live within it, wouldn’t this fact alone ensure the continued existence of the culture? The answer, in short, is no; as Kymlicka implies, just as there may be fifty ways to leave one’s lover, there is more than one way to leave one’s culture. For instance, one could be quite literally forced to leave one’s culture, as when Aboriginal Canadian children were forced to attend residential schools. Secondly, one could leave one’s culture quite freely, having decided (although this would seldom be an easy decision) that on critical reflection it was not worthy of one’s allegiance. Thirdly, and most crucially, one could leave one’s culture in order to take advantage of certain benefits (economic, social, educational, etc.) offered by another culture. (This third scenario is commonly thought to be at work when members of national minorities and indigenous peoples make efforts such as learning new languages or physically moving in order to take advantage of better employment prospects within the majority culture, for example.) What is special about this third way in which people can become detached from their cultures is that it
does not appear to represent a choice by the individual to leave a culture that is felt to be somehow unworthy of her allegiance, nor does it involve a coercive foreclosing of her ability to live according to her culture. That is, if my quality of life is likely to substantially improve if I leave my culture for a different one, I may be in a sense ‘forced’ to do so, but only if I ‘choose’ to pursue this improved standard of living rather than remain in my culture.

The question that must be addressed, then, is whether I have a reasonable expectation that I will never have to make such a difficult choice. And here I think the answer must be no. If a particular culture is on the verge of disintegration because its members are leaving en masse to seek better opportunities within the majority culture, there are only two ways to stem the exodus. The first, actively preventing members from leaving, is deeply illiberal, as well as probably unworkable in practice. The second option would be to ensure that the opportunities that are tempting members of the threatened culture to leave are made available to them within their own culture. But is any culture entitled to state support to ensure that the sorts of economic, social and educational opportunities it provides to members are approximately equal to those provided by other cultures? Surely not, I feel confident in answering.\(^\text{51}\)

This may seem like a rather hard line. For example, we may feel that when some Aboriginal Canadians have to move away from their ancestral lands to seek a decent standard of living in large cities they are confronted with a devastating choice between their culture and their livelihood. I think this sort of reaction is understandable, and

\(^{51}\) Even the requirements under the Canada Health Act that the health care systems of the provinces all live up to standards of accessibility, universality, and comprehensiveness, for example, quite clearly do not represent an attempt to ensure that the broad array of economic, social, and educational opportunities within all of Canada’s constituent cultures are approximately equal.
humane. But I submit that we have this reaction to the dilemma of many Aboriginal people because we automatically assume that the inability of some indigenous cultures to provide adequate opportunities for a decent standard of life is not actually the fault of these cultures themselves. Instead, we presume (often quite rightly, I think) that the hopelessness that characterizes life within some of these cultural communities is a direct result of oppression and mistreatment by the majority culture. However, if a certain minority culture simply failed, all of its own accord, to provide its members with meaningful economic, social, and educational opportunities, the liberal state, I submit, should positively encourage members’ exit from that community. Certainly, it would seem onerous to charge the state with a moral obligation to step in and create for the culture’s members the sorts of valuable opportunities that the culture itself was unable to throw up.

It might be objected that the three ways in which people may leave their culture that were enumerated above are not exhaustive. Specifically, it may be that some people leave their culture through a mundane, gradual process in which they are in a sense

52 Moreover, in light of this sad reality, it seems quite clear to me that there may be very compelling reasons for the liberal state to enter into self-government or land claims agreements with Aboriginal nations that are only indirectly related to the goal of preserving culture per se. For instance, the state may recognize the unextinguished sovereignty of indigenous populations, and their right to self-determination, because it recognizes that it is simply wrong to assert power over another people without their consent. However, I am, for the moment, interested only in whether the state has a general duty to preserve decaying national minority or indigenous cultures as such.

53 None of this is to say, however, that it would necessarily be unduly onerous to require the state to give positive support for a marginalized culture where the state itself was responsible for marginalizing that culture, and/or encouraging members to be ashamed of their own heritage (as seems to be the case with regard to some Aboriginal cultures, for instance.) I believe that in these cases the state may, in fact, be under a duty to help preserve these imperilled cultures. Indeed, failing to hold them under such a duty could give rise to a moral hazard by which states have perverse incentives to undermine the viability of minority cultures.

54 I would, however, hold out the possibility that if encouragement is insufficient to motivate some individuals to leave a decayed, narrow culture – that is, if some members will simply not leave the culture, perhaps out of a deep-seated psychological connection to it – then, out of a concern for the well-being of its citizens, the state may have a duty (albeit an onerous one) to attempt to make certain basic (as opposed to equal) economic, educational, and social life-options available within that culture.
bombarded by assimilationist pressures from the dominant culture, and over time adopt many of its values and practices. This way of leaving one’s culture does not look like any of the three patterns noted above, since it does not involve the individual being coerced out of her culture, nor self-consciously repudiating it, nor making a deliberate decision to leave it in order to take advantage of certain opportunities not available within it. So, might people not have a reasonable expectation that their cultural community will be provided with the group-differentiated rights necessary to ensure that its distinct cultural structure will be able to withstand these sorts of diffuse assimilative pressures?

In reply, I propose that it is not possible to defend the general claim that individuals have a reasonable expectation that their particular culture will be preserved. Instead, I want to suggest that Kymlicka’s analogy about nonsubsistence resources does not actually prove what he thinks it does. For instance, recall that Kymlicka equates being abjectly poor with not having secure access to one’s particular culture: while human beings can survive in either situation, we are entitled to expect more – namely, “a level of material resources above bare subsistence” and “access to one’s culture,” respectively. But surely it does not follow, from the fact that I can reasonably expect to have a basic set of nonsubsistence resources, that having access to my culture is also a reasonable expectation. To be clear, I am not seeking to refute Kymlicka’s suggestion

55 Kymlicka, supra note 1, at 86.
56 Now, I think even as regards people’s expectations for nonsubsistence resources there is an ambivalence to Kymlicka’s analogy that parallels that between being forced out of one’s culture and having that culture positively supported. For example, it is not entirely clear whether Kymlicka is suggesting merely that we are all entitled to expect that the state will not deprive us of such nonsubsistence resources as we currently possess (or of the ability to acquire these resources), or whether he is making the stronger claim that we are all entitled to the expectation that we will be provided with these sorts of resources by the state in cases where we have failed to secure them for ourselves. Of course, some people, such as libertarians, will reject the idea that the latter expectation is reasonable. However, at least for the purposes of argument, let us assume that it is reasonable.
57 To be fair to Kymlicka, he does not suggest that the latter proposition logically ‘follows’ from the first. Instead, he has merely attempted to construct an analogy that, by appealing to our intuitions, asks us to view
that many people do have an expectation that they will remain in their culture for the whole of their lives. But even if this is true, and even if many people have the further expectation that the state will provide their cultural community with the sort of minority rights necessary to ensure that individual members retain the ability to live in their culture, does it follow that they should have these expectations fulfilled? That is, does it follow that these expectations are reasonable?\textsuperscript{58}

Here, I think, we need to be careful that each of the items that Kymlicka is comparing in order to construct his analogy are in fact analogous. For instance, Kymlicka equates poverty with leaving one’s culture and living within a different one. However, I do not think this is an appropriate comparison. For example, the benefit of having access to subsistence level resources is that these ensure survival, other things being equal. But if one is abjectly poor, one is, by definition it would seem, just barely able to get enough food, water, shelter and the like in order to survive. On the other hand, consider the sort of benefit that culture is said to provide: a meaningful context of choice.\textsuperscript{59} If I leave my culture for a new one, can it really be assumed that this new culture will, necessarily, just

\textsuperscript{58}I use ‘reasonable’ here in a specific sense. For instance, it may be ‘reasonable’ to assume that I will be able to live my entire life within my English-Canadian societal culture, regardless of whether I have a right to do so, since I have good reason to expect this culture will, as a matter of fact, outlive me. However, the sense in which I, and Kymlicka, use the term ‘reasonable expectation’ here is to refer to an expectation that is not merely grounded in reason, but also places some other actor under a duty to ensure that the expectation gets met.

\textsuperscript{59}Of course, we have reason to believe cultures have benefits that extend beyond these. However, while this is not the place to discuss the matter in any depth, I would argue that many of these additional benefits, such as a psychological sense of belonging, or a sense that our actions “contribut[e] to the advancement of [our] own particular nations” (Yael Tamir, \textit{Liberal Nationalism} (Princeton: Princeton University Press, 1993), at 85), that they “are not only acts of individual accomplishment, but also ‘part of a continuous creative effort whereby culture is made and remade’” (Kymlicka, \textit{supra} note 1, at 90, quoting Tamir at 85), can also be realized – and in a real, fulsome way – by our adopted cultures.
barely provide an adequate range of meaningful life-options for me? This strains belief;\(^{60}\) sometimes we might be inclined to think that a person has benefited from a broader, more meaningful context of choice precisely by changing cultural commitments.\(^{61}\) What this shows, I think, is that having access to only subsistence resources (i.e. enduring poverty) is the equivalent, for our purposes, of having access to only the most basic, sparse sort of ‘shared vocabulary of tradition and convention’ required to make meaningful choices among life-options. In other words, having just enough material resources to subsist is like having just enough access to culture so as not to be a hermit.

If this is correct, then Kymlicka is also wrong to analogize the expectation of access to one’s particular culture with the expectation of having nonsubsistence resources. Instead, I want to suggest that while it may be legitimate for people to expect more than just subsistence resources, this merely suggests that it is also legitimate for people to expect more than just access to the barest sort of culture. For example, it seems plausible that individuals might have a reasonable expectation that they be able to have access to a shared cultural vocabulary that exhibits some basic level of internal coherence,\(^{62}\) or one that is more than minimally capacious. But these sorts of expectations fall a long way short of having guaranteed access to any one particular culture, let alone my own. To use what seems a more apt analogy, desiring to remain within one’s particular culture is like

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\(^{60}\) As noted above, there may be some instances in which a particular culture is so qualitatively different from another that members of one might be unable to appreciate the meaning of the life-options thrown up by the other. Unless we suppose that all cultures are deeply inscrutable to one another in this sense, however, it is not the case that after integrating into a new culture I will, necessarily, have only the scantest range of meaningful options before me.

\(^{61}\) As, for example, when someone integrates into a much more liberal culture than they were born into, or when an individual joins a culture whose values and practices simply resonate much more deeply with her than did those of her original culture.

\(^{62}\) To be clear, by ‘internal coherence’ I do not mean that the character of the culture is largely fixed or non-negotiable, but rather that the sort of narratives exhibited by the culture are not blatantly inconsistent with one another or schizophrenic.
wanting not just nonsubsistence resources, but rather particular types of these resources – a steady job, a functional car, a place in the suburbs, etc.\textsuperscript{63} And while the desire for these particular sorts of things may be ‘natural’ enough, it is not at all clear that we are entitled to have these desires fulfilled.

**Changing Cultures: Like a Snake Shedding its Skin, or a Leopard Changing its Spots?**

To summarize, I believe the demand to stay within one’s culture is like demanding particular sorts of material resources – that is, it is, in fact, more exigent (or more ‘demanding’ one might say) than Kymlicka assumes.\textsuperscript{64} However, I think this line of reasoning must address two obvious objections. Firstly, it might be objected that the revised analogy I wish to draw between having access to one’s culture and having access to particular configurations of material resources is itself inappropriate, in that it unwarrantedly treats cultures as fungible. As Kymlicka might put the objection, and as he has put it against a similar argument raised by Jeremy Waldron, my argument “treats the loss of one’s culture as similar to the loss of one’s job.”\textsuperscript{65} Secondly, it could be pointed

\textsuperscript{63} To complete the analogy between cultures and resources, the expectation that one’s culture will be guaranteed to both survive and flourish “through indefinite future generations” (see Charles Taylor “The Politics of Recognition”, in Amy Gutmann, ed. *Multiculturalism: Examining the Politics of Recognition* (Princeton: Princeton University Press, 1994), at 41) – an expectation Kymlicka explicitly rejects as being impossible for a liberal democracy to satisfy (supra note 1, at 104-5) – would be akin to the expectation that one will not only have specific sorts of material resources, but will have them in very high quantities – i.e. that one will be rich, and will remain so for life.

\textsuperscript{64} In other words, I have tried to show that we cannot defend the general claim that everyone has a reasonable expectation to be able to remain in their culture merely by insisting that this expectation is natural and non-exigent. (This is not, however, to make the much stronger claim that no group could ever have such a right. The Hutterites, for example, who initially settled in Canada with assurances from the government that they would be allowed to preserve their cultural and religious distinctiveness, may be entitled, as of right, to have this promise honoured. (See Kymlicka, supra note 1, at 25).) Instead, as we will see immediately below, whether a particular group has a reasonable expectation of being provided with the means to preserve their culture will depend on the specific circumstances of the group – in particular, on the sorts of measures that would be required to sustain the societal culture, and on how costly it would be for individual members to forego that culture and integrate into another.

\textsuperscript{65} Kymlicka, *supra* note 1, at 84.
out that Kymlicka nowhere suggests people are entitled to get whatever they naturally desire. When it comes to nonsubsistence goods, people’s desire for these resources is only one half of the reason he gives for why we should take people as entitled to them. As he writes, “the desire for nonsubsistence resources is so normal – and the costs of forgoing them so high for most people’s way of life – that people cannot reasonably be expected to go without such resources….”66

I think that focusing on the actual costs that one faces in having to leave one’s culture – as opposed to merely asking whether the desire to remain within one’s culture is, in the abstract, natural or demanding, unexceptional or exigent – is the right way to approach the issue. Further, as a general matter, it seems that even if we have come to a determination about whether a certain expectation is demanding, we have not necessarily implied anything specifically about the cost of forfeiting that expectation. For example, one child’s expectation that none of his classmates take peanut products into a classroom may rightly be thought of as demanding, yet this does not imply that the cost of foregoing the expectation must be low, since the cost might be incurring a serious risk of death due to anaphylactic shock.67 So, the question becomes, even if the expectation that I may remain within my culture is a fairly demanding one, just how high is the cost of foregoing that expectation?

I find Kymlicka’s discussion of this question unsatisfying. The reason I find it unsatisfying, I think, is because I simply do not believe there is any general answer available. And while at times Kymlicka seems to concede as much, admitting that the

66 Ibid., at 86. (First emphasis added, second in original.)
67 Inversely, it may not be asking very much to expect that my neighbour will refrain from playing his stereo after 10 pm, but even if he does not, the cost of foregoing this expectation would be minimal if the music was never very loud and always stopped long before I wished to go to bed.
costs to the individual of changing cultures will vary greatly depending on a number of circumstances, he appears to conclude, quite categorically, that the final price will always be too dear. For instance, consider the following passage from *Multicultural Citizenship*:

…even where successful integration is possible, it is rarely easy. It is a costly process, and there is a legitimate question whether people should be required to pay those costs unless they voluntarily choose to do so. These costs vary, depending on the gradualness of the process, the age of the person, and the extent to which the two cultures are similar in language and history. But even where the obstacles to integration are smallest, the desire of national minorities to retain their cultural membership remains very strong (just as members of the majority culture typically value their cultural membership).

I think Kymlicka is right that the costs of leaving one’s culture vary according to a number of factors, and the three he gives, while not exhaustive, are certainly a few of the most important variables. However, leaving aside this talk of degrees and variation, Kymlicka goes on, on the next page of his discussion about changing one’s cultural membership, to make the rather categorical declaration that “[l]eaving one’s culture, while possible, is best seen as renouncing something to which one is reasonably entitled.” Later, as well, Kymlicka briefly discusses John Rawls’s views about the possibility of an individual cutting her cultural ties, noting that for Rawls, “the ties to one’s culture are normally too strong to be given up, and this is not to be regretted.”

However, in the next sentence, with apparent approval and no sign of qualification, Kymlicka puts the following gloss on Rawls’s ideas about leaving one’s culture: “[w]e cannot be expected or required to make such a sacrifice.”

In essence, then, I think Kymlicka may be guilty of drawing overly categorical conclusions about the costs of leaving one’s culture; for all his talk of how the price of

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68 *Supra* note 1, at 85-6.
69 Ibid., at 86.
70 Ibid., at 87 (Emphasis added.)
71 Ibid.
Exiting a cultural community can vary according to circumstances, when it comes to making policy prescriptions he nevertheless insists that since, borrowing from Rawls, “the bonds to one’s culture are ‘normally too strong to be given up,’” we are thus entitled to make the Rawlsian assumption that “‘people are born and expected to lead a complete life’ within the same ‘society and culture’, and that this defines the scope within which people must be free and equal.”72

Consider, for instance, his choice of the term ‘sacrifice.’ We might regard a sacrifice as “the surrender or destruction of something prized or desirable for the sake of something considered as having a higher or more pressing claim.”73 But clearly there is – at least sometimes – an important moral difference between the state allowing a culture to disintegrate and forcing it to die.74 For instance, a state that simply chose not to preserve a decaying minority culture would not necessarily thereby require the group’s members to sacrifice up their culture in favour of another, supposedly superior one.75 For the reasons mentioned above, demanding this type of sacrifice would unacceptably undermine the

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74 Now, it may be tempting to regard a state’s decision to simply allow a minority culture to decay as tantamount to forcing it to die, since the state’s inaction may well spell certain death for the culture. But, without suggesting that there will never be cases in which the state is under a moral obligation to provide the endangered culture with the means of preserving itself, I want to insist that state inaction with regard to protecting an imperilled minority culture cannot, in the abstract, be morally equated with forcibly eradicating the culture. In other words, when thinking about the morality of state action or inaction in this field, we should not conclude that, wherever a state could be held to have caused the dissolution of a culture on a tort law ‘but-for’ test of causation, the state has therefore acted unjustly. (This is not to suggest that the state may only be guilty of a moral wrong where it is some sin of commission that spells the demise of the culture, nor do I doubt that in some cases deliberate acts of omission may be just as morally blameworthy as the taking of positive steps to eradicate a culture. However, I want to insist that in spite of these possibilities we must not assume that failing to preserve a culture is always the moral equivalent of forcing it to die.)
75 It may be the case that even where the state does not force people to leave their culture some members will choose to leave it for one they regard as ‘having a higher or more pressing claim.’ But this decision, which liberalism suggests they should be free to make, would not be forced upon them in any way by the state.
ability of individuals to live according to the cultural traditions of their choice, and would also convey to members of minority cultures the highly illiberal message that their culture was inferior to the culture into which they were being made to assimilate. But, as I say, simply choosing not to save a culture from disintegration does not necessarily force anyone to make such a sacrifice.

Another definition of sacrifice, however, is simply “to endure the loss of” something.76 Perhaps all Kymlicka is saying, then, is that leaving one’s culture always involves a kind of moral loss. And, to be sure, allowing a culture to die would indeed require its members to endure its loss. But this tells us absolutely nothing about the magnitude of the loss, the extent of the sacrifice. So, even if we are inclined to agree with Kymlicka that the causes of people’s sense of attachment to their own culture “lie deep in the human condition, tied up with the way humans as cultural creatures need to make sense of their world,”77 we cannot know ahead of time that enduring the loss of those attachments and forging new bonds with a different culture will be excessively costly, without knowing something about the cultures themselves and the individuals who live in them. To suggest that for every minority culture we can assume that the costs to members of integrating into a larger culture will be excessively high is to run the risk of ignoring the cautionary note sounded above by Jacob Levy, since, as we know from experience, for any group of people the alternative to life within their cultural community “is often some other community to which persons also have some attachment.”78 Of course, this does not mean that the actual difficulties that integration will entail for all

77 supra note 1, at 90.
78 Levy, supra note 10, at 71.
members will be trivial. But Kymlicka seems to put the point too strongly by implying that, as a general matter, the costs of integration for all members of minority groups will be exceptionally costly.

In short, Kymlicka’s argument that liberal states should ensure that minority societal cultures have the tools to secure their continued existence appears strongest where he casts his opponents as attempting to “disprove the claim that people are connected to their own culture in any deep way.” Against this kind of austerely cosmopolitan claim, Kymlicka’s argument that our cultural ties are deep and strong ones looks like an uncontroversial statement of fact. Surely cultural membership is not just a matter of preference; it is not merely something, like caviar, that, after a period of adjustment, we should, and will, get used to not having. However, Kymlicka swings too far in the other direction when he argues that the state must always secure the ability of its citizens to live within their cultures, and that political theory can assume that people will live their entire lives within one cultural group.

In order to stake a middle ground, recall Levy’s idea that people often have significant attachments to more than one cultural community. Kymlicka, of course, does not deny this. However, he seems to assume that our attachments to these sorts of secondary cultures, as it were, will generally pale in comparison with our attachments to our societal culture. This, I think, is too strong. While the former sort of attachments may generally be of a lesser order than the latter, we should not assume that the

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79 Supra note 1, at 85. This is Kymlicka’s assessment of Jeremy Waldron’s argument that moving between cultures is much easier, and much more common, than Kymlicka and others who advocate for state protection of minority cultures presume.
difference between the two is necessarily vast.\textsuperscript{80} Consider, for instance, the following passage from \textit{Multicultural Citizenship}:

Why not let minority cultures disintegrate, so long as we ensure their members have access to the majority culture (e.g. by teaching them the majority language and history)? This latter option would involve a cost to minorities, but governments could subsidize it. For example, governments could pay for the members of national minorities to learn about the majority language and history.\textsuperscript{81}

Because he sees people’s ties to their national cultures as generally so much stronger than their attachments to other cultural communities, Kymlicka rejects this option, complaining, as noted above, that it “treats the loss of one’s culture as similar to the loss of one’s job.”\textsuperscript{82} The implication is clear: while government can subsidize a person for the loss of his job, the cost of foregoing one’s culture is un-subsidizeable. But, put in these categorical terms, the argument is implausible. Just as some occupations (being the President of the United States, say, or the Pope) may be so unique that one’s having to forego them could never be adequately subsidized, if one has fairly strong attachments to the majority culture as well as one’s minority culture, the costs of leaving the latter for the former may not be so high as to be un-subsidizeable after all.\textsuperscript{83}

\textsuperscript{80} Indeed, as Yael Tamir writes, people’s “interlocking memberships cannot be placed in a hierarchical order. For some, belonging to a social class is a more important locus of identification than being members of a church, whereas identification with a political party or with a gender support group will, for others, mean more than affiliation with a particular nation” (\textit{supra} note 59, at 155).

\textsuperscript{81} \textit{Supra} note 1, at 84.

\textsuperscript{82} Ibid.

\textsuperscript{83} As will become clearer below, this does not mean that there are no cases in which asking people to change cultures might involve making them incur a cost that \textit{is} unsubsidizeable. I think this could certainly be the case, for instance, if a majority culture actively oppressed a minority culture and treated their culture as inferior, and then demanded their assimilation.
CHAPTER FOUR:

THE COSTS OF CULTURAL PRESERVATION

Preserving Minority Cultures: Not so Demanding After All?

So where this leaves us, it seems, is with the idea that we really can’t say anything definite about the costs of leaving one’s culture, except that these costs will usually, for most people, be rather significant. But perhaps that’s enough to justify Kymlicka’s proposal that minority societal cultures should be protected from disintegration. For example, even if some instances of leaving one’s culture will, for some individuals, not be excessively costly, perhaps we can assume that it will demand too much of at least a significant portion of a culture’s members to ask that they forego their membership and integrate into a new societal culture. On this view, ensuring that the minority culture continues to exist means that we avoid asking any of its members to make this sacrifice. Further, according to Kymlicka, protecting minority cultural structures involves providing them with rights to regional autonomy and official language status, and does not entail that these cultures will “enforce traditional lifestyles” or prevent the exit of their members. Thus, providing minority cultures with the means of cultural self-preservation will not in any way preclude members who have strong attachments to other cultural communities from leaving their original culture for another.

One possible objection that I wish to raise in order to reject runs as follows: ‘even if our cultures are as important to (most of) us as Kymlicka suspects, the fact that they are “ethically central to our lives… is an argument for toleration of our identities, not for their

That is, while it is true that “each of us has a morally legitimate interest in being left alone, in not having our way of life stamped out,” we have no reason to think the state is ever under a positive obligation to actively protect our cultural structures. Rather, a position of state neutrality with regard to the life and times of its cultural communities is perfectly permissible, since it involves no effort to stamp out any ways of life.’

This objection does raise a very important point. Specifically, saying that the state should ensure that people have secure access to their own societal cultures is, as Jacob Levy notes, like “[s]aying that diversity is valuable”: “its overinclusive. It doesn’t distinguish between a language dying off because a state kills all its speakers and a language dying off because its speakers voluntarily abandon it for a language that has wider use.” For example, even if our cultures are very important to us – providing, according to a famous article by Joseph Raz and Avishai Margalit, an “anchor for [our] self-identification and the safety of effortless secure belonging” – this fact alone does not imply that states must always provide positive protection for these cultures. However, I want to insist that it is still possible that the state could be under such a duty in some circumstances.

Consider, for instance, the distinction between killing a person and letting them die. Now, it seems clear that the bare fact that persons are under a general moral duty not to kill other people does not in itself imply that we also have a general moral obligation to rescue others from mortal danger. It is not the case that we must all run into burning

85 Appiah, supra note 20, at 71. (Appiah is attempting to summarize the view of a number of commentators, and does not actually endorse this position himself.)
86 Levy, supra note 10, at 108.
87 Ibid.
buildings and rescue those trapped inside, for instance. Sometimes, then, it is morally permissible to let others die. But, and this is the point, that does not mean it is always permissible to do so. For instance, if I were a sky-diving instructor and realized that my co-instructor had given one of the divers a backpack with no parachute in it, I would, ceteris paribus, be under a moral obligation not to let that person jump out of the plane without a parachute. If I remained silent and the person jumped to her death, I would not by any stretch have actively taken her life, yet I would have acted immorally, since I knew that inaction on my part would result in certain death, and since I could have acted to prevent the tragedy at little or no cost to myself. The implication of this discursion into moral philosophy is that determining whether an actor is under a moral obligation to take certain positive steps towards another person will require an understanding of how burdensome the taking of these steps will be for the actor.89 (This is essentially the lesson we learned when we discussed Kymlicka’s analogy between cultural membership and nonsubsistence resources: we found that the reasonableness of an expectation appears to be a function of both the cost of foregoing the expectation, and of the severity of the demands that having that expectation fulfilled will place on other actors.90)

So, is state protection of minority cultures more akin to rescuing a child from an inferno, or letting someone know they’re about to leap out of a plane without a parachute?

At this point, I think it is appropriate to admit that the demand to remain in one’s culture

89 I want to be clear that I am not suggesting that it is only where the state can be said to be under a ‘duty of rescue’ that it will, as a matter of justice, have an obligation to preserve a societal culture. (In fact, I think talking of a duty to rescue is particularly infelicitous when it comes to state obligations, since, in tort law, the duty to rescue falls on individual bystanders, not the state.) I raise the example of a duty of rescue merely to make the simple point that even if the state (or any other agent) is not under a general moral duty to do x, it may be positively required to do x in certain circumstances.

90 Indeed, if we look at the skydiving example from the perspective of the novice diver, we see that even though she has no reasonable general expectation that others will act to save her life, we are inclined to think that she does have a reasonable expectation that the instructor take positive measures to prevent her death in this particular circumstance.
is not necessarily a particularly exigent one. Asking the state to ensure that I am able to remain in my cultural community may not always require extraordinary measures on the part of the state, particularly where the minority culture is a cohesive and vibrant community highly valued by its members. This admission may appear to contradict our earlier argument that demanding access to my culture is like demanding access to a particular set of nonsubsistence resources. However, I want to suggest that the expectation that I will remain in my culture is more like the demand that I have a financial-industry job and a serviceable car, for example, than the more basic desire for material resources above subsistence level. But, since devolving governmental authority to regions in which a minority group forms a majority, and making the minority’s language an official language of the country, does not appear as burdensome as ensuring that each citizen has a basic range of nonsubsistence goods in line with their personal preferences, the analogy is not perfect. That is, the demand for access to my culture ends up looking more demanding than the expectation of having nonsubsistence resources, yet less exacting than the claim that I ought to have particular material goods.

But if this demand is thus only moderately exigent, or perhaps is of uncertain exigency, and if the costs of giving up one’s culture are generally, (although, as we saw above, not invariably) high, why shouldn’t we err on the side of caution, as it were, and, with Kymlicka, demand guaranteed state support for the cultural structures of all minority societal cultures? Moreover, do we not have an additional reason to make such a demand if we assume, as seems plausible, that whenever a national minority group is faced with

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91 It should be noted, in the interests of full disclosure, that this discussion assumes what some critics of multiculturalism hotly dispute – namely, that concerns about the effects of multicultural policies on the stability and cohesion of the wider society, and their potential foreignness to the community’s accepted ideals of undifferentiated citizenship, do not render the demand for self-government exigent.
having to integrate into a larger societal culture there is likely to be at least a sizeable 
segment of the minority community’s membership for whom such integration will be 
exceedingly difficult?

I want to suggest that these conclusions are intuitively plausible. To resist them, I 
think, we would need to put forward an argument for why, all things considered, the costs 
of meeting people’s expectations that they will have the ability to remain in their culture – 
even where this wouldn’t place undue burdens on the state and where the personal 
hardships involved in foregoing the expectation would be significant – are, in the end, 
unacceptably high.92

And, in fact, critics of the notion that states should preserve cultural communities 
often put forward these sorts of ‘all things considered arguments’, arguing that state 
protection of culture actually has hidden costs that may be intolerably high.93 In this 
regard, the critics are primarily preoccupied by two evils alleged to be inherent in efforts 
to sustain minority cultures (and, according to some, in multiculturalist policies 
generally): the loss of solidarity and cohesion within the wider society, and the 
“essentializing” of minority cultures. I will have very little to say about the first of these 
concerns. There is now a very wide literature (to which Will Kymlicka has been a

92 To use another analogy from everyday life, imagine that a little girl sees a rabbit in a pet shop and decides 
that her parents must buy it for her. She does not ask her parents to purchase the rabbit, she simply declares 
that they must. It may be that giving up her expectation that she will receive the rabbit will cause the girl a 
great deal of unhappiness. Assume, as well, that buying the rabbit would be no great burden for the parents: 
they can easily afford it, and have reason to believe that if their daughter owned it she would take excellent 
care of it. Despite all this, however, we would feel that the parents would be justified in refusing to buy the 
rabbit – that is, in making their daughter forego her expectation that she will receive it – in order to teach 
the girl the lesson that she is not simply entitled to have everything she desires. That is, all things 
considered, when we take into account external factors having to do with the moral development of 
children, the cost of acquiescing to the girl’s demand is just too high.

93 That is, most critics. Some, like Jeremy Waldron, reject the idea that the costs of changing one’s culture 
are very great to begin with. In other words, he seems to see state protection of minority cultures as almost 
all cost and no benefit, as opposed to seeing the benefit but arguing that on the long view the costs outweigh 
it.
leading contributor) on the practical effects of various multicultural policies for “social capital” and feelings of solidarity in the various countries in which these policies have been implemented, and I do not wish to attempt to explicate the many, and in some cases conflicting, empirical findings. However, after looking at the extent to which Kymlicka’s policy recommendations for national minorities may involve coercing both members and outsiders, I will return to ask whether the essentialist critique is as powerful as its proponents suggest.

Cultural Preservation and Coercion

One ‘all things considered’ argument against state preservation of minority cultures is that it will require unacceptable levels of coercion. In this context, recall that we are dealing here with preserving a cultural structure, not its particular character. While a culture may lose its initial character even if its membership stays the same, losing a cultural structure seems to require that the culture experiences a drop in membership. If a societal culture is, according to Kymlicka, about a common language and a shared history, the culture as a structure will survive only so long as there are sufficient numbers of members that continue to speak in that language and share in that history. Consider, then, the four ways in which people may leave their culture that we mentioned above. Firstly, one might simply reject the culture’s values and practices and adopt instead the values of another community. However, virtually all commentators agree that acting to


\[95\] As Kymlicka writes in Multicultural Citizenship (supra note 1, at 104): “[w]e must… distinguish the existence of a culture from its ‘character’ at any given moment. The character of a culture can change dramatically, as the Quiet Revolution in Quebec shows.”
prevent people from exiting their cultures in this way would be a grave violation of individual liberty, involving, for instance, denying individuals in vulnerable minority cultures freedom of association and mobility. Secondly, a culture may die if the state forces its members to leave (or if, what comes to the same thing, it kills them). As we found above, coercing people out of their cultures is also a severe violation of individual autonomy.

Thirdly, perhaps members of minority cultures can sometimes be assimilated almost unconsciously by constant exposure to the dominant majority culture. But while this may be true, it does not seem to describe a process by which people actually leave their culture – that is, how a cultural structure becomes imperiled. Instead, it appears to describe how a culture’s character might undergo certain changes. That is, it seems to me quite implausible to suggest that people are often subconsciously led out of their cultural structures, if, per Kymlicka, we take these to be comprised of a shared language and history. For instance, I may rather unconsciously come to adopt some of the linguistic majority group’s expressions, but to actually leave my cultural structure, to more or less stop speaking in my native tongue and no longer identify with the culture or its history, would, at least in most cases, require a conscious decision on my part.96

This point leads us to the fourth reason people may leave their cultural structure: they might choose to leave because they wish to take up certain opportunities only available outside of their community.97 As Jacob Levy says, “[i]n the absence of

96 Now, this is not to say that the decision may not be an agonizing one between remaining in a culture I wish to live in, on the one hand, and taking advantage of certain opportunities only available within another culture, on the other. The point is merely that leaving one’s cultural structure will not usually happen without one’s notice.
97 I don’t mean to suggest that all francophone Quebeckers working in Calgary, say, have left their culture behind. Again, this would involve a conscious decision on their part to distance themselves from their
persecution, what typically endangers cultures is the choices of their individual members; and sometimes (or so it is argued) those choices are made strategically rather than out of any genuine shift in cultural sentiment.\(^98\)

In this fourth case only, where members leave not because they reject their culture in favour of what they believe to be greener pastures, but rather merely to make more green, it looks as though the liberal state may properly have a part to play in ensuring that members retain access to what they all want, namely their shared cultural membership. As Jacob Levy lays out the argument, the reason the state has an important role to play here is because “[t]here is a collective action or public goods problem with cultural preservation. This problem can only be overcome with some institutional provision, as is true for many collective action problems.”\(^99\) Specifically, the ‘cultural membership as collective good’ rationale for state action to preserve cultures runs as follows:

Each member of a minority culture prefers that the culture remain viable – that the language continue to be spoken, that children continue to be raised in the traditions, that all that which makes the culture unique not die out. But, as long as the culture is a minority culture, each person also has a strong interest in leaving the preservation to others, in gaining for him or herself the advantages of being in the majority.\(^100\)

It’s not clear what Kymlicka thinks of this kind of argument. His own arguments for why minority societal cultures deserve protection by the state appear focused on avoiding situations in which the majority, sometimes deliberately, threatens the survival of minority cultures. For example, when discussing how minority cultures may find themselves endangered, he writes that “[t]his can happen if the land, language rights and

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native culture – one that cannot be inferred from the mere fact that they are a considerable physical distance from their original culture’s traditional homeland.

\(^98\) Levy, supra note 10, at 117.

\(^99\) Ibid., at 115.

\(^100\) Ibid., at 114-15.
political institutions of a national minority are *taken away*."  

Further, consider how Kymlicka draws his famous distinction between “external protections” and “internal restrictions.” Internal restrictions, according to Kymlicka, involve the claims “of a group against its own members.” They refer to cases in which “the basic civil and political liberties of group members are being restricted” in order to control “the extent to which [these] members engage in untraditional or unorthodox practices.” External protections, by contrast, involve “inter-group relations,” and are “intended to protect the group from the impact of external decisions (e.g. the economic or political decisions of the larger society).” That is, his central focus is to prevent situations in which “the very survival of [a minority] culture as a distinct society [is] in jeopardy… as a result of decisions made by people outside the culture.” The threat, in other words, is always an *external* one.

Why would Kymlicka not make more of the possibility that the survival (and not just the character) of a minority culture might also be threatened by *internal* factors, by the choices of its own members? Perhaps the answer lies in his belief that most human beings are so deeply attached to their own cultures. If Kymlicka assumes we are loathe to leave our cultures, the collective action problem we looked at seems unlikely to arise. However, I think Kymlicka’s position is more sophisticated than this. Specifically, it may

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101 *Supra* note 1, at 105 (Emphasis added.)
102 Ibid., at 35.
103 Ibid., at 37.
104 Ibid., at 38.
105 Ibid., at 36 (Emphasis in original.)
106 Ibid., at 35 (Emphasis in original.)
107 Ibid., at 105.
108 Except, perhaps, for situations in which the opportunities available to members of the minority culture are so few or unappetizing that, despite their ties to their culture, ‘defection’ becomes a rational response. But in this case I believe Kymlicka, as a good liberal, would take the position that such defection should in fact be encouraged as the best way to ensure the autonomy and well-being of members.
be that he believes that if minority cultures are given external protections they will, eventually, be able to make available many opportunities of their own. For instance, if a minority group no longer has to fight tooth and nail simply in order to survive as a distinct culture, members may begin to concentrate on creating opportunities for higher education and professional employment within the group’s own language. If this is Kymlicka’s view, it does have an air of plausibility. Evidently, without some external protections, the continued existence of a given minority culture may be a very uncertain proposition.

However, the survival of a minority nation cannot be guaranteed solely by ensuring that the “national minority cannot be outvoted or outbid by the majority on decisions that are of particular importance to their culture.”\(^{109}\) That is, even if both national minorities and national majority groups possess meaningful rights of self-government, there can be no assurances that there will be equal opportunities for individual prosperity within the respective communities; the majority society, simply by being larger, may offer a greater range of employment opportunities, for instance. And, if sufficient numbers of the minority’s members opt to integrate into the majority culture to take advantage of these opportunities, the minority culture may be lost. Thus external protections may be a necessary condition for ensuring the survival of a minority culture, but they will not always be sufficient.\(^{110}\)

\(^{109}\) Kymlicka, supra note 1, at 37-8.

\(^{110}\) That Kymlicka assumes external protections may be sufficient to sustain minority cultures (putting aside instances in which significant numbers of members actually desire to leave their culture for another) appears evident from the following quotation: “Group-differentiated rights … can help rectify … disadvantage, by alleviating the vulnerability of minority cultures to majority decisions. These external protections ensure that members of the minority have the same opportunity to live and work in their own culture as members of the majority” (supra note 1, at 109). (Emphasis added.)
So, if external protections are not always sufficient, if preserving a minority culture also requires making sure members do not have “distorting incentives to work against” the public good of membership,\textsuperscript{111} we will have to do something about the collective action problem described above. It is here that Levy, for instance, hopes to spring his trap: the sort of ‘institutional provision’ needed to overcome the collective action problem, he insists, will require an illiberal sacrificing of some members’ liberty, and is thus actually ruled out by Kymlicka’s categorical refusal to countenance internal restrictions.

Why does solving the collective action problem of cultural membership involve illiberal coercion? As Levy explains, it has to do with the fact that the public goods problem only arises in the first place because “exit from many communities is in an important sense too easy.”\textsuperscript{112} Consequently, in some cases the only way to preserve the culture may be to ensure that the ability to exit is restricted. As Levy explains:

No doubt, sometimes the threat of cultural dissolution is invoked as a pretext. There is a point, however, after which exit really does jeopardize the viability of the remaining cultural community. A linguistic community is threatened when too few people speak the language, or operate social institutions in the language. Communities from the Amish to indigenous tribes may be threatened when too few people remain behind to make a communal economy function.\textsuperscript{113}

I think Levy is absolutely correct on this score. It does seem that in some cases ensuring that a minority culture remains viable could only be accomplished by imposing significant restrictions on the ability of members to leave. Moreover, since these sorts of restrictions are aimed at members of the culture and restrict their basic freedom to opt out


\textsuperscript{112} Supra note 10, at 114. (Emphasis in original.)

\textsuperscript{113} Ibid., at 117.
of their community, Kymlicka would have to classify them as internal restrictions rather than external protections. But then Kymlicka appears to face a conundrum. He argues both that minority societal cultures should be preserved, and that liberalism should reject internal restrictions which limit the freedom of group members. However, it seems that the former project, as it turns out, may sometimes positively require these latter types of restrictions.

If we took the view that all internal restrictions were necessarily illiberal and unacceptable, then the fact that ensuring the viability of certain minority cultures requires such measures would indeed be a knock-down argument against preserving those – and only those – cultures. However, it is worth noticing that Kymlicka excludes from the category of internal restrictions such constraints on liberty as jury duty or military service, for instance, since these are “intended to uphold liberal rights and democratic institutions.” By contrast, true internal restrictions, on his account, “restrict these rights in the name of cultural tradition or religious orthodoxy” and thus violate “basic civil and political liberties.” In other words, some restrictions on the freedom of members will be relatively mild and should be accepted as serving a greater good. This same rationale, in fact, is employed to justify external protections. For instance, Kymlicka admits that even external protections limit the liberty of members of the majority society, for instance “by making it more costly for them to move into the territory of the minority,” “or by giving minority members priority in the use of certain land and resources.” But these restrictions are explicitly defended as serving the greater good of minority cultural membership: “the sacrifice required of non-members by the existence of these rights is far

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114 Supra note 1, at 36.
115 Ibid.
116 Ibid., at 109.
less than the sacrifice members would face in the absence of such rights."\textsuperscript{117} Now, as we found above, the extent of the sacrifice members face in having to integrate into a new culture is variable, and thus I think Kymlicka is too quick to assume it will always ‘far’ outweigh the sacrifices external protections will require non-members to make. However, I think Kymlicka’s justification of external protections focuses on the correct issue – namely, whether the costs these measures impose on non-members exceed the costs members would have to pay if the external protections were not in place.

However, it is one thing to talk about the costs imposed by protections designed in large part to discourage the \textit{entry} of outsiders.\textsuperscript{118} It is quite another matter to restrict the ability of insiders to \textit{exit}. For instance, as we saw, Kymlicka is focused on drawing a distinction between external protections, which he claims are needed to preserve cultural structures from corrosion by the actions of outsiders, and internal restrictions, which he says illegitimately endeavour to insulate aspects of the culture’s character from interrogation by insiders.\textsuperscript{119} But, as Levy observes, “[l]eft unaddressed is the question of whether \textit{insiders} may be coerced to so as to preserve the \textit{existence} of a culture.”\textsuperscript{120}

Because Kymlicka leaves this question largely unaddressed, it is not entirely clear how he would respond to it. One might expect that Kymlicka would reject this sort of coercion out of hand as an internal restriction. And there are points at which Kymlicka’s liberalism seems to categorically rule out internal restrictions.\textsuperscript{121} However, on closer

\textsuperscript{117} Ibid. See also ibid., at 122.
\textsuperscript{118} Specific examples of these sorts of measures that Kymlicka discusses are longer residency requirements, and the provision of fewer government services in the majority language (\textit{supra} note 1, at 109).
\textsuperscript{119} I think, to be fair, this preoccupation is understandable, given that Kymlicka’s central purpose in his earlier work was to show that not all external protections are incompatible with liberalism in the way that most internal restrictions are assumed to be, and that the former don’t lead inevitably to the latter.
\textsuperscript{120} \textit{Supra} note 10, at 118. (Emphasis added.)
examination, Kymlicka’s position appears to be more nuanced. For instance, in
*Multicultural Citizenship* he concedes that “[t]he distinction between internal restrictions
and external protections… is not always easy to draw. Measures designed to provide
external protection often have implications for the liberty of members within the
community.”¹²² This concession thus anticipates and grants the force of Levy’s insight
that many measures designed to restrict the actions of outsiders “are restrictions on how
they may interact with members – which is to say that they also restrict the liberty of
insiders.”¹²³ Thus, for instance, while Kymlicka believes that “the most effective way to
protect indigenous communities from [the majority’s] external power is to establish
reserves where the land is held in common and/or in trust, and cannot be alienated
without the consent of the community as a whole”, he admits that “one by-product of
common ownership of reserve land is that individual members of an indigenous
community have less ability to borrow money, since they have less alienable property to
use as collateral.”¹²⁴ According to Kymlicka, although “this is not a violation of a basic
civil or political right, it is a significant restriction on the liberty of individual
members.”¹²⁵ Nonetheless, Kymlicka insists that “[i]n so far as internal restrictions are
present,” they can be “defended… as unavoidable by-products of external protections,
rather than as desirable in and of themselves,”¹²⁶ and thus, he implies, ought to exercise
the liberal’s conscience much less than “what we might call ‘pure’ internal restrictions –

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¹²² *Supra* note 1, at 42.
¹²³ *Supra* note 10, at 118.
¹²⁴ *Supra* note 1, at 43.
¹²⁵ Ibid., at 43-4.
¹²⁶ Ibid., at 44.
that is, protecting the historical customs or religious character of an ethnic or national

group through limitations on the basic civil liberties of its members.”127

What is more, in Politics in the Vernacular, Kymlicka addresses the difficulties

that national minorities face in integrating immigrants, concluding that “[i]mmigrant

multiculturalism and minority nationalism are not necessarily enemies, but nor are they

easy allies. The sorts of policies required to achieve a successful form of multicultural

integration may be more complicated, and in some ways less liberal, than those which the

majority can adopt.”128 As examples, Kymlicka suggests that Quebec’s “demand that

immigrants send their children to schools in the minority’s language, rather than having

the choice of majority or minority-language schooling,”129 and that all commercial signs

be in French, were ultimately necessary to persuade Quebecers “that immigrants would

contribute to Québécois society, rather than integrating into the anglophone society, and

that [they] would not dramatically change the balance of power between English and

French in Canada.”130 To his credit, Kymlicka does not deny that these sort of measures

are internal restrictions, nor cast them as another species of ‘unavoidable by-products of

external protections.’ In fact, he does not even deny that they are illiberal. Instead,

perhaps surprisingly, he takes a very pragmatic view, arguing that the restrictions may

nonetheless be required to serve the greater good of “shift[ing] Québécois nationalism


127 Ibid. Thus, it may seem that Kymlicka dislikes internal restrictions not so much because of who they restrict – i.e. members rather than non-members – but rather because of what they restrict – i.e. members’ abilities to assess and revise cultural practices and values. There is, then, perhaps room to argue for a radical interpretation of Kymlicka’s position that would have him acquiescing in rather severe, ‘impure’ internal restrictions if these were necessary to preserve the cultural structure and did not otherwise impair members’ abilities to freely reject or accept aspects of the culture’s character.
128 Supra note 121, at 286.
129 Ibid.
130 Ibid., at 287.
from an ethnic to a post-ethnic form of nationalism.” As Kymlicka sums up the situation as he sees it, “[T]hese policies are sometimes criticized as illiberal. And perhaps they are. But here we reach a genuine dilemma. For such illiberal policies may be required if national minorities are to successfully integrate immigrants.”

So, might restrictions on the ability of members to exit imperilled minority cultures also be necessary evils, regrettably required to ensure the greater good of stable cultural membership? I think Kymlicka suggests the appropriate response to this question (despite the fact that he doesn’t actually see this particular question as arising). For instance, Kymlicka sees Quebec’s move toward a post-ethnic conception of the nation as raising similar questions, in particular the following: “Should we insist on a rigorous adherence to liberal norms of individual choice, knowing that this will stop and perhaps reverse the shift from an ethnic to a post-ethnic definition of Québécois nationalism? Or should we accept some limited deviation from liberal norms in order to consolidate and extend the shift to a civic form of minority nationalism?”

When it comes to answering these thorny questions, Kymlicka, I think quite rightly, shies away from grand statements of principle. His response, instead, is a measured one, in which he insists that determining whether liberalism can countenance these sorts of deviations from its own general norms requires attention to contextual factors: “I have no definite answer to this question. It surely depends on how great the violation of liberal norms would be. Restricting the language of commercial signs is one thing; restricting the language of

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131 Ibid.
132 Ibid., at 286.
133 Ibid., at 287.
newspapers, churches, or private schooling (as sometimes happens in Eastern Europe) is another.”

I think Kymlicka is absolutely right. However, the extent of the violation of liberal norms is not the only relevant factor; the value of the benefit that could not arise in the absence of the violation must also be looked into. For instance, to use Kymlicka’s own examples of jury duty and military service, perhaps it is the case that asking people to serve on a jury is no great violation of liberal norms of non-coercion. However, the situation might appear rather different when it comes to compelling citizens to potentially kill and die for their country. I suspect the reason, then, that Kymlicka thinks compulsory military service may be legitimate is not because it represents only a slight deviation from liberal norms, but rather because this practice, while it is actually significantly impairing of individual liberty, is seen as vital to secure something which is taken to be of overriding value: the survival of the liberal democratic state. What this means, then, is that when it comes to deciding whether or not a minority culture should be preserved, liberalism should not rule out as beyond the pale all preservationist measures which involve some deviation from liberal principles; we must look at the extent of the illiberality involved. But neither can we assume that all measures short of grave violations of individual liberty are necessarily to be allowed. Instead, we have to ask if they serve some overriding value, since even minor evils should be avoided if they bring about no greater good.

134 Ibid., at 288.
A Closer Look at the Costs of Leaving One’s Culture: Are Nations Great Goods?

It seems, then, that determining whether we are justified in employing a particular set of *prima facie* illiberal means to preserve a minority societal culture will depend on how much the group’s members value their cultural membership, and on the likelihood that they would be able to secure meaningful contexts of choice in the event that their cultural structure were to decay. Now, earlier in this paper I said that I wanted to draw attention to the fact that non-societal cultural groups, and not just Kymlicka’s societal cultures, can provide their members with meaningful contexts of choice, in order to suggest that if we feel no need to preserve the former cultural communities we should think twice about Kymlicka’s suggestion that all minority societal cultures should be preserved. However, even if we are right that sub-societal cultures create contexts of choice, Kymlicka could respond, in order to defend his differential policy recommendations vis-à-vis the two sorts of cultural entities, by asserting that the cost to members of foregoing their sub-societal cultural membership is significantly lower than the cost of foregoing membership in a national culture.

It does seem to appear, for instance, that whereas many individuals from non-societal cultural communities such as immigrant groups (especially the younger generation) often choose to integrate rather fully into the dominant society, members of national minorities tend to cling to their societal cultural membership with particular tenacity. However, it is not clear that this is because the former sort of people value their ethnic communities less than the latter value their national ones. In other words,

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136 In fact, any insinuation that people always value their national membership highly, while they are much less committed to their non-societal cultures, seems simply false. As Yael Tamir (*supra* note 59, at 155)
the extent to which we are willing to give something up is not a perfect indicator of how
much we value that thing. For instance, we are not entitled to conclude, simply because
more people from Group X integrate into the majority culture than do people from Group
Y, that culture X is less valued, relative to Y, by its members, or that the costs of leaving
Y must be higher than the costs of leaving X. To make these determinations we must
inquire not only into the actual costs of leaving, but also into the costs of staying.

For example, let us assume Kymlicka is right to suggest that in the modern world,
“for a culture to survive and develop… it must be a societal culture.” This means is
that, for members of sub-societal cultural groups, the alternative to integrating into the
wider societal culture may be remaining in a dying, stunted cultural community.
Economic prosperity, political enfranchisement, having one’s cultural interests taken into
account by one’s fellow citizens, all of this may depend on integration into a larger
societal culture. On the other hand, I want to suggest that it is part of the essence of the
nation that it attempts to ensure that its members can have access to all of these goods
without having to look beyond the boundaries of the cultural community. In addition,
nations, which generally have greater resources than sub-societal cultures, are better able
to achieve this goal. Further, since leaving one’s national group is often seen as
unnecessary, it becomes possible for nations to socialize members into the belief that
leaving is also unthinkable. In short, then, people might leave their non-societal cultural

writes: “interlocking memberships cannot be placed in a hierarchical order. For some, belonging to a social
class is a more important locus of identification than being members of a church, whereas identification
with a political party or with a gender support group will, for others, mean more than affiliation with a
particular nation.” Further, if we were to assume, for instance, that all members of what I’m calling sub-
societal cultures are also a part of a wider societal culture which commands their ultimate loyalty, we would
be assuming away the entire problem that has caused immigrant multiculturalism to recently lose favour in
Western Europe.

137 Supra note 1, at 80.
communities not because they value them any less than others value their national cultures, but simply because the costs of staying are so much higher.

Recall, for example, that after pointing out that the costs of integrating into another culture will vary from case to case, Kymlicka observed that “even where the obstacles to integration are smallest, the desire of national minorities to retain their cultural membership remains very strong (just as members of the majority culture typically value their cultural membership).”138 Perhaps what Kymlicka means by this is that although the costs of foregoing one’s societal cultural membership may, in certain cases, not be particularly high (as he puts it the obstacles to doing so may be low), there is an intransigence involved in the way people identify with their nations that states ignore at their peril. For instance, it may be that Kymlicka is admitting that asking members of a national minority to forego their membership might not always be asking them to give up a reasonable expectation after all, but that the state should nevertheless refrain from making this demand because it will likely be met with destabilizing resistance, even violence.139 If this is what Kymlicka is saying, I think he raises a good point. Perhaps some minority groups should be accorded minority rights not because the preservation of their cultural structures furthers the autonomy of their members, but because the alternative is disunity or bloodshed. But then Kymlicka’s distinctive argument for minority rights, the claim that they are required to secure meaningful contexts of choice for citizens of multinational states, is washed away; what we are left with is not a

138 Supra note 1, at 85-6.
139 Jacob Levy, for instance, argues that “[r]esponsible normative theories about multiculturalism must… take some aspects of life in a multiethnic world as a given – ‘must’ because attempts to deny or radically alter them have systematically been bloody failures, and ‘must’ because they are true…” (supra note 10, at 5). The most basic of these ‘facts’, he assumes, is that people are committed to their specific cultural identities, and he warns that feelings of national attachment, especially, are “easily and quickly mobilized, and ignored at our peril” (ibid., at 6).
multiculturalism founded on philosophical principle, but rather a multiculturalism of fear.\textsuperscript{140}

However, I don’t think this is what Kymlicka has in mind. Instead, when he points out that members of minority nations still cling to their national identity, even where the obstacles to integration are at their smallest, I think he is referring to \textit{practical} obstacles such as the extent to which the two cultures differ in language or history. It seems unlikely that he wishes to suggest that when these obstacles are at their smallest the total costs of integration will be low. Rather, I think his purpose in stressing that members of national minorities have a strong desire to retain their cultural membership, regardless of the size of the practical obstacles, is to suggest that the cost of leaving one’s national culture will always be high (again, regardless of the size of the practical obstacles). In other words, although he appears to have some affinity for Yael Tamir’s belief that nations are uniquely valuable for the way in which they provide purpose and value-added components to our lives,\textsuperscript{141} Kymlicka suggests that the cost of asking people to forego their national membership will inevitably be high because we would be asking individual members to give up something they greatly value, not because nations are themselves of great moral value.

So what should we make of this idea that leaving one’s nation will always be a severe hardship? Firstly, I think we should admit that leaving one’s culture is not always unthinkable. In fact, often times ‘defecting’ to the majority societal culture may increase the choices and opportunities available to members of minority nations. However, people

\textsuperscript{140} For a book length explication of such a theory, see Jacob Levy’s \textit{The Multiculturalism of Fear} (supra note 10).

\textsuperscript{141} See \textit{Politics in the Vernacular}, supra note 121, at 228; \textit{Multicultural Citizenship}, supra note 1, at 90, 105; see also Tamir, supra note 59, at 84: “A national life allows individuals to enjoy a degree of self-fulfillment they cannot experience on their own.”
still seem quite reluctant to give up their national identities. As Kymlicka puts it, many often appear “willing to forego a wider freedom [to move freely between cultures] to ensure the continued existence of their nation.”

Why is this? On this question I think Kymlicka gives us a very plausible answer: cultural membership “shapes our self-identity. Moreover, national identity is particularly suited to serving as the ‘primary foci of identification’, because it is based on belonging, not accomplishment.”

As Joseph Raz and Avishai Margalit write, “cultural membership provides an anchor for our self-understanding and the safety of effortless secure belonging”, with the result that “people’s sense of their own identity is bound up with their sense of belonging to encompassing groups.”

What is more, it is little use to argue that, since nations are not primordial, but rather constructed and imagined communities, we don’t need any particular national identity to have a secure sense of belonging and self-identity – that at least some immigrants and cosmopolitan types have found the latter despite forgoing much of their original national identities. While all this seems true, we are concerned not with what people can do, but with what they can reasonably be asked to do. And if we are being honest, we must admit that asking someone to give up their national membership and integrate into another nation is a big ‘ask.’ Even though there may be many cultures out

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142 Supra note 1, at 93.
143 Ibid., at 89, citing Raz and Margalit (supra note 88, at 132).
144 Supra note 103, at 133.
145 Ibid., at 134.
146 Denying that we can switch national cultures, as Jacob Levy writes, would require us to accept the deeply implausible proposition that (as Moshe Halbertal and Avishai Margalit have contended), “persons have one and only one culture which is or could be their own, [and to] deny the possibility or the coherence of the trade-offs persons really do make between the comfort of the familiar and other human goods” (supra note 10, at 121, paraphrasing Halbertal and Margalit, “Liberalism and the Right to Culture”, Social Research, Vol. 61, No. 3 (1994), 491-510).
147 Again, as Kymlicka eloquently puts it, the claim we are addressing is “not about the limits of human possibility, but about reasonable expectations” (supra note 1, at 86).
there that I could make my own, it is still true, as Jacob Levy has written, that national identities “are strongly felt, and experienced by many people at many, perhaps most, times to be permanent and immutable.”

So, could the state ever properly ask people to give up something that they feel is an immutable part of their identity? The answer appears to be yes. For instance, even if I felt it was constitutive of my identity that I regularly assault members of a rival ethnic group I regard as sub-human, the liberal state, I assume, should still require me to give up that practice. And here the fact that my personal identity has no necessary relationship with any one cultural community is indeed important: it suggests that someone who has lost access to her original nation is not necessarily left existentially unmoored and faced forevermore with an unsolvable ‘identity crisis’, since she may find a sense of personal identity within a new cultural milieu.

Further, it is not only when the personal ties that one regards as ‘permanent and immutable’ are obviously illiberal or evil that the state may be justified in refraining from taking action to ensure we will not have to give them up. For instance, one’s membership in a religious community can be just as constitutive of one’s sense of identity as one’s national membership. However, liberal democracies generally do not take active measures to ensure their citizens will never have to forego these attachments to communities of believers, because they believe that the costs of doing so, namely state promotion of particular religions, would exact too high a price in terms of violating liberal norms of equality and neutrality. Thus, even in the case of an apparently liberal nation such as Quebec, it is worth inquiring whether standing by while the community’s

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148 Supra note 10, at 5.
members lose their cherished national identity could be justified in light of the illiberal measures that would need to be employed to maintain the nation.

What is more, as we know from Kymlicka, some of the actual costs that members of a national minority will face in integrating into the majority culture can be subsidized, through such efforts as state-funded programs that teach these people about the language and history of the larger society, as well as the provision of social services in their mother tongue. Furthermore, we can expect these personal costs – things like having to learn a new language and losing access to traditional cultural activities – will be lowest where the loss of one’s national culture, and the subsequent process of integration into another, is gradual. By contrast, these costs would be greatest where the minority culture were suddenly snuffed out, as at the hands of a vindictive majority group. But, since national identities are tenaciously held, and since we have already ruled out any efforts by the liberal state to actively undermine its citizens’ ability to live out their cultures, we have reason to believe the speed at which minority nations decay will be more or less gradual, and a function of the choices of their own members.149

In the final analysis, then, we should be honest that in not taking steps to ensure that national minorities have the means to preserve themselves, liberal states may effectively be asking members of those nations to give up something they usually value extraordinarily highly – namely, their national identities. However, we must be hesitant to conclude, from this fact alone, that the actual costs of foregoing these identities are always exceptionally high, just as we should not assume that they will always outweigh the sorts of illiberal policies that may be required to ensure that members can remain

149 Of course, it’s possible that some may expire in the same fashion that Hemingway’s character in The Sun Also Rises, Mike Campbell, was said to have gone broke – that is, “gradually, then suddenly.”
within their national cultures. In other words, once we appreciate that preserving a minority societal culture may require \textit{prima facie} illiberal measures like those in place in Quebec, we are forced to ask whether the goal of preserving the societal culture is of overriding value. And, since both the magnitude of the internal restrictions required to sustain a minority societal culture, and the extent to which a group’s members are personally committed to their cultural structure, are \textit{variable}, we cannot always this question in the affirmative.

\textbf{Taking Stock}

Exactly where, in practical terms, does this leave us? I submit that we are left with the conclusion that while we cannot rule out state protection of minority cultures \textit{a priori} as unacceptable from a liberal perspective, neither can we accept Kymlicka’s claim that liberalism’s concern with individual autonomy positively requires the state to preserve all minority societal cultures. Unfortunately, but not surprisingly, relatively little else can be said in the abstract. I think it is clear that if preserving a minority culture from dissolution were to actually require that members be physically prevented from leaving a geographic area, this is ruled out by basic liberal commitments to individual liberty and mobility. Putting aside such egregious cases, however, we should admit that in any culture there will exist pressures on members not only to remain within the cultural structure, but to accept certain aspects of its character. As Jacob Levy puts it, “everything about a culture is an exit barrier.”\textsuperscript{150} What’s required, then, is to be able to distinguish between legitimate attempts at “moral persuasion”, such as may occur when a mother tries

\textsuperscript{150} Supra note 10, at 112.
to persuade a son not to move away from a minority community, and instances in which
members face undue “moral pressure” to stay within the community, or to accept certain
of its values or practices.\(^{151}\) Again, little can be said in the abstract here, because the
value of preserving a particular culture from disintegration will depend on a number of
variables. However, I would suggest – as I take it Kymlicka is suggesting – that whatever
the value of membership in this culture, resorting to ‘restricting the language of
newspapers, churches, or private schooling’ in order to preserve it, or denying basic
public services to individuals without the proper ethnic or linguistic credentials, would
grossly violate individuals’ rights to freedom of expression and equal treatment. As such,
these draconian measures would represent undue moral pressure and should be ruled out
by a liberal theory of minority rights.

On the other hand, imagine that we were faced with a situation in which the vast
majority of members of an imperilled minority culture were virtually incapable of
integrating into another societal culture (perhaps because the survival of the minority
culture was only threatened due to the malicious efforts of the surrounding majority
culture, for instance). Assume, in addition, that all that is needed to preserve the minority
culture is to grant the group basic external protections, such as the regional autonomy
necessary to make political decisions on issues “that are of particular importance to their
culture, such as issues of education, immigration, resource development, language, and
family law.”\(^{152}\) While, as we’ve seen, even basic external protections may somewhat
reduce the liberty of both outsiders and insiders, the overall balance of costs and benefits
in this situation suggests that the price is worth paying, and thus a liberal multiculturalism

\(^{151}\) See Kymlicka, “The Essentialist Critique of Multiculturalism”, supra note 84, at 23.
\(^{152}\) Kymlicka, supra note 1, at 38.
should provide the minority societal culture with the means to preserve itself in this ideal case.

All real-world scenarios falling between these two extremes must be tackled on a case-by-case basis, in which the costs, all things considered, of preserving minority cultural structures are weighed against the costs of requiring members to forego their expectations of being able to remain within their culture. Here, nothing much can be said in advance. Perhaps the only thing that can be said that will not bias the assessment is that while not all measures required to ensure the preservation of minority cultures will be harsh and illiberal, giving up one’s culture does not always mean giving up oneself.
CHAPTER FIVE:

TWO ALL THINGS CONSIDERED ARGUMENTS AGAINST
LIBERAL MULTICULTURALISM

The Essentialism Debate

Many commentators suggest that even if certain multicultural accommodations would appear to be warranted in particular cases in light of the difficulty of leaving one’s culture, when we look closely at the actual costs, all things considered, that multiculturalism asks us to pay, we will find that the price is simply too high for liberal egalitarian states to endure. Specifically, it is widely alleged that multiculturalism is guilty of ‘essentializing’ cultures. A useful articulation of this view comes from Anne Phillips:

[Multiculturalism] exaggerates the internal unity of cultures, solidifies differences that are currently more fluid, and makes people from other cultures seem more exotic and distinct than they really are. Multiculturalism then appears not as a cultural liberator but as a cultural straitjacket, forcing those described as members of a minority cultural group into a regime of authenticity, denying them the chance to cross cultural borders, borrow cultural influences, define and redefine themselves.

As Will Kymlicka has forcefully argued, however “the debate around essentialism has largely been misdirected, primarily because the essential critique of multiculturalism conflates different potential targets, jumping from critiques of academic theories of liberal multiculturalism to critiques of government policies of multiculturalism to critiques of

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everyday street-level discourses or enactments of ethnic difference.”\footnote{155} Phillips, for instance, appears to take as her target what Kymlicka labels a “public ethos” of multiculturalism, one which she fears is bound to be marred by intolerance and stereotype,\footnote{156} while other critics such as Kwame Anthony Appiah and Seyla Benhabib suggest philosophical theories of multiculturalism themselves essentialize cultures.\footnote{157} Yet others, such as Jane Cowan, focus on the essentializing effects of multiculturalist activists.\footnote{158}

I want to argue that even if neither academic theories of multiculturalism nor existing multiculturalist laws and policies actually essentialize culture, multiculturalism does create incentives for minority groups seeking accommodation in the form of group-differentiated rights to offer up essentialized accounts of their cultures. More specifically, suppose we are right that the question of whether the liberal state ought to provide national minorities with the group rights needed to sustain their culture depends on weighing the costs of preserving the minority culture (paid out both in external protections and internal restrictions) against the costs of asking members to forego their cultural membership. If that’s true – if Kymlicka is wrong that all national minorities are entitled to self-government rights merely by virtue of possessing societal cultures – then minority cultures which are insular and dissimilar from the majority culture have, \textit{prima facie}, a better claim on such minority rights than do groups which share much in common with the majority culture and whose members identify to a large extent with it, since the

\textsuperscript{155} Supra note 84, at 2.  
\textsuperscript{156} Supra note 154, at 31, 72, 76, 81-2.  
\textsuperscript{157} See Appiah, supra note 20, at 110, 151-2; Benhabib, supra note 20, at 4, 68.  
costs of integrating into the wider societal culture will be greatest for members of the former sorts of groups.\textsuperscript{159}

Furthermore, in order to highlight the extent to which a minority culture is importantly different from the majority culture, it pays for spokespeople for that culture not only to accentuate dissimilarities, but to cast these differences as central to the culture itself. For instance, affirming that a minority culture is, in its essentials, poles apart from the majority has the effect of making the costs of integrating into the majority culture appear higher than would be the case if the values and practices of the minority culture were admitted to be varied, contested, and evolving.\textsuperscript{160} In other words, although I do not believe that multiculturalism, as it is conceived of by most theorists or as it is practiced in the real world, inherently relies upon essentialized notions of culture, it does provide members of minority groups with incentives to proffer essentialized accounts of their own culture, since essentialism serves the goal of making cultures look exotic.\textsuperscript{161}

\textsuperscript{159} I don’t want to suggest that Kymlicka’s preferred form of multicultural accommodation for minority nations avoids essentializing tendencies entirely. I believe that although the incentives to essentialize minority cultures in order to make them appear ‘more exotic and distinct than they really are’ are greatest where decisions on whether to grant such accommodations expressly inquire into the costs of leaving the cultures at issue, even if this is not done (because the costs are simply assumed to be too great), there will still be practical incentives for minority groups to emphasize their distinctiveness, in that the more they can cast their claims for minority rights as necessary to prevent wrenching cultural dislocation, the better the chances that they will find a sympathetic ear within the corridors of power.

\textsuperscript{160} So, whereas Bikhu Parekh, for example, criticizes liberal ‘monism’ for assuming “the moral and ontological primacy of similarities over difference” (Parekh, Rethinking Multiculturalism: Cultural Diversity and Political Theory (Cambridge: Harvard University Press, 2000), at 18), much of the underlying logic of the liberal multiculturalism I’m defending could be seen as threatening to do the opposite – that is, privilege differences over similarities.

\textsuperscript{161} It should be noted that the cases of non-Aboriginal homeland minorities and indigenous peoples are somewhat divergent in this respect. For instance, Canadian courts require First Nations groups to prove the distinctively non-European ‘essence’ of their traditions and practices in order for their Aboriginal rights to be recognized. On the other hand, quite paradoxically, Aboriginal groups that wish to secure extensive self-government powers through self-government agreements negotiated with the federal and provincial governments generally must demonstrate that they will provide ‘modern,’ ‘transparent,’ and ‘democratic’ forms of governance, and that they will pursue economic and social policies that are also ‘modern’ and ‘development’-oriented. (I would like to thank Mark Walters for raising this point while commenting on an earlier draft of this thesis). In other words, while Canadian courts reward the proffering of essentialized accounts of indigenous culture, Canadian governments, fearful of granting self-government powers to
Taking seriously Kymlicka’s instruction that when talking about essentialism we need to “carefully distinguish” between the potential targets of our critique, let me be clear that my central focus is on essentialist understandings of culture within the discourses of minority activists and within the wider public ethos of multiculturalism. So, for instance, I am concerned that minority elites will offer essentialized accounts of their cultures that may be experienced by members as scripts which they are under moral pressure to follow, and that these accounts will feed majority stereotypes about, and prejudice toward, minority groups.

It may be, however, that these concerns over essentialized understandings of minority cultures are overstated. As Tariq Modood has argued:

The charge of essentialism is itself essentialist. It rightly identifies some elements of essentialism in the political discourses of identity and culture but attributes a false importance to them. It gives them the status of being THE beliefs that constitute the understanding of culture, identity and so on in multiculturalism, when in fact multiculturalist discourses may be, indeed invariably are, based on a variety of beliefs and assertions about culture.

This is an excellent point, and it is true that an essentialist interpretation of a culture will never represent the way in which that culture is understood by everyone. However, my concern is simply that a multiculturalism committed to weighing the costs of cultural preservation against the costs of cultural integration necessarily provides incentives for such essentialist stories to be put forward.

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162 Supra note 84, at 2.
164 I am not suggesting, for instance, that multicultural policies are the sole cause of cultural essentialism – as Will Kymlicka points out, “examples of self-appointed leaders of ethnic and religious groups trying to impose ‘purity, authenticity and fixity’ on their members” are “as old as the Bible” (supra note 84, at 21) – but rather that this age-old phenomenon is encouraged by many contemporary multicultural policies.
Kymlicka, for one, does not deny that even in officially multicultural countries some minority activists will try to convince other members that they ought to live in more ‘authentic’ or ‘traditional’ ways. Instead, while he takes it “as a given that such processes of intra-group essentialization exist”, he worries that the only way to eliminate them would involve “violating fundamental civil liberties.” I think Kymlicka is right to worry. As he notes, “[a]fter all, it is a foundational right within any democratic society that people can freely state their opinion that (for example) a good proud Macedonian should speak Macedonian wherever possible, and should resist the corrupting influences of Greek culture.” So, if we are really concerned that multiculturalism creates incentives to essentialize cultures, we have to ask ourselves how we might fix the problem. On this issue I find Kymlicka’s analysis very insightful. As he suggests, in order to stamp out what we take to be undue moral pressure placed on members of minorities to adopt essentialized cultural scripts, while at the same time respecting basic rights of free expression, we will have to distinguish between undue moral pressure and attempts at simple moral persuasion. And here I must admit that I have no idea what criteria we should employ to this end.

It might seem, then, that any ‘solution’ to the problem of essentialism would represent a cure at least as noxious as the disease. However, just because nothing can be done to solve a problem, once created, does not mean that we should be indifferent as to whether we are creating incentives that fuel the problem in the first place. After all, what we are dealing with here is, putatively at least, a problem. Kymlicka, however, is not sure

165 Supra note 84, at 21.
166 Ibid., at 22.
167 Ibid.
168 Ibid., at 23.
that the fact that individuals face pressures to adopt essentialized identities is actually much of a problem. According to Nancy Fraser, for example, minority scripts “put moral pressure on individual members to conform to group culture. The result is often to impose a single, drastically simplified group identity, which denies the complexity of people’s lives.”

But Kymlicka responds by asking, I think quite reasonably, whether “multiculturalism really allow[s] activists to “force” or “impose” identities…? How are we to interpret these dramatic claims of “forcing” [and] “imposing”…? If it is meant literally – i.e., that multiculturalism policies would legally empower minority activists to “force” members to accept a simplified identity – then it is simply false.” Of course, Kymlicka is quite correct: although multiculturalism might provide an incentive for some individuals to champion essentialized versions of their cultures, it does not require anyone to adopt these scripts. As he emphasizes, “[l]iberal multiculturalism… supports demands for recognition within liberal-democratic constraints that do not allow for the involuntary ascription of ethnic categories or for the undemocratic imposition of cultural scripts.”

Once we recognize that multiculturalism does not actually force people into cultural scripts, much of the force of the essentialist critique has been blunted. However, I don’t think charges of essentialism are entirely toothless, either. The reason for this is because I think the ‘liberal’ component of ‘liberal multiculturalism’ is almost inherently hostile to essentialized accounts of culture. For instance, it is true that while the

\[169\] Supra note 153, at 24.
\[170\] Supra note 84, at 22.
\[171\] As Kymlicka notes, denying that members of minority cultures retain the ability to choose for themselves whether or not to embrace cultural scripts runs the risk of paternalistically assuming “that while members of the… majority can safely be trusted to engage in democratic persuasion and deliberation about their identities and cultures, members of minority groups are trapped in cultural scripts that pre-empt or override their capacity for autonomy” (supra note 84, at 23 n. 11).
\[172\] Ibid., at 24. (Emphasis added.)
underlying fear that seems to motivate those who charge multiculturalism with essentialism is that members of minorities will take up essentialized cultural scripts, multiculturalism does nothing to guarantee this. However, it is worth taking a minute to examine this fear more closely. Notice, for instance, that the essentialist critique of multiculturalism is not animated solely by the fear that individual members of minority groups may be led to adopt particular essentialized accounts of how they ought to live as a member of their community. Instead, many of multiculturalism’s liberal critics often simply fear that these individuals will embrace an essentialized script of one kind or another. This shows, I think, that liberals are inherently suspicious that holding up particular practices or values as essential to a culture will leave the individual with a narrow, circumscribed identity (or context of choice, one might say). We assume, rightly, I believe, that life within any narrow cultural world generally does violence to individual autonomy, to one’s ability to give expression to one’s talents and curiosities, since we assume that in the modern world few if any cultures will have a narrow, essentialized self-understanding as a result of the free choices of their members.173 In other words, liberals live by the motto ‘different strokes for different folks’, and assume that even within one cultural community there will be many ‘different folks.’ Thus, even if multiculturalism does not impose narrow, essentialized scripts on individuals, if we are right that the sort of liberal multiculturalism defended above creates incentives for minority activists to put forward such scripts, this should concern us, as it can only increase the chances that individuals from minority communities will take them up.

173 This general liberal view, I think, is consistent with, but does not imply, the notion, which I take William Galston to be operating under in his famous essay “Two Concepts of Liberalism” (Ethics, Vol. 105, No. 33 (April 1995), 516-34), that there is a natural diversity of human types that narrow cultures must suppress.
In addition to fears that individuals from minority groups will adopt cultural scripts, providing incentives for the production of these scripts (even if, in the end, they are not widely taken up) is potentially problematic in two other ways. Firstly, if the state continually receives, from certain minority groups’ own spokespeople, essentialized versions of what their cultures consist in, there is a risk that the state’s multiculturalism policies, and the officials charged with implementing them, will come to operate on the basis of overly simplistic understandings of culture. Second, essentialized accounts of minority cultures may be picked up by members of the majority culture, thereby creating or reaffirming in the minds of the majority harmful stereotypes about members of minorities. In either or both of these ways, the result may be a situation in which the agency and autonomy of individuals from minority cultures is denied, and their culture viewed as, to repeat Phillips’s phrase, a “straightjacket.”

Thus, we have three potential problems: the taking up (under duress) of narrow cultural scripts, simplistic understandings of culture on the part of state officials, and stereotyping and prejudice on the part of the majority. How might we avoid these problems? We might be inclined to put an end to experiments in liberal multiculturalism altogether. However, I think this would be rash. I am not convinced on the evidence that current multiculturalist policies as enacted are routinely based on crude and essentialized understandings of culture. After surveying various such policies at work in modern day Britain, for example, Anne Phillips’s recent book concludes that public officials are

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174 Supra note 154, at 14. Phillips laments, for instance “the selective way culture is employed to explain behaviour in non-Western societies or among individuals from racialised minority groups, and the implied contrast with rational, autonomous (Western) individuals, whose actions are presumed to reflect moral judgments, and who can be held individually responsible for those actions and beliefs” (9).
generally operating on a rather sophisticated view of culture and identity. What is more, although there is still little comprehensive data to go on, at this point it looks as if ethnic stereotyping may in fact be less of a problem in countries with multiculturalism policies than it is in those that have not adopted multiculturalism. As such, paradoxically, I think Kymlicka is correct when he argues that, when it comes to our second and third concerns listed above, “strengthening… [liberal multiculturalist] policies is the best remedy. It may be that the best way for public authorities to combat an essentializing public ethos is precisely to more actively diffuse the more complex and sophisticated understandings about multiculturalism that are currently given to the public officials tasked to implement these policies.”

But, even if “the answer to the essentializing risks of a strongly multiculturalist public ethos is not to abandon multiculturalist public policies, but to re-commit to them”, does this alleviate our first concern that multiculturalism provides incentives for minority group activists to pressure their members into adopting an authentic, essentialized cultural identity? Here, unsurprisingly, Kymlicka insists that liberal multiculturalism is again the solution. For instance, Kymlicka argues that “[b]y ensuring respect and recognition for a minority’s identity, multiculturalism policies facilitate minority members adopting dual and complementary identities that bridge to the larger society.”

I think this is an important insight. For example, the species of liberal multiculturalism I am defending, like Kymlicka’s version of liberal multiculturalism, does

175 Ibid., at 112, 144.
177 Supra note 84, at 19.
178 Ibid.
179 Ibid., at 21.
not require minority cultures to be ‘pure’ or ‘authentic’ in order to receive group-
differentiated minority rights. What is inquired into is not the alleged purity of the
culture’s character, but the role of the cultural structure in securing the autonomy of
members, and the costs that would be incurred if that culture were to dissolve. Precisely
because of this fact, members of cultural minorities are not faced with a zero-sum choice
between ‘authentic’ membership in an essentialized minority culture and undifferentiated
citizenship within the majority culture.

In this sense, by giving individuals the option to live out multiple, overlapping
identities, recommitting to liberal multiculturalism can indeed help to ensure that
essentialized cultural scripts are not taken up by members of minority groups.
Furthermore, there will, in the real world, be a number of other factors that will provide
members of minority groups with incentives to cultivate, rather than cut, their ties with
the majority society. These may include, for instance, deep emotional identification with
the wider culture (Kymlicka gives Macedonians’ identifications with Greek culture as an
example here),\(^{180}\) or more practical, self-interested concerns such as the need on the part
of members of minority groups to trade with or work within the dominant culture.

Ultimately, then, while essentialism should be a concern for liberal
multiculturalists, in light of the fact that multiculturalism contains within itself the means
to mitigate its own essentialist effects, and does not actually force people into
essentialized identities, I do not believe essentialism is such an acute danger that it should
cause us, as some critics suggest, to give up multiculturalism entirely – nor, as Phillips
counsels, to “radically overhaul” how it’s currently practiced. However, unlike
Kymlicka’s, the vision of multiculturalism that I defend insists that, since giving national

\(^{180}\) Ibid., at 19-20.
minorities the means to preserve their cultures will almost inevitably entail some 
curtailment of individual liberty in the form of external protections or internal 
restrictions,\textsuperscript{181} we must always ask whether the total costs of preserving a culture 
outweigh the costs of asking its members to integrate into another cultural community (or 
other cultural communities). And, as we have seen, a consequence of this is that my 
liberal multiculturalism has a tendency to reward minority cultures that can prove their 
difference and insularity from the majority culture. Thus, while I share Kymlicka’s 
optimistic belief that liberal multiculturalism is the best medicine for essentialism, my 
optimism in this regard is tinged with ambivalence. That is, unlike Kymlicka, I do not 
offer up multiculturalism’s virtues as a \textit{cure} for essentialism, since I am forced to admit 
that my multiculturalism is at once a cause of the problem and a palliative for it.

\textbf{Unfairness and Exclusion}

Another possibility I wish to explore is that the price of Kymlicka’s 
multiculturalism is too high, all things considered, since his prescriptions for supporting 
national cultures can lead to unfairness towards internal minorities – so-called minorities 
within minorities. This may seem like a rather unpromising line of criticism. After all, 
Kymlicka has been quite clear that the multiculturalism for which he advocates is a 
\textit{liberal} multiculturalism,\textsuperscript{182} one premised on the view “that traditional models of

\textsuperscript{181} To be clear, I believe it is possible, in principle, that all that would be needed to preserve a particular 
minority culture is regional autonomy or some arrangement in which the minority group is devolved 
significant political decision-making power over matters central to its culture, and that this need not involve 
restricting the freedoms of members.

\textsuperscript{182} This can be contrasted, for instance, with what Kymlicka has termed “millet multiculturalism”, after the 
millet system of the Ottoman Empire. Under this form of multiculturalism, Kymlicka writes, Jewish and 
Christian minorities were allowed “not only the freedom to practise their religion, but a more general 
freedom to govern themselves in purely internal matters” (\textit{supra} note 1, at 156). However, notes Kymlicka,
citizenship have been unjust and exclusionary,” and one which “support[s] struggles for the emancipation of historically excluded groups.” However, I think if we consider the way in which ‘traditional models of citizenship’ are exclusionary, we may have reason to worry that Kymlicka’s multicultural citizenship will replicate the injustice.

For example, Kymlicka pulls no punches in his assessment of the notion that the state should be ethnoculturally neutral, and that it should “respond with ‘benign neglect’ to ethnic and national differences,” declaring that “this common view is not only mistaken, but actually incoherent.” Kymlicka, quite plausibly, argues that since “[g]overnment decisions on languages, internal boundaries, public holidays, and state symbols unavoidably involve recognizing, accommodating, and supporting the needs and identities of particular ethnic and national groups”, “the state unavoidably promotes certain cultural identities, and thereby disadvantages others.” According to Kymlicka, when citizenship is undifferentiated, consisting in universal individual rights that are blind to cultural difference, members of national minority cultures are disadvantaged in two specific ways. Firstly, “the viability of their societal cultures may be undermined by economic and political decisions made by the majority,” in the sense that they “could

non-Muslims were not allowed to proselytize, and apostasy and heresy were forbidden (ibid., at 82, 156). Thus, as Kymlicka concludes, while the millet system “was generally humane, tolerant of group differences, and remarkably stable”, “it was not a liberal society, for it did not recognize any principle of individual freedom of conscience” (ibid., at 157; emphasis in original).

183 Supra note 84, at 10.
184 Ibid.
185 Supra note 1, at 108.
186 Ibid. It is worth noting that the unchosen disadvantage faced by members of cultural minorities is particularly worrying for Kymlicka because he is an egalitarian liberal, who, in the Rawlsian and Dworkinian mode, wishes to distribute resources, including cultural resources, in a choice-sensitive and endowment-insensitive manner. (For an explicit discussion of how minority rights can help “rectify” what Kymlicka regards as the unchosen disadvantage that members of cultural minorities face, see supra note 1, at 108-15. For further evidence of Kymlicka’s egalitarian commitments, see his Chapter “Liberal Egalitarianism and Civic Republicanism: Friends or Enemies”, in Politics in the Vernacular, supra note 121, at 327-46.)
187 Supra note 1, at 109.
be outbid or outvoted on resources or policies that are crucial to the survival of their societal cultures.”

Second, although the cultural bias of the public sphere need not mean that individuals from minority groups must lead lives completely disconnected from their cultures, it does result in a situation where “they have to spend their resources on securing the cultural membership which makes sense for their lives, while members of the majority culture get theirs for free.”

Professor Kymlicka’s concern over these instances of cultural disadvantage leads him to advocate carving out politically autonomous sub-units such that viable, territorially concentrated national minorities possess their own sub-unit in which they represent a majority and within which their culture predominates. However, it’s not clear that this sort of solution doesn’t just relocate the problem. As Yael Tamir notes, for instance, it could theoretically create a “Russian doll phenomenon” in which the cultural disadvantage previously faced by national minorities vis-à-vis the majority culture gets displaced onto those sub-societal cultural communities that find themselves minorities within the territory of national minorities.

In order to assess whether Kymlicka’s vision of multiculturalism does, in fact, mistreat internal minorities, this section will ask whether Kymlicka’s recommendation that the state should provide only national minority groups with the self-government rights necessary to ensure secure access to their societal cultures, and his assertion that non-national minorities do not have a right to have their societal cultures consolidated or

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188 Ibid.
189 Kymlicka, Liberalism, Community and Culture (Oxford: Clarendon Press, 1989), at 187. Yael Tamir also points out a further disadvantage in that not only do members of minority cultures have to work to secure their own cultural membership, they face special obstacles in “becom[ing] acquainted with the ruling nation”, since this “demands that they devote time and efforts that members of the majority culture can invest elsewhere” (supra note 59, at 149).
190 Supra note 59, at 158.
recreated, are unfair to non-national minorities. In other words, does not requiring non-societal cultural minorities to integrate into political communities which instantiate foreign cultural commitments violate the autonomy of minority group members? For example, as we saw in Chapter Two, even non-societal cultures are to be valued by liberalism for providing their members with contexts of choice. Further, given that we may value our membership in these smaller affiliations just as highly as we value our national membership, is it not unjust to privilege societal cultures alone? Kymlicka thinks the answer to these questions is no. While I agree with him, I do so for rather different reasons.

Kymlicka, for instance, provides a couple of rationales for drawing a bright line between national minorities and immigrant groups when it comes to determining what sorts of minority rights each should enjoy. Firstly, he argues, I think quite persuasively, that immigrant groups, by and large, neither demand nor desire to have their native societal cultures reproduced on Canadian soil, and that this fact has not changed with the entrenchment of multicultural policies since the 1960s.\(^{191}\) Instead of asking to be treated as homeland minorities like the Québécois or Aboriginal nations, the demand of immigrants is generally a demand for inclusion, and for fairer terms of integration.\(^{192}\) I find this first justification for the differential treatment of immigrants, relative to national minorities, very compelling. If immigrant groups do not even wish for the sort of rights Kymlicka accords to national minorities, who are we to suggest that they should be given these rights (and responsibilities) nonetheless?

\(^{191}\) Supra note 1, at 97-8; Finding Our Way, supra note 121, at 37.
\(^{192}\) See Finding Our Way, supra note 121, at 155.
However, Kymlicka also insists that even if they wish for them, immigrant groups are not entitled to national rights, since through the very act of immigration immigrants have consented to “relinquish some of the rights that go along with their original national membership,” most notably the right to their native societal culture. For three reasons, however, I do not think this argument from consent succeeds. Firstly, Kymlicka notes that the case of refugees is importantly different from that of voluntary immigrants, since the former “did not choose to give up their culture.” In addition, as Kymlicka admits, “[t]he line between involuntary refugees and voluntary immigrants is difficult to draw, especially in a world with massive injustice in the distribution of resources, and with different levels of respect for human rights.” While Kymlicka has done well to concede this difficulty, I think he fails to appreciate how much of an obstacle it really is to his theory that immigrants have consented to “waive” their right “to live and work in their own culture.” As a preliminary matter, for instance, I am skeptical that all instances of voluntarily migration necessarily entail a waiving of one’s rights to one’s original national membership. But even if voluntarily leaving one’s country of origin can be taken as having this effect, if we often can’t even get clear on who has left their culture voluntarily and who is a refugee, then we will not have any firm basis for denying

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193 Supra note 1, at 96.
194 Ibid., at 98.
195 Ibid., at 99
196 Ibid., at 96.
197 It seems this would all depend on the policy of the welcoming state regarding the integration of migrants, and the extent to which these expectations were made clear to individual immigrants. As Kymlicka recognizes, for instance, there are a few groups in Canada, such as the Hutterites, whose members emigrated “voluntarily, but only because of explicit promises from Canadian immigration officials that they would be able to settle as a group and maintain their own social institutions, such as schools” (supra note 1, at 216 n. 23). In these admittedly rare cases, I think we should conclude, as Kymlicka does, that these groups cannot be said “to have chosen to relinquish the claims that go with membership in their cultural community” (ibid.).
that the members of a particular immigrant group have retained rights to their original national membership, including the right to secure access to their native societal culture.

Secondly, even if an individual has consented to give up her culture and integrate into a new one, this does not necessarily mean she should have to do so. For example, while I may consent to removing my Vancouver Canucks hat every time I visit a convenience store run by a Toronto Maple Leafs fan, that’s not reason enough for the shop-keeper to be justified in requiring me to take it off. In other words, just because I expect to have to forego my culture, and am ultimately willing to do so, the state should not automatically feel justified in making me do so. Thus, what is required for Kymlicka’s consent based argument to hold here is the further claim that the state is actually morally entitled to ask the immigrant to forego some of the rights that go along with her original culture and integrate into her new societal culture.¹⁹⁸

Thirdly, it is not clear how the argument that immigrants consent to giving up the culture of the old country applies to second-generation immigrants. For instance, if these people have a strong connection to the culture of their parents’ homeland and wish to see it reproduced as a societal culture in Canada, we clearly cannot dismiss their claims by arguing that they voluntarily broke their ties to this culture through an act of emigration.

In order to justify denying immigrant groups the self-government rights needed to recreate their societal cultures, then, I think we need to move beyond Kymlicka’s consent-based argument. Specifically, echoing the general theme of this paper, we should attempt to weigh the costs of requiring immigrants to forego access to their

¹⁹⁸ Kymlicka’s insistence on what he terms ‘poly-ethnic rights’ can be seen as laying the foundation for just such an argument, as these poly-ethnic rights are expressly designed to ensure that the terms of integration are fair, and that immigration need not entail shedding all of one’s original cultural ties. I discuss Kymlicka’s poly-ethnic rights, and whether they suffice to make the state’s expectation of integration reasonable, below.
original societal cultures against the costs that would have to be incurred in order to reproduce these societal cultures. This is not to say that asking whether an immigrant consented to leaving much of his culture behind is completely unhelpful. Indeed, if someone had a real choice to either stay in their country of birth or emigrate, with the knowledge that the policy of the recipient state was to require immigrants to integrate into their new societal culture, then the fact that that person chose to leave is, I think, strong evidence that they were psychological prepared to integrate. In the result, asking them to forego their original societal culture would not be to demand the sort of personal sacrifice that would be involved if refugees who were literally forced from their homelands were required to integrate into the cultural life of the society which granted them refuge.

Further, on the other side of the ledger, the actual costs of ensuring that an immigrant group could consolidate a societal culture of its own appear to be very high. As Kymlicka puts it, “[t]o maintain a separate societal culture in a modern state is an immensely ambitious and arduous project.”

Drawing on the example of Quebec, Kymlicka writes:

every commentator would agree that ‘la survivance’ in Quebec has depended on a number of very basic conditions: French-language education, not only in childhood but through to higher education; the right to use French not only when dealing with government, but also in day-to-day employment, whether in the public or the private sector; exemption of francophone immigrants from the requirement to learn English to gain citizenship, as well as the right to select, integrate, and naturalize immigrants; and the right not only to a fair share of political power at the federal level, but to self-government, as embodied in a constitutionally defined federal subunit that has the power to make decisions with respect to education, employment, and immigration.

200 Kymlicka notes that “[s]imilar conditions have proven necessary to sustain distinct societal cultures in Puerto Rico, in Flanders, and in Catalonia” (ibid., at 34).
201 Ibid.
Moreover, given that national groups have a historical presence as a viable cultural group within the state, and are generally larger and better resourced than non-national minorities, the latter groups would likely need at least these sorts of guarantees to make their own nation-building projects successful. Thus, it may be that we can rule out recreating societal cultures for ethnic groups simply because these communities would balk at what’s actually required to achieve that end. However, even if a number of sub-societal cultural groups did wish to take on such an arduous project, I submit this is simply asking too much of the state. Not only would it require huge resource expenditures, it would fragment the political community to such an extent that the stability, and thus the very existence, of the multinational state would be deeply imperilled.

Furthermore, as we saw above, in order to maintain a minority societal culture it is not always enough to provide the minority group with the sort of external protections Kymlicka defends. For many reasons, sometimes the lure of the majority culture is so strong that some members of the minority opt to join the larger societal culture, even while they retain the hope that enough of their fellows will remain behind to keep the minority culture going. Thus, as we saw above, preserving a societal culture requires that a critical mass of members remain within it. And, since we cannot actually deny individuals the ability to switch their cultural allegiances, national minorities naturally seek to create members of the nation. In this way, the Quebec government does not

\[\text{\footnotesize 202 Of course, the cultural majority is also very much in the business of nation-building. (For an excellent study of how majority nation-building is often an unnoticed, banal phenomenon in the modern world, see Michael Billig, Banal Nationalism (Thousand Oaks, California: Sage Publications, 1995).) However, since the modern state typically seeks to integrate newcomers into the language and customs of the dominant group, majority nation-building is often conceived of as nation-building simpliciter. Moreover, while minority nation-building may often be a reaction to the way in which majority (or state) nation-building}\]
take away the ability of individual Québécois to choose to integrate into English Canadian society, but rather attempts to make such a choice more or less unthinkable.

We can see this phenomenon at work in Quebec’s requirement that the children of allophones be educated in French public schools. Of course, Quebec nationalists do not insist that the children of allophone immigrants be prevented from learning English. However, they know that since language is so connected to personal identity, those who grow up speaking a particular language will much more easily identify with a culture and public life that is carried out in that language, as opposed to another. In other words, the costs of foregoing one’s native linguistic community and entering a new one are prohibitively high for most people, unless they stand to gain greatly by changing membership – e.g. if the life-options made available to them within a new linguistic community are markedly superior. Therefore, Quebec nationalists concerned with sustaining and perpetuating the Québécois societal culture apprehend that it is crucial to ensure that the ‘native linguistic community’ of the children of allophones is a French one.

Thus, if we wished to allow sub-national ethnic groups to consolidate their own societal cultures, similar measures restricting the ability of members to enjoy public education in the language of their choice would likewise be necessary. Now, I think it is important to admit that denying people the opportunity to attend public schools in the language of their choice does not deprive them of a fundamental right.203 However, from a liberal perspective, the fact that such a policy pays no regard to the desires of the

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children and the parents that it affects makes it far from ideal. What is more, while the Quebec education policy, as I will argue in greater detail below, is itself suspect from a liberal perspective, it is nevertheless true that there are a vast array of economic, educational, and social opportunities available within the French-speaking societal culture of Quebec, and that francophone Quebecers are no longer systematically economically disadvantaged relative to anglophone Quebecers (as they were before the Quiet Revolution). Thus a life led solely within the Québécois societal culture may be just as autonomous, in the sense of being chosen from among an adequate range of meaningful options, as a life led entirely within English Canadian society.

The picture is less rosy in the case of immigrant societal cultures, however. For instance, even if we take societal cultures as by definition possessed of a broad range of institutions, immigrant group societal cultures appear destined to remain narrower than the majority culture. Due simply to its size, there will generally be more opportunities available within the majority culture than within a minority culture. Consequently, there will almost always be pressures on members of minority societal cultures to learn the language of the majority culture in order to increase their economic prospects. And, while requiring that children within the Vietnamese community in Vancouver, say, receive grade-school education in Vietnamese does not prevent these children from also learning English, it does differentially burden them, in that they have to learn English on their own time, after expending the time and energy required to complete their classes in Vietnamese. This is unfair to members of the Vietnamese community because it hurts

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204 We might say, then, that as with the negative effects of communal ownership of reserve land on the ability of individual Aboriginals to borrow money, even if we were inclined to believe that Quebec’s education policy “is not a violation of a basic civil or political right, it is a significant restriction on the liberty of individual members” (Kymlicka, supra note 1, at 41).

their economic prospects, in the sense that they are forced to pay a premium to take advantage of economic opportunities that are available within the English-speaking societal culture and which are not present to anything like the same extent in their nascent Vietnamese societal culture.\(^{206}\)\(^{207}\)

In the final analysis, then, Kymlicka’s liberal multiculturalism does not appear guilty of unfairness to internal minorities simply by virtue of denying them something that it accords to national minorities – namely, secure access to their societal cultures. Instead, given the costs both the state and individual members of immigrant groups would be forced to pay in order to have immigrant societal cultures recreated within their new homelands, it seems fair that immigrant minority groups are asked to integrate into the societal culture of the political community in which they live.

Or does it? The answer, it seems, is: it depends. That is, it depends on what sort of community they are being asked to integrate into to. For instance, Kymlicka’s multiculturalism is premised on the idea, which I accept, that traditional models of undifferentiated citizenship place unfair demands on members of minority cultures by asking them to assimilate into the cultural life of the dominant group. Put slightly differently, Kymlicka appears to believe that while modern, industrialized nation-states generally see the value in ensuring that their citizens have access to a range of meaningful

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\(^{206}\) If, on the other hand, it is part of Kymlicka’s definition of “societal cultures” that they each provide a roughly equal range of economic opportunities to their members, then I submit that a Vietnamese societal culture in Vancouver that was a functional alternative to English Canadian societal culture simply could not arise without the aid of restrictions on the ability of members to integrate into the wider English-speaking culture – restrictions that would unfairly limit their life prospects. That is, even if the end product is, by hypothesis, a vibrant and capacious Vietnamese societal culture, given the greater opportunities the established English Canadian societal culture would provide as compared with any nascent immigrant societal culture, the means to this end will, initially, involve exactly the sort of unfairness we noticed above in policies requiring that the public schooling of children take place in Vietnamese.

\(^{207}\) This is not even to mention the thorny problem of deciding which Vancouverites must attend Vietnamese-language public schools (an issue which is likely to be less problematic in the case of a long-established, territorially defined minority like the Québécois – although, of course, even here decisions as to who should be exempt from the requirement to attend French-language schools is hotly controversial).
life-options, “the traditional way in which [the liberal state] ha[s] sought to ensure such access is through nation-building policies that integrate all of its citizens into a societal culture based on the majority's language and culture.”

This is unjust, Kymlicka adds, in two main ways. First, it denies national minorities their legitimate expectations to secure access to their own societal cultures. Second, these nation-building efforts have, in practice, typically required non-national minorities to shed virtually all of their cultural particularity in order to be recognized as full members of their new national communities.

Now, as we saw above, Kymlicka may be too quick in asserting that all national minorities have, almost *a priori*, a reasonable expectation of access to their own societal cultures. However, I do not wish to quarrel with his assertion that traditional modes of integrating non-national ethnic minorities (as well as, for that matter, many national minority groups) – i.e. requiring them to extensively assimilate into the cultural life of the majority – are unjust. Rather, I want to ask whether Kymlicka’s favoured multicultural policies do anything to remedy the injustice. For instance, it is clear that by according self-government rights to national minorities, Kymlicka’s multiculturalism addresses the first of the two concerns enumerated in the last paragraph. However, it is worth asking whether this ‘solution’ merely replaces a situation in which the state engages in ‘nation-building policies that integrate all of its citizens into a societal culture based on the majority's language and culture,’ with one in which each national minority group which represents a majority within a federal sub-unit does likewise. In other words, multicultural accomodations in favour of national minorities might cause a change in

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terms of which cultural community newcomers will have to assimilate into, while leaving
the underlying injustice – that is, the fact that they are made to assimilate at all –
untouched. Joseph Carens, for one, seems to have something like this in mind when he
argues that the “deepest problem – and greatest irony – of Kymlicka’s concept of societal
culture is that it is much better suited to a monocultural conception of citizenship than to
a multicultural one,”\(^\text{210}\) and that Kymlicka’s multiculturalism thus ultimately “reproduces
rather than challenges the logic of the nation-state.”\(^\text{211}\)

To be fair, however, Kymlicka is quite aware that granting autonomy to national
minorities does not, in itself, preclude them from demanding the assimilation of their
internal ethnic minorities. Indeed, Kymlicka can be seen to level a powerful challenge to
the “old logic of the nation-state”\(^\text{212}\) when he emphatically renounces the “‘Anglo-
conformity’ model” of immigration and integration (by which Western ‘immigrant
nations’ such as Canada, the U.S.A., and Australia were historically built), on the grounds
that its explicit assumptions that immigrants “should abandon all aspects of their ethnic
heritage and assimilate to existing cultural norms and customs”\(^\text{213}\) were profoundly unfair.
Further, Kymlicka seeks to ensure the fairest possible terms of integration for non-
national minorities by insisting on rigorous adherence to the “common rights of
citizenship”\(^\text{214}\) (which he takes to include “positive steps… to root out discrimination and
prejudice, particularly against visible minorities”\(^\text{215}\)), and on “changes to the education
curriculum to recognize the history and contribution of minorities.”\(^\text{216}\) In addition,

\(^\text{210}\) Supra note 11, at 65. (Emphasis in original.)
\(^\text{211}\) Ibid.
\(^\text{212}\) Ibid., at 66.
\(^\text{213}\) Kymlicka, supra note 1, at 30.
\(^\text{214}\) Ibid., at 31.
\(^\text{215}\) Ibid., at 30-31.
\(^\text{216}\) Ibid., at 31.
Kymlicka goes a step further and advocates for a form of group-differentiated citizenship rights for immigrants that he calls “poly-ethnic rights,”\textsuperscript{217} which he argues are needed, over and above basic common citizenship rights, to ensure that the integration of immigrants occurs on fair terms. Examples of such group-specific measures include public funding of minority cultural practices and festivals, “the provision of immigrant language education in schools,”\textsuperscript{218} and “exemptions from laws and regulations that disadvantage [ethnic minorities], given their religious practices, such as Sunday closing legislation or occupational dress-codes.”\textsuperscript{219} What unites these disparate sets of measures, says Kymlicka, is that they “are intended to help ethnic groups and religious minorities express their cultural particularity and pride without it hampering their success in the economic and political institutions of the dominant society.”\textsuperscript{220}

I think Kymlicka’s support for poly-ethnic rights is entirely appropriate, since I believe, with Kymlicka, that these sorts of multicultural accommodations are required to alleviate the injustice that occurs when non-national minorities are forced to shed the trappings of their cultural heritage in order to successfully integrate into the dominant societal culture. Thus, although the societal cultures into which immigrants seek integration remain, importantly, \textit{national} cultures, since integration must take place within the bounds set by the common rights of citizenship and by poly-ethnic rights, the concern that Kymlicka’s societal cultures will exclude, or exhibit unfairness towards, members of internal minority cultures appears seriously blunted.

\textsuperscript{217} Ibid., at 30.
\textsuperscript{218} Ibid., at 31.
\textsuperscript{219} Ibid.
\textsuperscript{220} Ibid.
However, I don’t think this concern over unfairness towards internal minorities is completely answered merely by insisting on poly-ethnic rights (coupled with rigorous enforcement of universal citizenship rights). For example, I spilled considerable ink above in an attempt to show that we should not assume that all national minorities are entitled to societal cultures of their own. Instead, I claimed that the question of whether a given minority nation ought to be accorded the means to preserve their own societal culture can only be answered after a contextual examination into the actual costs that would be involved in either embarking on or rejecting such a project – costs such as those the state would have to incur (in terms of both resource expenditures and the potential destabilizing of the polity) in according rights of self-government, and costs that would be paid by individuals, such as the costs of foregoing the ability to live and work in one’s culture, as well as certain limitations on one’s freedom of choice (such as are occasioned by Quebec’s commercial sign laws and education policy) that may be necessary to ensure the continued viability of the societal culture. The reason that I have such an affinity for Kymlicka’s poly-ethnic rights, then, is because, in allowing ethnic and religious minorities to retain aspects of their cherished cultural identities and taking proactive measures to ensure that individuals from minority groups have full access to the societal culture, these group-specific rights directly help to lower the costs (psychological, social, economic, etc.) of integration.

By contrast, however, the reason I fear that Kymlicka’s account of national minority societal cultures could still cause unfairness towards internal minorities, despite Kymlicka’s laudable insistence on poly-ethnic rights, is that, as we saw above, preserving societal cultures (at least where the societal culture is that of a national group that is a minority within the wider state) can positively require nation-building efforts designed to
ensure that the costs associated with an individual member’s decision to ‘defect’ and leave the community are prohibitively high. In short, while poly-ethnic rights help to ensure that the costs to newcomers of *joining* the societal culture are rather low, the very survival of that cultural community as a going concern may require ensuring that the costs of *leaving* it are quite high.

**More on Unfairness and Exclusion: A Trip to Quebec**

Two points here need further explanation. Firstly, why is it that we should be worried about the fact that societal cultures need to stack the deck against exit, as it were? After all, on reflection, it seems that all kinds of associations of individuals (be they states, ethno-cultural groups, religious communities, trade unions, or even the institution of marriage) actively attempt to discourage members from exiting, and it’s not clear that there is anything illegitimate about this. Second, if the sorts of nation-building projects required to preserve the societal culture from desuetude are designed to make exit from the cultural community virtually unthinkable for all members, how does safeguarding the societal culture cause unfairness to internal minorities in particular?

On the first question, it does seem clear, to me at least, that there is nothing *per se* illegitimate about groups of all sorts actively working to ensure that members look upon exit (if they look upon it at all) as a costly option. Feelings of comaraderie, empathy, and even love for one’s fellows, for instance, all appear to be the sort of associative ties that can serve as legitimate, and particularly effective, exit barriers. Thus, placing groups

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221 For example, when Jacob Levy writes that “everything about a culture is an exit barrier” (*supra* note 10, at 112) he does so without any trace of regret or disapproval; perhaps we ought to see the matter in this same light.
under some sort of moral obligation not to cultivate these bonds between members would be to snuff out the very thing that makes associations of individuals valuable, from the point of view of human well-being, in the first place. On the other hand, of course, some efforts designed to preserve a critical mass of group members will be illegitimate: physical violence or coercion and brainwashing, for example, are clearly unjustifiable. What we need to do, then, is get clear on what sort of measures, designed to make exit appear as a costly option to members, are actually employed by national minority groups, and decide whether these are more akin to fostering bonds of empathy, or to physical intimidation.

So as not to hold reader in suspense, I’ll admit at the outset that I believe the sorts of nation-building policies currently utilized by national minorities in most Western democracies tend to fall closer to the more innocuous end of the continuum. However, taking Quebec as an example (both because it is the case I know the most about and because it is widely regarded as a paragon of liberal minority nationalism), some of the measures that Québécois nationalists have regarded as essential to la survivance are not without coercive elements. As we saw above, in focussing on the (in)famous examples of Quebec’s policies regarding commercial signage and the language of public education, Kymlicka himself conceded that these measures may in fact be illiberal. Let me go one step further and provide a quick argument (using Kymlickian language that we became familiar with above) for why I believe they are, if not outright illiberal, then, at the very least, significant ‘deviations from liberal norms.’

222 In addition, I take it as a given that draconian measures designed to forge a national identity, such as physically preventing individuals from leaving the nation’s homeland, are ruled out by any version of liberal multiculturalism worthy of the name.
Firstly, Quebec’s sign laws represent a substantial deviation from liberal ideals in that they restrict the right of shopkeepers in Quebec to express themselves in the language of their choice. As one commentator characterizes the situation, “the legislation restricts expression by limiting the medium of expression in certain contexts of signage to a particular language. These restrictions would seem to be internal restrictions of the sort Kymlicka’s theory would try to rule out.”

Now, it must be admitted that not all limitations on expression are illiberal. It is completely in keeping with liberalism, for instance, for the state to restrict the ability of its citizens to shout ‘fire’ in a crowded theatre when there is no fire. But, as the Supreme Court of Canada’s landmark decision in the case of *Irwin Toy Ltd. v. Quebec (Attorney General)* tells us, this is because the Constitution’s guarantees of free expression are designed to promote certain values that free speech is widely believed to further – values such as “seeking and attaining the truth”, “participation in the community”, or “individual self-fulfillment and human flourishing.”

Thus, yelling ‘fire’ in a crowded building is not the sort of speech that a liberal democracy should be committed to protecting, since it furthers none of the three values just listed. That is, if the state criminalizes such expression it is not limiting its citizens’ rights of free speech at all, but rather merely properly delimiting that right. Further, while most would agree that commercial expression does not go to the core of free speech

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223 Newman, supra note 111, at 66. It may seem incongruous to examine Quebec’s sign laws in the context of a discussion about discouraging exit from a cultural community. For example, a clear result of Quebec’s language policy was to spur the flight of anglophones from Montreal in the 1970s. However, I believe Quebec’s language laws are effective exit barriers because they serve to ensure that the cultural life in which Quebecers are socialized is less influenced by English, and more dominated by French, than it otherwise would be. Looked at in this way, the fact that Quebec’s language laws, in driving thousands of unilingual Anglophones from Montreal to Toronto, actually encouraged the exit of numerous Quebecers, does not change the reality that the laws have served to make exit a more costly option for those, predominantly francophone, Quebecers who remained. And, of course, it may be that it is this latter group of Quebecers, as opposed to the former, whose ‘defection’ to English Canadian culture would most jeopardize the long-term vitality of the Québécois societal culture.


225 Ibid., at para. 54 [cited to S.C.R.].
guarantees in the way that the ability to freely express one’s political views is widely thought to, allowing shopkeepers in Quebec to express themselves in the language of their choice could, arguably, still serve each of the three “values underlying the vigilant protection of free expression” identified by the Supreme Court. In other words, the Quebec restrictions on such expression do limit a right individuals would ordinarily have in a liberal democracy. As one commentator observes, for instance, were it not for the supposedly existential threat English poses to Québécois culture, “nobody would defend restrictions on the language of expression in commercial signage,” just as nobody (or at any rate, very few) appear moved to do so in Saskatchewan, for example. What this points to is that the Quebec government could only justify its policies regarding commercial signage if the infringement of the free speech rights of Quebec shopkeepers that these policies undoubtedly represent is outweighed by some other value that the policies bring about (which, in this case, of course, is alleged to be the preservation of Quebec as a distinct society). That is, while it may be that Quebec’s sign laws are necessary evils, this still makes them, from the point of view of liberalism, evils.

When it comes to Quebec’s policy of allowing access to publicly-funded education in English only to those children with at least one parent who was educated in English in Canada, I do not think we are dealing with a limitation of a fundamental

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226 Ibid.
227 As a unanimous Court held in Ford v. Quebec (Attorney General), [1988] 2 S.C.R. 712, 54 D.L.R. (4th) 577, at para. 59 [cited to S.C.R.]: “Over and above its intrinsic value as expression, commercial expression which, as has been pointed out, protects listeners as well as speakers, plays a significant role in enabling individuals to make informed economic choices, an important aspect of individual self-fulfillment and personal autonomy. The Court accordingly rejects the view that commercial expression serves no individual or societal value in a free and democratic society and for this reason is undeserving of any constitutional protection.”
228 Newman, supra note 111, at 66.
229 The question of whether this goal in fact justifies Quebec’s language laws will be addressed in detail below.
230 This is a simplistic, although I think not an unhelpful, summary of Quebec’s policy regarding the availability of English-language education. There do exist, for instance, special exceptions granted in
individual right like that to free expression. However, by ruling out, from the outset, any possibility that allophone or francophone children who do not qualify for an exception to Quebec’s Bill 101 could receive public schooling in a language other than French, the Quebec government has simply ordained that when it comes to determining which children can attend English-language public schools, it will pay no heed to the actual desire of individual parents or children. As such, viewed against the backdrop of education policy in the other provinces, Quebec’s language laws are uniquely, and fundamentally, undemocratic. As one commentator writes: “if enough parents in Vancouver wanted their children to be educated in Japanese immersion programmes in public schools so as to gain advantages in developing future trading relationships with Japan, they would normally be free to propose this. The Quebec legislation rules out ab initio a request for education in a particular language that might offer certain economic benefits.”

Thus, as far as allophones and their children are concerned, current education policy in Quebec has made the ‘French fact’ an almost unalterable bottom line, and one whose invocation precludes the ability of these Quebecers to exercise free choice in education.

I think we can see, then, that these two aspects of Quebec’s language laws involve a significant deviation from liberal ideals, since they fail to respect the autonomous choices of individual Quebecers. I want, however, to make the slightly larger claim that, favour of First Nation children and temporary residents of Quebec. See The Charter of the French Language, Government of Quebec, <http://www.olf.gouv.qc.ca/english/charter/>.

Moreover, while it is, of course, possible that the government of Quebec could repeal Bill 101, given that the whole thrust of the legislation is to socialize the majority of Quebecers into a French societal culture, so that ‘defecting’ to English becomes unthinkable (such that, by the time children of allophone immigrants, for example, attain voting age, they will likely be far more comfortable living and working in French than in English), and given that the Quebec government insists on being able to select immigrants, it appears that those most likely to advocate for substantial changes to Quebec’s language laws will remain a legislative minority well into the future.

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for the same reason, the underlying logic of Quebec’s language laws (which, of course, finds expression in the two particular sets of policies we have just focused on) itself represents a deviation from liberal norms. I take it, for instance, that, since the 1970s, “[o]ne of the main goals of Quebec government language policy was to ensure a preeminent position for French in Quebec society.”233 My argument, then, is that this rationale of perpetuating Quebec’s francophone visage – of insisting that the ‘French fact’ is to be viewed not only as an empirical reality in the here and now, but also a permanent, non-negotiable ideal that defines Quebec – is actually inherently illiberal.

The reason that this legislative objective is illiberal is precisely because it removes individual choice from the equation, in the sense that it takes Quebec’s visage linguistique off the table and beyond the reach of democratic contestation. ‘Our society can and should grow and change, as it did during the Quiet Revolution,’ Quebec nationalists appear to be saying, ‘but it will never, and must never, outgrow its francophone heritage.’

I think it is necessary to deal with two potential criticisms of this very quick characterization of Quebec’s language laws as significant deviations from liberal norms of individual choice and democratic contestation. The first objection suggests that it is not illiberal for a state to attempt to give permanent pride of place to a particular language, or, at any rate, that even if this may be illiberal it is unavoidable. The second criticism, by contrast, admits that the motivation behind Quebec’s language laws is illiberal, but suggests that this is, in the end, no great failing, and that the policies are justifiable nonetheless. Turning to the first potential objection, the critic may insist that having one common language (or perhaps two) is a functional requirement of all modern states with capitalist, post-industrial economies, and that in order to achieve this end the

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233 Québec Since 1930, supra note 205, at 445.
state will inevitably be required to privilege that language (or those languages). This sort of state privileging of languages, it could be argued, can take place quite self-consciously, as in the case of linguistic minorities such as Quebec, but can also occur in more banal and unnoticed ways, for example through such ostensibly apolitical decisions as those governments will inevitably have to make on issues such as which language(s) to use in Parliamentary proceedings, courts, and public ceremonies, and on street signs, currency, and public buildings. As Kymlicka has written, for instance, “[t]he state can… replace religious oaths in court with secular oaths, but it cannot replace the use of English in courts with no language.”

Now, I do not want to deny that whichever language is chosen as the common language of the state is privileged in myriad ways relative to all others; this seems clear, and inevitable. What does not seem inevitable, however, is that whichever language currently enjoys the status of the common state language must forever remain in this privileged position. For instance, it may be that the practical effects of establishing a given language as the regnant language of the community, combined with the countless ways in which the language’s privileged position is reinforced daily as both citizens and state unreflectively communicate within it, means that prospects of, say, English being supplanted by another language as the dominant language of English Canada or the United States seem exceedingly remote in the medium-term. But, the point is that this is at least a possibility in these two political communities, whereas, given Quebec’s current...

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234 Supra note 1, at 111.
235 Indeed, the very fact that when we wish to speak of all of Canada excluding Quebec we refer to ‘English Canada’ is itself evidence that we feel quite confident that these two communities will remain identifiable in light of their respective linguistic characters for some time to come.
language laws, its French visage is a non-negotiable given, irrespective of the interests some of its citizens may have in challenging this fact.

Thus, I think the English Canadian position of not setting in stone a particular language as the permanent language of the community is normatively preferrable, since this enables the state to respond to the desire of its members to democratically alter the status quo, should this be their wish (even if in actual fact English’s continued hegemony seems all but assured). In case this strikes the reader as a distinction without a difference, I think it is important to note that toppling the dominant language of a political community from its place of honour is more than a mere conceptual possibility. Successive Quebec governments, of course, have supported restrictive language laws precisely because they are operating on the empirically plausible assumption that the French language is under threat in that province, and that state support of la langue française is required to shore up its status as the working language of Quebec. This shows, I think, that the sorts of factors that could serve to undermine the dominant language of a political community are not all that uncommon or unusual. In fact, they include such mundane pressures as changing demographics within the community, or the fact that those who become fluent in a rival language enjoy improved economic prospects. But if members of the community wish to challenge the position of the community’s dominant language for these sorts of mundane reasons, this appears, from

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236 Of course, it may be that what I call the ‘English Canadian position’ would only be adopted where a community has the luxury of knowing that its dominant language will remain dominant even if this is not insisted upon by law. Furthermore, it may be argued that English Canada would in fact take preventative measures comparable to those in effect in Quebec if the status of the English language were threatened with decline. What I am arguing is that liberal norms dictate that governments should, in principle, be open to the possibility that the free choices of their citizens will undermine the hegemony of the dominant language.

237 As evidence of this reality, consider the insistence on the part of the government of Quebec that it be able to exercise control over selecting immigrants to the province, including by favouring francophone applicants.
the perspective of democratic theory, perfectly valid. Indeed, where citizens ask that their children enjoy public schooling in the non-dominant language for such unremarkable and understandable reasons as these, a government that categorically refuses to consider their claim would seem to stray a rather considerable distance from the liberal democratic ideal.

At this point, just before turning to examine the possibility that Quebec’s language laws may be \emph{justifiable} deviations from liberal norms, let us return briefly to address the question, raised above, of how these measures (some of which, like Bill 101’s provisions on commercial signage, apply to virtually all Quebecers) cause unfairness to internal minorities in particular. On this score, I think it is reasonable to assume that, relative to members of the francophone majority, members of the anglophone and allophone minorities within Quebec will, proportionately, be more greatly impacted by language policies that restrict their ability to work and learn in languages other than French. The reason for this is the simple fact that, as a general matter, proportionately fewer francophone Quebecers will wish to send their children to non-French schools or put up English only signs.\footnote{I do not mean to suggest that this is somehow necessarily true. It is possible, for instance, that members of a less prosperous linguistic majority could in fact be more desirous that their children be educated in the language of a thriving linguistic minority than parents within an allophone minority would be, if the latter group of parents felt confident in their children’s ability to develop fluency in the minority tongue despite attending schooling in the majority’s language. Nevertheless, I think it is safe to say that in Quebec today francophone parents who would opt to send their children to English-language public schools if they could do so, while certainly not few, are proportionately fewer than the number of allophone parents that would make such a decision.} However, it should not be forgotten that “Quebec’s Bill 101 coerces anglophones and francophones alike, in large part to prevent defection by francophones to English.”\footnote{Levy, \textit{supra} note 10, at 118, paraphrasing Pierre Coulombe, \textit{Language Rights in French Canada} (New York: Peter Lang Publishing, 1995) at 123.} Consequently, I would submit that the liberal should be concerned by Quebec’s language policies chiefly because of the way in which they coerce
Quebecers – anglophone, francophone, and allophone – and only secondarily because they can be expected to disproportionately disadvantage Quebec’s linguistic minority communities.

This brings us to a second possible objection to my characterization of the objective of Quebec’s language laws as illiberal. Specifically, the critic could simply concede the point but argue that nothing much follows from it, and that the laws might be justifiable nonetheless. For instance, even if it’s true that Quebec’s language policies illiberally preclude Quebecers from altering the linguistic landscape of their community, it seems clear that Quebecers still live in what is, overall, a very liberal political community. That is, even if they do not have any real option to change the French fact, they still enjoy a wide range of other options of the sort that generally are of more concern to liberals (e.g. what political and religious views to adopt, where to live, which occupations to take up, whether to pursue higher educational opportunities, how to dress, dance and eat, etc.).

I think all this is true, and thus it would be farcical for anyone who is truly concerned with liberalizing illiberal groups to hold out Quebec as the community most in need of change; there are, unfortunately, much, much bigger fish to fry in our world. However, none of this, it seems to me, means that we should accept Quebec’s restrictive language laws. That is, even if Quebec’s language police are worlds apart from Orwell’s Thought Police – and although what some English Quebecers derisively refer to as “tongue troopers” will never take on anything like the truly sinister aspect of Hitler’s stormtroopers – if the province’s language policies are admitted to amount to deviations

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240 A community that, according to Kymlicka, for instance, “is today the most liberal society in North America” (supra note 84, at 12).
from liberal norms, liberals are at least entitled to ask whether these deviations could not and should not be avoided.

Thus, it may be that Quebec has no choice but to employ relatively illiberal language laws. But here again the liberal should ask how this situation came about, whether it could have been avoided, and how it might be undone. That is, even if we assume that Quebec’s Bill 101 is a necessary evil in today’s Canada, we may still wish to ask, as the following chapter of this essay seeks to, whether such prima facie illiberal means of preserving minority societal cultures will always be necessary evils in modern liberal democracies.

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241 The question of whether we are entitled to make this assumption about the necessity of Quebec’s language laws (from the perspective of liberalism’s concern for autonomy) in contemporary Canada will be taken up directly in Chapter 7.
CHAPTER SIX:

AN ALTERNATIVE VISION OF NATIONHOOD

To summarize, we have seen that Kymlicka is correct in asserting that traditional models of nation-building, which require cultural minority groups to integrate into the cultural life of the majority, are unfair, since they impose unchosen disadvantages on members of minority cultures. However, having found that Kymlicka’s alternative recommendation of granting all viable minority societal cultures the means to sustain themselves could involve countenancing rather coercive internal restrictions, it is worth asking if there might not be a third way. That is, I wish to explore whether we could strive towards the creation of a culturally inclusive national identity, such that the liberal state, without simply granting self-government and language rights to all national minorities as such, could nonetheless avoid unfairly demanding that members of cultural minorities integrate into a public life steeped in the majority’s culture.

This chapter of the essay thus builds upon the last, in that it asks whether it might be possible to avoid a situation in which national minority groups are forced, in order to preserve the vitality of their cultural structures, to utilize their powers of self-government to implement illiberal restrictions against their members. Obviously, the most effective way of avoiding this sort of scenario would be to deny self-government to national minorities in the first place.\(^{242}\) Now, this may seem like an unacceptable solution, since,

\(^{242}\) My examination of an alternative vision of national identity in this chapter does not assume that it would be desirable to require all citizens’ integration into the national identity of a unitary Canadian state. In other words, in a country as vast and geographically diverse as Canada, it seems to be desirable to maintain some sort of federal system characterized by a regional devolution of political decision-making powers. What I wish to explore, however, is the possibility that granting self-government to minority nations as such could be avoided, so as to forestall the need for illiberal measures to be used by these minority groups in
as we saw above, it may be entirely appropriate, from a liberal perspective, to devolve political autonomy to a national minority where the costs of doing so would be outweighed by the costs members of the minority would have to bear if self-government rights were not granted and their culture were to decay. Further, we saw that since the nation-building projects of national minority groups can often be seen as a response to the majority group’s own explicitly cultural nation-building efforts, demanding that members of national minorities forego their own cultures and integrate into the majority’s societal culture can be profoundly unfair. All that this points to, however, is that if we are to deny self-government to national minorities as such, we must be able to guarantee that the larger, cross-cultural multinational identity in which their members would be immersed would be so culturally inclusive that requiring their integration would not involve compelling them to undergo significant personal hardship. That is, we would have to guarantee that the personal costs of integration for members of these minority cultures would be so low as to be less worrying, for the liberal, than the costs (measured in the restriction of individual liberty) of measures such as Bill 101 that may well be necessary to preserve a minority societal culture in the face of the nation-building efforts of the surrounding majority culture.

So, could we ever be in a position to offer these sorts of guarantees? In order to address this question, I wish to explore a vision of nationalism that need not hold up any aspect of a political community’s culture – not even language – as a non-negotiable given which defines the community and is impervious to change in response to the will of members. To put my efforts at developing a less ‘culturalist’ (if you will) vision of order to preserve their distinct cultural life from the assimilative pressures of the majority’s rival national culture.
nationhood in context, consider that liberal nationalists like Kymlicka and Yael Tamir, recognizing both the inherent dangers of ethnic nationalism and the reality that “nationalism will simply not go away”,243 believe “[t]he way to confront ethnocentric nationalism is not to suggest that national interests should be denied altogether, but to offer an alternative national view.”244 Since I too accept that nationalism will not simply fade away, but at the same time harbour misgivings about the potential illiberality and unfairness that I see as inherent in not just ethnic but also thickly cultural nationalisms, such as that embodied by Quebec, the vision of civic nationalism that I proffer below can be seen as my attempt to offer, as it were, an alternative to the liberal nationalist alternative.

The sort I civic nationalism that I have in mind borrows very heavily from the work of Canadian legal scholar Jeremy Webber. Specifically, the species of civic nationalism plumped for by Webber, and whose prospects I wish to evaluate in much of the remainder of this essay, takes the view that our national identity inheres in, and just is, the contours of our particular political community’s “public debate through time.”245 In other words, if we are asked what makes ‘us’ a nation, a satisfactory reply, according to Webber, will involve stressing a shared commitment to a particular ongoing debate that takes place among citizens living within our borders. What unites us as members, then, is our commitment to this debate, to the well-being of this political community; our national ties aren’t ethnic or thickly cultural, they’re bonds formed through the give and take of

243 Tamir, supra note 59, at 167.
244 Ibid.
political participation and argument, they accrue over time, and they’re expressed in the common terms, or vernacular, in which we debate and participate.

Now, this vernacular will be distinctively ours, just as the overall debate is ours, in the sense that it centres on the fate of this political community and the proper understanding of its history and fundamental values. As Webber puts it, our national conversation will “have a particular flavour” with which citizens will come to relate, and which will distinguish our particular debate from those of other countries. Indeed, taking Canadian history as a guide, at its earlier stages the debate will likely be the product of the particular history and culture of the dominant group within the territory. Of course, avoiding this sort of unfair cultural bias is exactly what motivated us to explore Webber’s alternative view of nationalism. However, the national debate does not have to remain captive to the cultural particularity of the dominant group. Instead, we should take pains as society pluralizes to ensure that the debate’s terms do not exclude those with different histories and cultures. And, since the precise contours of the debate at any point in time are not fixed, but merely provisional, there is room for the debate to grow in ever more inclusive directions. Furthermore, the fact that what we are talking about is, after all, a public debate, means that it invites those who feel that their voices are not being given enough weight to raise these concerns with their fellows and seek to change the status quo.

246 We can see then, that this vision of nationhood “at least to some extent has to rely on already existing political units: it is not a free-standing theory of political boundary-formation, and therefore does not answer questions about political self-determination which rival theories like liberal nationalism might well be in a position to answer (even if those answers turn out to be unsatisfactory, from a normative and practical point of view)” (Jan-Werner Müller, Constitutional Patriotism (Princeton: Princeton University Press, 2007), at 48). As Müller goes on to note, “In this regard, one might say, it shares a weakness of liberal thought more generally, that of, by and large, taking for granted existing bounded political space” (67-8).

247 Supra note 245, at 192.
It seems true, however, that, as Webber insists, “[a] small core of shared values is vital to the health of a democratic order.” In this sense, some fundamental principles (Webber gives freedom of religion and “the rights of a person accused of a crime” as examples) are taken as givens. Does this not constitute a ‘deviation from liberal norms’ in the same way that Quebec’s language laws do? The answer, I think, must be no, since the sort of “general, stable, relatively uncontroversial principles” Webber suggests democratic national debates must be built upon are exactly what is necessary for a liberal polity to exist in the first place. Kymlicka, for instance, mounts a particularly compelling argument on this score in Politics in the Vernacular. There, Kymlicka makes an important distinction between a liberal nationalism that seeks to “increase the likelihood that citizens will fulfill their obligations of justice” to other citizens, and one whose nation-building projects “promote a particular conception of the good life.” According to Kymlicka, since “people are more likely to make sacrifices for others if these others are viewed as ‘one of us,’” promoting a thin form of national identity “strengthens the sense of mutual obligation needed to sustain liberal justice.” In other words, not only is the promotion of this sort of national identity permissible under liberalism, it may be positively required by it, and it does not violate liberal neutrality since the identity that is being promoted “is not grounded in a particular conception of the

248 Ibid., at 185.
249 Ibid., at 192.
250 Ibid.
251 Supra note 121, at 334.
252 Ibid.
253 Ibid.
good,” nor is the state, in promoting it, “saying that a life with this particular identity is more rewarding than a life with some other identity.”

Now, I think Kymlicka is quite correct that the traditional way in which modern states attempt to integrate their populations into a common national culture can be unfairly exclusive to members of minority nations (although I contended that Kymlicka, in failing to look into the actual costs of such national integration for both the state and specific individuals, too quickly assumes that requiring such integration is always unjustified). However, these traditional nation-building projects usually have an explicitly cultural component which renders them ‘thicker’ than the species of civic nationalism I am defending. The question, then, is, if multi-national states were to define their national identity with reference solely to the contours of their particular ongoing public debate, in the process denying that national minorities are, as such, entitled to rights of self-government, would requiring all citizens to integrate into a pan-state national identity be rendered innocuous, or even desirable? Put slightly differently, without devolving self-government powers to specific minority groups, might it nonetheless be possible to make the country’s public sphere culturally thin enough that all citizens could live within it without being excluded or unfairly asked to give up their cultural particularity?

I must admit that I am not confident I have the answer to this hypothetical question. However, I do wish to suggest that Kymlicka is a little too quick in asserting a negative response. For example, he appears to take the question as settled (in the negative) by the mere fact that, as he puts it, “[t]he idea of responding to cultural

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254 Ibid.
255 Ibid. The question of whether promoting a particular linguistic identity is also necessary to ensure that citizens meet their obligations of justice will be addressed below.
differences with ‘benign neglect’ makes no sense.”256 The reason I feel this is too quick is because affirming the impossibility of complete state neutrality on matters of culture does not actually address the question of whether the (allegedly inevitably) culturally partial decisions of the state in fact unfairly disadvantage members of ethnic and cultural minorities. Now, it might be thought that any sort of cultural particularity on the part of the state which tends to support “the needs and identities of particular … national groups”257 thereby unfairly excludes members of all other groups. But I do not believe this follows, and, from what I can tell, neither does Kymlicka. For instance, when it comes to accommodating non-societal cultural minorities such as immigrant groups, Kymlicka’s belief that the public sphere is pervasively shaped by the culture of its dominant groups leads him to insist on poly-ethnic rights for immigrants in order to make their integration fairer. But Kymlicka does not suggest that the cultural particularity of the societal culture into which voluntary immigrants integrate renders the state’s demand that they integrate ‘unfair, yet justified,’ or anything to that effect. Instead, Kymlicka appears to believe that, in the circumstances, requiring these immigrants to integrate into their new societal culture actually is fair, provided that the costs of integration are eased by poly-ethnic rights and the rigorous enforcement of universal citizenship rights. And I think this is absolutely correct. It seems quite implausible, for instance, to insist that if the national identity of the state is at all culturally particular it is, for this reason alone, therefore unfair to members of minority nations, in the sense that it necessarily excludes them from participation or requires them to shed their own cultural particularity, or

256 Supra note 1, at 108.
257 Ibid.
undermines their dignity or autonomy.258 In short, then, even on Kymlicka’s own account, complete cultural neutrality on the part of the state is not a requirement of ethnocultural justice.

However, as we saw above, when it comes to identifying “what liberal democratic justice requires with respect to culture and identity,”259 there are ethically relevant differences between national minorities and non-national groups. National minorities, for example, typically both desire having, and expect to be able to have, access to their own societal cultures to a greater extent than do immigrant groups. In addition, the total costs of ensuring national minority societal cultures remain viable appear less than what would be required to guarantee the viability of numerous immigrant societal cultures. So, with that in mind, is it possible to envision a state that would be culturally inclusive enough that its public life was not unfairly exclusive of at least one of its national minorities?

To answer this question, I think, we have to ask what a sufficiently culturally open multinational state would look like. To reiterate, I take it that this question is not asking us to set out what would be required to purge a political community of all the trappings of culture. Rather, the question tasks us with providing some plausible account of a multinational polity that refuses to grant political autonomy to national minorities as such, yet whose national identity and public sphere are fair to its citizens (in the sense of not unduly excluding any of them on ethnic or cultural grounds). Now, I believe that if we have any hope of providing such an account it is necessary, as Joseph Carens argues (in a rather ‘Kymlickian’ vein), to recognize that in order to achieve ethnocultural justice

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258 I admit that it may well be quite plausible, however, to suggest that the level of cultural particularity on the part of the state that is inevitable will, inevitably, exceed the undefined threshold beyond which cultural partiality becomes positively unfair to national minorities. I address this concern in greater detail below.

259 Carens, supra note 11, at 12.
the state cannot adopt an agnostic, “hands-off approach” to culture. The reason for this is because, as we’ve seen, it is impossible to take a hands-off approach to culture. As Kymlicka has demonstrated, for instance, state decisions on the language of government and the public schools have profound and unavoidable cultural implications. Further, since a state cannot remain neutral on these issues – since some language or languages have to be chosen – it will, invariably, have a hand in shaping the cultural life of the polity.

Consequently, as Carens pleads, we must take a more sophisticated view of what justice requires when it comes to culture – an approach he labels “justice as even-handedness”, as opposed to justice as strict neutrality. According to Carens, the notion of justice as evenhandedness “is derived from the assumption that to treat people fairly we must regard them concretely, with as much knowledge as we can obtain about who they are and what they care about. This approach to justice requires immersion rather than abstraction.” So, for example, when it comes to choosing “the language of government – i.e. the language of public schooling, courts, legislatures, welfare agencies, health services, etc.” in a multinational state such as Canada, there’s a strong case to be made that we ought to choose both English and French. Of course, this decision will involve supporting English Canadian and Québécois culture to some extent, but it will nonetheless be fair, in the sense of being even-handed, in light of the size of these cultural groups within Canada, their historical contributions to shaping the Canadian polity, and

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260 Supra note 11, at 8-14.
261 Supra note 1, at 111.
262 Supra note 11, at 8-10.
263 Ibid., at 8.
264 Kymlicka, supra note 1, at 111.
265 The more difficult question, I believe, is whether Aboriginal languages should also be chosen, and, if so, which ones.
the extent to which their languages and cultures are inextricably bound up with state symbols and institutions. What this shows, I hope, is that I do not wish to jettison Kymlicka’s notion that multiculturalist policies which truly endeavour to accommodate cultural minorities must be based on a recognition that in “many areas … true equality requires not identical treatment, but rather differential treatment in order to accommodate different needs.”

On this point, Kymlicka, Carens, and I all share common ground. That is, I agree with Kymlicka that differential, even-handed treatment is required to treat members of different cultural groups fairly and equally. The way in which my project in this chapter is different from Kymlicka’s is simply that I wish to explore whether this sort of fair treatment could occur within a multinational Canada with a single, culturally inclusive public sphere.

Kymlicka, for instance, writes that “[r]efusing to provide public schooling in a minority language … is almost inevitably condemning that language to ever-increasing marginalization.” Now, Swahili is clearly a marginal language in Canada, and if the Canadian government, for that reason, refuses to educate children in it, some may want to label this decision as “condemning” the language to greater marginalization. It seems to me, however, that its fate is not a fait accompli; if, in the future, the number of Swahili speakers in Canada were to vastly expand and there was a concerted push for Swahili-language public schools, nothing would preclude the government of Ontario, say – as opposed to the government of Quebec – from acceding to that request. I fail to see, then,

266 Kymlicka, supra note 1, at 113. Indeed, Carens claims that justice as evenhandedness “opens the door to the idea that we may sometimes come closer to equality by adopting practices of differentiated citizenship than by insisting on identical formal rights” (supra note 11, at 8).
267 I do not, for instance, wish to reject multicultural accommodations in principle as enemies of equality, à la Brian Barry (who Kymlicka has labelled an anti-multiculturalist critic (supra note 84, at 8)), nor do I argue that the state should ‘get out of the culture business’ entirely, so to speak.
268 Supra note 1, at 111.
(nor do I think Kymlicka would see) how, given current demographic realities, the Canadian government would be acting unfairly by refusing to provide Swahili-language schooling; such a refusal does not violate the dignity of Canadian Swahili-speakers, nor does it undermine their autonomy (provided they have the opportunity to integrate into their surrounding societal culture). In other words, the Canadian government is not singling out Swahili (or Urdu or Finnish, for that matter) for marginalization. Rather, it is simply exercising a completely legitimate option to not rescue the language from a process of marginalization that is occurring because of the limited numbers of Swahili speakers living on Canadian soil.

Opting not to turn around the fortunes of Swahili in Canada, in short, is totally in keeping with a commitment to an evenhanded approach to culture and identity. This is because even-handedness is not the polar opposite of a hands-off approach to culture. That is, if a strictly neutral approach endeavours to allow the state to ‘get out of the culture-supporting business’ altogether, so to speak, even-handedness with respect to culture does not imply that all cultures must be supported, and supported equally. Instead, per Carens, “[t]he guiding idea of evenhandedness is that what fairness entails is a sensitive balancing of competing claims for recognition and support in matters of culture and identity.” Moreover, as Carens explains, “being fair does not mean that every cultural claim and identity will be given equal weight, but rather that each will be given appropriate weight under the circumstances and given a commitment to equal

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269 Nor is it the case that the government is standing back and watching as a language whose marginalization initially began because of the state’s own ruthless efforts at assimilation, as in the case of numerous Aboriginal languages, sinks steadily toward near-oblivion.

270 Supra note 11, at 12.
respect for all. History matters, numbers matter, the relative importance of the claims to the claimants matters, and so do many other considerations.”271

Looked at in this light, refusing to operate public schools in Swahili, even if this decision does in a sense ‘condemn’ the language to ‘ever-increasing marginalization,’ is appropriate in the circumstances. What would not be appropriate, however, and, more than this, what would be positively unfair in light of historic and contemporary demographic circumstances, is if all provincial governments refused to provide any public schooling in French. Thus, when Kymlicka insists that “government … cannot avoid deciding which societal cultures will be supported,”272 we should be prepared to concede the point,273 while recognizing that this fact alone does not mean that the government’s unavoidable support of certain cultures will necessarily be unfair, all things considered. That is, even though the government cannot avoid making decisions about which societal cultures to support, these decisions need not be made willy-nilly. While Carens’s idea of justice as even-handedness admittedly leaves a lot to be filled in, and does not provide specific guidance about which sorts of considerations should be given the most weight in order to achieve ‘a sensitive balancing of competing claims’ for support, it does hold out the possibility that decisions about which societal cultures should be supported, and to what extent, will all be weighed on the same scales.

271 Ibid.
272 Supra note 1, at 111.
273 The inevitability of state support for some cultures or others, therefore, really is, as Kymlicka observes, “a significant embarrassment for the ‘benign neglect’ view” (supra note 1, at 111). It is not, however, any embarrassment at all to the ‘even-handedness’ approach we are exploring here.
In Defence of Self-Government for National Minorities

So, to recapitulate, I believe Kymlicka is too hasty in concluding that the inevitable cultural permeation of a democratic public sphere will render it unfair or hostile to national minorities. I think that drawing on Carens’s writings, once we realize that justice does not require strict state neutrality on matters of culture, we may have some reason for optimism that, although “[g]overnment decisions on languages, internal boundaries, public holidays, and state symbols” are fraught with cultural implications,274 these determinations could be arrived at in an evenhanded and fair manner. However, if the foregoing discussion has not left the reader with a very clear picture of what an evenhanded, culturally inclusive Canadian state that did not devolve self-government powers to its French national minority as such would actually look like, that is, unfortunately, to be expected. In fact, not only am I uncertain as to exactly what such a picture would look like, I’m not sure whether such a situation is even possible – although, if it is possible, I expect it would look much like Canada’s contemporary public life, minus the publicly recognized role for the government of Quebec as the protector of the French language in North America and the champion of Québécois culture and history.

Now, there is one particular argument, to the effect that it would be naïve to hope that a culturally fair and open Canada could in principle exist, in the absence of self-government for cultural nations as such, whose force I want to concede. The argument is the basic one, looked at earlier, which says that if national minorities do not possess self-government rights they will be outvoted by members of the majority group on matters integrally related to their ability to live within their culture. This unfairness, it would

274 Kymlicka, supra note 1, at 115.
seem, would be worked upon national minorities even if their language is given official status, their holidays officially recognized, and state symbols made to reflect their history and culture. In other words, treating national minorities justly seems to require not only a *public sphere* that is *fair*, in sense of being culturally inclusive, but also a *public* that is *fair-minded* enough to take into account the peculiar cultural interests of national groups to which they don’t belong. Since Kymlicka, not unreasonably, appears to view this as an unrealistic pipedream, he would, no doubt, respond to our discussion by concluding that true evenhandedness with regard to national minorities will always require, in this imperfect world at least, devolving political autonomy to territorially concentrated national minorities. And, while I would not put the matter in such categorical terms, I think this assertion has a real air of plausibility.

I want to go one step further, in fact, and suggest that even if the citizens of a multinational state which denied self-government to national groups were altruistic enough to pay due regard to the cultural interests of other communities, and even if we could fashion a public sphere that was culturally accessible to all (such that members of national majorities and minorities alike could participate within it, without having to shed their cultural particularity or forego access to a range of meaningful life-options), we might *still* have good reason to prefer a situation in which political power was devolved to minority nations. Indeed, I think there are at least two good reasons, both of which relate to the crucial notion of *identification*, for why, in general, we might wish to ensure that a public debate through time occurs not only at a pan-state level but at the sub-state national level as well.

Firstly, for instance, where a national minority currently exercises powers of self-government, members will likely have come to identify with the particular vernacular of
their own public debate. Phasing out self-government rights and integrating the minority group into a pan-state public debate, even if this new broader discussion self-consciously attempts to make room for the distinctive modes of argumentation that characterized the minority’s debate, will therefore involve asking both majority and minority groups to participate in a public conversation marked by foreign vernaculars and unfamiliar idioms. While there may not be anything illiberal about this in principle, there is reason to fear, I think, that citizens will simply have a difficult time identifying with the new debate as their own. In turn, these citizens may decide that participating in the new debate is not worth the effort.

For example, since unmediated engagement with others’ viewpoints requires being able to speak their language, and since the pan-state debate will characteristically cut across linguistic lines, unilingual citizens on both sides of a linguistic divide may feel that certain nuances of their positions are being lost in translation, and that they can’t fully interrogate the political arguments of those who present them first in the debate’s other language. As Kymlicka succinctly puts it, for instance, “democratic politics is politics in the vernacular. The average citizen only feels comfortable debating political issues in their own tongue.” Thus, effective participation in a debate which occurs in more than one tongue, and incorporates many distinctive modes of argumentation, may appear out of reach for most citizens, with the result that the debate becomes dominated

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275 As mentioned above, this seems all the more likely where the two sets of vernaculars are quite dissimilar (as they may be in the case of settler versus indigenous debates, for example), not to mention the possibility that a cross-cultural debate could perhaps be objectively incoherent, in the sense that it may endeavour to reconcile simply irreconcilable or incommensurable viewpoints and vernaculars.

276 Politics in the Vernacular, supra note 121, at 231.
by a bilingual elite. In short, “democracy within national/linguistic units is more genuinely participatory than at higher levels that cut across language lines.”

I believe there is, then, a compelling argument that self-government for national linguistic minorities can, in general, further the liberal goal of democratic participation. I also believe that this argument is distinct from Kymlicka’s more categorical, and wide-reaching, autonomy-based argument to the effect that the connection between societal cultures and individual freedom justifies national minorities’ demands for political autonomy.

Secondly, it is important to note that even if, by hypothesis, the state were rendered culturally inclusive of all of its members, this would not alter the fact of cultural diversity within the population. Some, however, might take the view that even if making the public sphere fair to national minorities would not erase their cultural differences vis-à-vis the majority, it would render these differences irrelevant when it comes to the question of the level at which political decision-making should occur. That is, it could be argued that if the public sphere were culturally inclusive, there would be no reason to make political decisions at the sub-state national level, as opposed to the state-wide level, and that insisting on the need for self-government for national minorities in order to respond to the fact of cultural difference would amount to the “narcissism of minor

See Ibid.
Ibid.
I say that Kymlicka’s central autonomy-based argument is more wide-reaching than this argument about democratic participation (the latter discussed at some length by Kymlicka in Politics in the Vernacular, supra note 121, at 203-241), because, while being an autonomous modern individual may require being able to participate in the democratic process, such participation appears to be only one facet – albeit a crucially important one – of an autonomous life.
difference.” This conclusion, however, is unsound. As we saw above, for instance, there is considerable evidence that we are more likely to make sacrifices for others we regard as being ‘one of us’, and cultural similarities tend to carry a lot of weight when it comes to picking out just who ‘we’ are. In this way, the existence of political sub-units, the boundaries of which are drawn in such a way as to make national minorities majorities within a particular sub-unit, can help to ensure that citizens fulfill their obligations of justice to one another.

Now, it is true that given the track record of cultural nationalisms, it is appropriate to worry that a preoccupation with shared cultural practices and values can render a community xenophobic and exclusive. However, merely identifying with those who share one’s cultural traits, and wishing to have a ongoing public debate with these people, does not in itself constitute ‘the narcissism of minor difference’, since, as we know from experience, participants in these sub-state debates can also actively participate in, and deeply identify with, the larger cross-cultural, pan-state debate. In the face of these sorts of dual allegiances, then, these instances of “deep diversity” in action, we should admit that narcissism and xenophobia are, as Shakespeare might have put it, “made of sterner stuff.”

In addition to these two arguments for why self-government for national minorities is generally desirable, even supposing the wider political culture to be free of unfair cultural bias, I want to briefly raise two distinct drawbacks to the alternative of forcing members of national minorities to integrate into a hypothetically welcoming pan-

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282 *Julius Caesar* (1.1.91-4) [delivered by Mark Anthony].
state debate. First, since I’m not sure if the public life of a multinational state that rejects self-government for national minorities could in fact be made fair to all, forcing national minorities to integrate into this brave new political world would represent a very large gamble. The concern, then, is a prudential one: if the gamble does not pay off and the public space into which national minorities are made to live is, in fact, unfairly biased against them, then we are back to an unjust situation in which their members are forced, in order to enjoy a meaningful range of life-options, to shed their cultural particularity and integrate into the cultural life of the majority. For example, assuming again that a culturally fair and inclusive pan-state national identity does not come off, if we rule out self-government, which Kymlicka has taught us may well be necessary to sustain a minority’s culture as a societal culture, then members of a national minority who rebel against forced integration into the larger culture, claiming that this is a price they should not have to pay for their freedom, will not have the safety of their old societal culture to turn to. They thus risk being left to cling to marginalized, decaying cultures, without access to the meaningful contexts of choice required for individual autonomy. In addition, the sort of gamble that is involved here seems particularly ill-advised, from the perspective of liberal theory, when we consider that, on the whole, multinational federations that devolve political autonomy to their homeland minority groups seem to be doing an adequate – perhaps even an especially good – job of providing a home for liberal democracy and liberal, as opposed to ethnic, nationalisms.

This brings us to our second point. Even if it were possible to create a fair cross-cultural public sphere, when we look around our world it seems clear that if the goal is to ensure that individual citizens are provided with access to an adequate range of meaningful options, or that they fulfill their obligations of justice to one another, it is
quite unnecessary to integrate all citizens into one meta-national cultural fabric.

Consequently, there is an argument to be made that although life within a single, cross-cultural national identity might not, in itself, be unfair to members of minority cultures, forcing them to live in such an environment would be unfair.

Specifically, it seems that forcing the integration of members of national minorities, and ruling out ab initio all of their demands for self-government, undermines the ability of these individuals to have any meaningful say in the fundamental matter of who will govern them. Such an intransigent project of cross-cultural nation-building would seem, for instance, to preclude entirely the possibility of secession. And while liberal views on the morality of secession may be so divergent as to call into question the notion that there is any one ‘liberal’ perspective, few commentators actually wish to deny that secession might in some cases be the best path to political freedom for an oppressed group. Consequently, while I am sceptical that there exists any such thing as a ‘cultural right to national self-determination,’ I think it is fair to say that this forced integration of national minorities violates their right to self-determination, in the sense that it precludes any recognition of the desire of the group’s individual members to take

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283 This is not to mention the possibility that where a state unnecessarily forces a people to forego their culture, it will convey to members of the group the highly illiberal message that that which they have been forced to give up must be inferior to that which they are being made to take on.

284 On this issue, I agree with Professor Kymlicka’s suggestion that liberals ought not to rule out secession as a mora failing, since decent, stable liberal democratic politics can apparently occur within more homogenous nation-states just as it can within more heterogeneous multinational polities. For instance, like Kymlicka, I see no reason to wish for the reunification of Norway with Sweden, although neither would I have any reason to object to such a union if both parties desired it. (See supra note 1, at 188.)

285 For such a proposition see Raz and Margalit, supra note 88; Tamir, supra note 59, at 72-4. For the contrary position see Jürgen Habermas, The Postnational Constellation: Political Essays, Max Pensky, (trans.) (Cambridge: MIT Press, 1995), at 72, where he labels “this purported ‘right’ to national self-determination” “sheer nonsense.”

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part in a political community whose boundaries are not coextensive with the already existing multinational state.  

This is an argument in favour of self-government for national minorities, then, (one which is distinct from Kymlicka’s individual autonomy-based argument, as well as from the arguments focussing on the way in which self-government for national minorities can enhance democratic participation and increase the likelihood that citizens will live up to their obligations of justice to others) that appeals to the value of government by consent. It appeals, in other words, to the idea that for members of national minorities to live under a government they perceive as legitimate, for them to enjoy what Habermas calls “public autonomy” – that is, the ability of citizens to feel as though they are in some sense the authors of the laws to which they are subject – it may be necessary for them to form a politically autonomous sub-state national community.

In the end, then, I do not offer my vision of nationhood as centred on an ongoing public debate through time as a panacea that will allow us to achieve perfect cultural neutrality, thus authorizing the state to take a strictly ‘hands-off’ approach to cultural matters. I highly doubt such neutrality is possible, and, even if it were, I believe devolving political autonomy to minority nations would still have much to be said for it. On these issues, then, Kymlicka and I may not disagree on all that much. For instance, although I have argued that Kymlicka may be too quick in asserting that a modern democracy could never achieve a fair, culturally inclusive multinational identity such that

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286 That is, it would preclude both self-government for national minorities within a federated system of government, and secession.
288 This argument is not, however, offered as a knockdown general argument for self-government for national minorities, since it only succeeds where sub-state national identification is strong enough that a system of government which did not accord self-government powers to the minority nation would appear decidedly illegitimate from the point of view of members of that nation.
self-government for national minorities would be unnecessary, my own view is that, in many cases, we shouldn’t wish to. That is, even if one embraces Webber’s conception of a national identity centred on a public debate through time, there may well still be good reasons to argue that public debate should take place at more than one level, that the pan-state conversation not be the only political debate in which citizens can take part.\(^\text{289}\) As I see it, however, this fact only further recommends Webber’s conception of civic nationalism, since his vision of a dialogically-constituted national identity recognizes that a country need not be defined solely by a single public debate.\(^\text{290}\)

In the remainder of the essay, then, after filling in some of the details of Webber’s conception of national identity, I wish to ask whether it is justifiable, from the perspective of liberal theory, that Quebec’s debate is, necessarily, a French one. That is, I will examine more closely a real-world case of a self-governing national minority that has seen fit to impose less than liberal restrictions on its citizens in order to preserve its cultural distinctiveness (namely Quebec and its Charter of the French Language\(^\text{291}\)), and ask whether these measures are justified deviations from liberal norms, or whether, so as

\(^\text{289}\) As Webber writes, for instance, “the nationwide forum need not be the only place of public discussion. There may be more restricted forums… in which debates follow their own dynamic, autonomous in large degree from that of the national community. These other forums… may attract their own sense of allegiance…. Citizens may cherish both the particular character of their national conversation and that of their local political community” (supra note 245, at 193).

\(^\text{290}\) To quote Webber again, “we can cherish the conversation between different cultures – we can see that conversation as constituting our community – without requiring the submission of one to the other. A viable allegiance can be compatible with the express recognition of difference as long as we remain willing to continue the national conversation across cultures. That willingness is the very substance of our allegiance. The conversation itself is our national life” (supra note 245, at 191). This sentiment is similar to that expressed by David Miller, for instance: “Nationality is not, of its nature, an all-embracing identity” (Citizenship and National Identity (Maldin, Massachusetts: Blackwell Publishers Ltd., 2000), at 34). Both Webber’s and Miller’s views on this matter can be contrasted with the following suggestion by Jacob Levy, which I would reject: “The nationalist does not ask me to choose between (Quebec or Canada) and (the rest of the world) but between Quebec or Canada…. [N]ationalism… claims that the nation takes priority not only over self and over humanity, but also over rival identities, loyalties, and group affiliations”(supra note 10, at 75).

\(^\text{291}\) Charte de la langue française, L.R.Q., c. C-11.
to avoid them, we should in fact wish to revoke Quebec’s self-governing status, and make Quebecers integrate into the wider English Canadian societal culture.

Filling in the Gaps: More on Webber’s Civic Nationalism

Our picture of an alternative vision of a liberal national identity needs to be filled in a little more – in particular by explaining in greater detail how a public debate through time may earn the loyalty of citizens. In order to tackle this issue, let us begin by looking at what Webber has to say about the sense in which a particular public debate is ours, and how our national identity could be picked out with reference to something so abstract as an ‘ongoing public debate.’ On this score, Webber is emphatic that it is a serious mistake to attempt to locate the core of nationhood in some shared cultural practices or in a set of uniformly agreed upon political principles – much less in a supposedly primordial, genetic essence of ‘Peoplehood.’ As Webber writes, “whenever one moves beyond the most simplistic of generalizations, the distinctive character of societies seems to reside more in the pattern of their public life – the terms of public discussion in those societies – than in any strong set of common values.”

I think Webber is quite correct on this score. Indeed, when it comes to offering up a vision of nationhood that moves away from the culturally-thick versions espoused by some liberal nationalists like Yael Tamir, I think Webber’s notion of national identity has many advantages over a rival conception of civic nationalism that would base national membership upon allegiance to a single set of socio-political values. As Webber argues, for instance, “[t]rying to define what makes a German a German, an American an

\[supra\] note 245, at 188.
American, or a Canadian a Canadian by listing the values that citizens of those countries hold in common can only produce a caricature of a country. National identities are much more complex.”

Take the United States, for example, a country that may be thought of, and may think of itself, as “defined by its devotion to a single set of values enshrined in its [C]onstitution.” On closer inspection, however, even a Constitutional value that all Americans endorse, such as the equality of persons, is susceptible of numerous, and conflicting, interpretations. Thus, even if the way in which such an accepted general value should be realized in practice is hotly contested, even if politicians with such divergent political views as “a Massachusetts liberal like Edward Kennedy and a southern conservative like Jesse Helms” each understood their favoured policies to be what true equality requires, “the terms of the discussion, the kinds of arguments used, the balance between the contending positions, and the tentative solutions adopted all bear a distinctively American stamp. They embody an American vernacular. But it is the character of the conversation as a whole, rather than one of the sides to that debate, that makes the public life of America what it is.”

The lesson here, as Webber points out, is that “[i]t isn’t so much what citizens agree upon as the way in which they disagree that is important. It is the distinctive structure of their fundamental debates – the issues that preoccupy their public life, the ways in which those issues are posed, the kinds of solutions discussed – that give a society its distinctive cast.

Another way to see that national identity is not determined by shared political values is to notice that the sort of values that really are widely shared in pluralistic

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293 Ibid., at 185.
294 Ibid., at 186.
295 Ibid., at 187.
296 Ibid.
297 Ibid., at 186.
democracies will be too few, and too politically indeterminate, to give rise to the rich, unique ‘personalities’ that nation-states are thought to exhibit. Kymlicka addresses this issue when he notes that in recent decades “there has been a convergence of political values throughout the Western world, amongst both majority nations and national minorities.”\(^ {298}\) However, this convergence of values has certainly not given rise to a sense that English and French Canada have become fused as one nation-state. Indeed, Kymlicka observes that the phenomenon of liberalization that has reduced differences between Québécois and English Canadians “has in fact gone hand in hand with a increased sense of nationhood” in Quebec.\(^ {299}\) As he puts it, “[i]n terms of their political values, the Danes, Germans, French, and British have probably never been as similar as they are now. But this has not had any appreciable impact on the desire of these majority nations to retain their independence. Why then should it diminish the desire of national minorities for self-government?”\(^ {300}\) Kymlicka, of course, wants us to conclude that it shouldn’t, that national identity is just that – a way in which people identify with a national group, regardless of the extent to which the shared political values of that group converge with those of another cultural group, or those of far away countries. I believe this is an important insight, and that, consequently, shared values cannot be a full answer to the question of what makes ‘us’ us; if it were, “the circle of we”\(^ {301}\) could plausibly be extended across many of the world’s homeland minority groups (such as the Québécois, Catalans, Basques, Flemish, Scottish, etc.) to take in virtually all the Western democracies.

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\(^{298}\) Supra note 1, at 188.
\(^{299}\) Ibid., at 88.
\(^{300}\) Ibid., at 188.
\(^{301}\) This turn of phrase is borrowed from Hollinger, supra note 153, at 68 and 106.
If the foregoing is understood chiefly as an argument for why a ‘shared values’ conception of the nation cannot – i.e. as a sociological matter – differentiate actually existing national groups, let’s now turn to an argument for why it should not be employed to do so. For instance, since the catalogue of truly shared values within any given modern democratic community will be sparse, and more or less common between all democratic regimes, picking out values that are unique to a particular nation and which do serve to differentiate it from others will require latching on to a number of values that are more specific – and more sectarian – than those shared by virtually all liberal democracies. In addition, while emphasizing a single set of political values as the sine qua non of ‘Canadianness’ might not cause any hardship if yours are the values singled out, if you happen to be from a minority community whose values are not given the imprimatur of the state, then your very allegiance to the nation could suddenly be called into question, and expression of your divergent values stifled. As Webber writes, “If the country was defined exclusively by what people had in common, characteristics that set minority communities apart would be pushed to the margins, becoming at best protected aspects of one’s personal life, at worst latent obstacles to national unity. They would not be an integral part of what it meant to be Canadian.” Thus, holding out a particular set of sectarian values – values not shared by significant elements of the population – as defining what it means to be a member of the nation over-determines national identity. As Professor Webber explains:

“[t]he essential problem with the language of shared values is that it is forced to carry too much weight. It leads one to over-determine what is important to a country and to citizenship, to constitutionalize visions of a country that do violence to its richness and diversity, impliedly excluding those who do not share

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302 Supra note 245, at 184.
those visions. It is often, in the end, anti-democratic, imposing exaggerated and unnecessary tests of belief on its citizens as proof of their allegiance.\textsuperscript{303}

In the result, it appears that a picture of the nation built around shared values that are sufficiently detailed to allow for the individuation of specific nation-states precludes the possibility that citizens whose political views do not coincide with those of the nation at large could be members in good standing. In the extreme, in fact, it may cast them as guilty of a sort of treason. The problem with this, of course, is that it seems profoundly illiberal and unfair to exclude from national membership civic-minded and law-abiding American citizens simply because they are, say, Marxists or pacifists.

Thus, the ultimate fear that is lurking in the background of this discussion of ‘shared values’ civic nationalism could perhaps be summed up in one word: McCarthyism. That is, we are concerned that venerating a certain set of political principles could allow political elites to ‘capture’ and ‘decontest’ “the meaning of such [principles] so as to discourage, or in the extreme, try entirely to disable political dissent.”\textsuperscript{304} The concern, put slightly differently, is that the tendency of shared values civic nationalism towards the veneration of constitutional or political values can turn it into a kind of civil religion (with no equivalent of a free exercise clause to protect nonbelievers). In consequence, not only are those who do not hold the proper values ‘pushed to the margins’, in Webber’s phrasing, and thus not regarded as a part of the nation to be celebrated, they may be marked as disloyal, an unacceptable part of the nation – or no part of it at all.

One scholar who is prepared to concede the problem is Jan-Werner Müller, who advocates a version of ‘constitutional patriotism’ that can be seen as a species of shared

\textsuperscript{303} Ibid., at 185.
\textsuperscript{304} Müller, \textit{supra} note 246, at 82.
values civic nationalism. According to Müller, for example, “there might be a genuine
trade-off between democratic contestation and constitutional veneration, and it’s at least
imaginable that constitutional patriotism perniciously reinforces the latter, rather than
enabling the former.” His ‘solution’, however, is to point out that a constitutional
patriotism or shared values nationalism that is centred upon the right kinds of values –
tolerance, equality, autonomy, and so on – “carries within itself the resources to counter
and correct the perils and problems” associated with the rise of a civil religion. Now, I
agree that if America in the 1950s had had a better understanding of what the cherished
constitutional values that Joseph McCarthy so badly twisted and misconstrued actually
required, the witch-hunts he instigated would never have been allowed to happen.
However, they did happen, and this alone may be reason to think that even if we define
the nation in terms of the ‘right’ sort of liberal democratic values, there still exists an
unacceptable risk that such noble sentiments will nevertheless be perverted and used as
tools of exclusion. In short, if we are inclined to move towards a vision of the nation that
rests on shared values because we wish to avoid the unfair exclusion that is worked upon
minorities when nationals are conceived of as sharing a certain ethnic or cultural heritage,
we must recognize that “political values can be as effective markers of group identity and
as exclusionary as ethnic allegiances.”

It may be objected, however, that even a conception of the nation as defined by an
ongoing public debate through time has exclusive implications. After all, it is not just any
debate that defines us as a nation, but rather it is the general contours of this debate, the

305 Ibid.
306 Ibid., at 84.
307 Ibid., at 75-6, citing Dora Kostakopoulou, “Thick, Thin, and Thinner Patriotisms: Is This All There Is?”
one taking place within our (heavily guarded) national borders. Further, although the notion of a political debate through time is a rather abstract concept, it does have some determinate content. Is it thus not unfairly exclusive of those who do not wish to argue in its favoured terms?

I would respond to this query by admitting that nationhood is in an important sense an inherently exclusive concept. Defining who ‘we’ are does indeed seem to require that we can be contrasted with an ‘other.’ However, this does not seem to me to be inherently illegitimate, unless the other is cast not merely as other but also as inferior. For instance, ‘Canadianness’, if it is to have any substantive content, cannot expand ‘the circle of the we’ to encompass all 305 million Americans. Thus Americans are not Canadians, but neither are they any the less for it.

It might still be argued, however, that viewing nationhood as bound up with a community’s public debate necessarily excludes those who ‘contribute’ to the conversation by arguing in a vernacular that rejects the very terms in which the debate is currently taking place. To respond to this concern, I think we must concede that even if we define the nation with reference to the broad forms of argumentation employed in public debate, we cannot do away with the notion of shared values altogether. For instance, any actually-existing public debate in a liberal democracy will be underwritten by a core of fundamental values such as a belief in the freedom and equality of persons. The forms of argumentation employed will appeal to, and be constrained by, such core values.

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308 The situation is complicated, of course, by the fact that so many Americans also possess Canadian citizenship. Thus, ‘Americans’ should be read here as Americans with only U.S. citizenship.

309 While it does not appear that it is inherently illegitimate to define national identity in contrast with other nation-states, this is not to suggest that a national identity could not be constructed in an unjustifiably exclusive manner. Without attempting to tackle the thorny open versus closed borders debate, for instance, steadfastly refusing to admit any immigrants or refugees on the grounds that doing so could alter the national character would seem to be patently unjust.
values. Furthermore, defining the nation with reference to a public debate through time presupposes a general commitment to the value of reasoned, democratic debate itself. However, since the values insisted on by this debate-centred vision of civic nationalism are so few, and since the political commitments which define a nation on the shared values account are far greater and more specific, Webber’s ideal of civic nationalism is far more inclusive than the alternative. For instance, whereas an American who rejects as pernicious the private ownership of property could be viewed as a less than full member of the nation on the shared values account, Webber’s approach, while it does hold that “[a] small core of shared values is vital to the health of a democratic order,”310 does not demand allegiance to specific, widely contested political values. Of course, this ‘small core of shared values’ will not describe “everything that makes a country what it is.”311 But precisely because the rest of the story gets filled in with reference to the country’s public debate, as opposed to particular political values that are alleged to be universally shared, the nation’s doors are open to far more comers.

This brings us to another important insight. Although focusing on the broad contours of a community’s public debate allows us to get a clearer picture of what separates that nation from others, the sorts of values which individual members must share in order for the debate to continue will generally include only such things as a commitment to listening to others, attempting to frame one’s proposals in terms all can understand, and non-violence. What is not required is that each member of the nation agree with the general direction in which the debate is heading. In other words, not only may members in good standing disagree on particular values and issues, they may also

310 Webber, supra note 245, at 185. Webber writes that “the list of those truly essential values will be relatively short, including basic respect for democratic procedures and political accountability…” (ibid.).
311 Ibid.
disagree on the terms in which the debate over these issues should take place. Thus, while the particular vernacular in which the ongoing public debate over healthcare expenditures currently occurs in Canada may take for granted that healthcare is a universal right, a Canadian who contends that healthcare is a commodity like any other is no less ‘Canadian’ for mounting such an atypical argument. In short, it is perfectly consistent with the notion that a nation is defined by the broad contours of its public debate through time to recognize that some members of the nation will not find cause for celebration in each aspect of the debate – and that some may even participate in that debate while retaining a firm belief that it has gone badly off the rails.312

Allegiance

It might be objected, however, that when it comes to holding together a multinational country such as Canada, Webber’s conception of nationhood would make for a woefully thin adhesive. In other words, the critic might insist that what all our talk about a common public debate fails to appreciate is that nations are important, from the perspective of generating the levels of trust and solidarity amongst citizens required to power stable, democratic politics (and the welfare state in particular), because they command allegiance. But, as Jeremy Webber asks, once we have declared that neither ethnic nor cultural ties, nor grand political principles, may legitimately be regarded as defining the boundaries of the nation, “[w]hat kind of allegiance is possible?”313 The first of two answers Webber provides suggests that “the very willingness to engage in…

312 This sort of civic nationalism, to use Müller’s phrase, thus “argues for argument, rather than for any particular argument” (supra note 246, at 143).
313 Supra note 245, at 188.
discussion... implies a common commitment ... to the discussion itself.” As he puts it, “the very fact that [a citizen] is willing to bother with discussion implies a sense of belonging.” This seems to put the cart before the horse, however. For isn’t our real question about why citizens will want to ‘bother with discussion’ – that is, how a ‘sense of belonging’ can be generated in the first place? On this score, however, I think Webber puts his finger on something quite important. As he suggests, different people may be committed to their country’s debate for different reasons, in much the same way that Charles Taylor, for instance, has argued that Canada is marked by “deep diversity,” in the sense that our constituent groups are attached to the larger polity in different ways and for different reasons. Webber, for example, offers the following comment on the complex issue of how people come to identify with a national debate:

There are different degrees of commitment. Commitment may be the product of necessity or economic self-interest: one simply cannot get out of the community, or getting out would be too costly. That may seem like an impoverished basis for any lasting political community, but even this grudging allegiance may ripen into a more robust commitment as members of the community come to conceive of their public life in terms inseparable from the particular debates of that community.

According to Webber, for instance, “[t]hat seems to be what has happened to Quebec since the British Conquest.” Specifically, Webber believes that while Quebecers’ “desire to maintain their own culture, … and the ever-present sense of vulnerability all discourage fulsome expressions of allegiance to Canada,” the devotion of Quebecers to a Canadian solution, the desire (even of independentistes) to maintain relations with the

314 Ibid.
315 Ibid., at 189.
316 Supra note 281, at 53-76.
317 Supra note 245, at 189.
318 Ibid.
319 Ibid.
rest of Canada, and Quebecers’ continued attachment to Canadian symbols … suggest a more fundamental, less instrumental allegiance.”

The second way in which Webber sees citizens as motivated to show allegiance to their country’s ongoing public debate focuses on, as he puts it, the “particular flavour,” the debate takes on. For instance, as mentioned above, the sort of nationalism that Webber is offering up does not “lack all character. Canadian patriotism would be unlike all others in its commitment to the distinctively Canadian conversation and that conversation’s distinctive vernaculars…. Moreover, aside from a general affinity for these ‘vernaculars,’ I think Webber is correct when he argues that “[t]he simple fact of conversing will very likely lead, over time, to some sharing of perspective, of concern, perhaps even of answers to public questions.” And the fact that some shared answers or perspectives on public questions will emerge from our debate provides a clear reason for those who share in these perspectives to remain committed to the debate which has given rise to them.

A third way in which citizens might come to feel a sense of allegiance to their national debate, not articulated by Webber, is through the development of emotive bonds with their fellow nationals. In other words, we may feel that we belong to the nation not only because we cherish the distinctive vernacular in which it takes place, but also

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320 Ibid.
321 Ibid., at 192.
322 Ibid.
323 Ibid., at 191. (Emphases added.)
324 This observation does not cause Webber’s vision of civic nationalism to collapse into the language of ‘shared values,’ since, “in a country as diverse as Canada,” these answers “are likely to be difficult to identify,” “may be provisional,” and “may well relate to how we make decisions rather than to grand constitutional principle” (supra note 245, at 191-2).
325 As Jan-Werner Müller writes, for example: “Let’s say, for instance, that we have engaged with others in a common effort in the past – a successful political struggle for greater justice and civic inclusion. What participants in that struggle might feel attached to is not just the principles of justice and inclusion, but also other participants, with whom we now share a history…” (supra note 246, at 65).
because we value the particular people with whom it takes place. I want to suggest, in other words, that over time we will likely come to value not only what our fellows add to our debate, but come to value them as flesh and blood people. That is, we will want to continue our public life with these people because we have grown to care about them, to empathize with them, if not totally understand them – in short, to identify with them: in Yael Tamir’s words, to confer upon them “the magical pronoun ‘my,’” such that ‘they’ are a part of ‘us.’ Now, this emphatically does not mean that what unites members of the nation is that they all belong to some natural, primordial ‘People’ that can be differentiated from all other people by members’ common DNA. What I wish to suggest, instead, is that we may feel attached to this debate because, as a result of our ongoing discussion, we have come, over time, to feel bound up with our co-debaters – to identify them as ‘one of us’ not because they share our blood but because they share our debate. I suspect, for instance, that if Quebec were to secede from Canada, many in English Canada (including those who might identify as being ‘of British stock’) would feel as if a family member had suddenly left home.

What is more, if we can come to positively value the people with whom we participate in a public debate, this provides us with a reason to wish that that particular debate will continue. A theory of deep diversity, on the other hand, which tells us we should recognize and value the fact that different groups in our debate belong to the discussion in different ways, does not actually explain why the constituent groups should remain together within this particular multinational conversation. As Kymlicka alludes

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326 Supra note 59, at 95.
327 Furthermore, if we value our conversation’s ‘distinctive vernaculars’, we may also come to value our particular debate partners through the realization that the conversation’s peculiar cast is a function of its unique cast of characters, and the different perspectives they each bring to the debating table. (This sort of phenomenon, it seems to me, amounts to valuing not only deep diversity in the abstract, but also the particular form of deep diversity currently instantiated by one’s nation.)
to, for instance, since “a sovereign Quebec would still be a very culturally diverse country,”
likely to instantiate and value a diversity of ways in which its own constituent communities have come to belong to the nation, Quebec could choose to secede from Canada without turning its back on deep diversity itself. As Kymlicka observes, “[f]or citizens to want to keep a multinational state together, therefore, they must value, not just ‘deep diversity’ in general, but also the particular ethnic groups and national cultures with whom they currently share the country.”

The intractable problem with all this, suggests Kymlicka, “is that this sort of allegiance is the product of mutual solidarity, not a possible basis for it.” It is here, in trying to suggest a possible basis for mutual solidarity that can result in a commitment to the particular ethnic and cultural groups that make up the country, that I wish to champion the prospects of Webber’s notion of an ongoing national conversation. Specifically, what I think Kymlicka does not sufficiently address (although he would not likely deny the point) is that often times what leads citizens to value the particular make-up of their state is that they (have no choice but to) participate with other ethnic or cultural groups within their borders in a sustained, even mundane, process of negotiating, revising, and in the end hopefully improving, the terms of their shared public life.

To use an analogy, we might say that sports teams or military units require high levels of solidarity in order to succeed. But what seems to be most crucial in generating this sort of camaraderie are the bonds formed between individual members as they work in lock-step toward a common goal. Now, it is clear that working closely together with another party does not always generate feelings of good-will and solidarity. If the parties

328 Supra note 1, at 191.
329 Ibid.
330 Ibid.
in a joint effort have irreconcilable objectives, or if one of the parties feels his or her interests are being disregarded by the other, partnership can lead to outright animosity – as in a dysfunctional marriage, for instance. As a result, in order for all parties to identify with the overall project and value those working alongside them, it is necessary for each party to feel as though they are able to influence the way in which the project gets carried out. In terms of holding together multinational states such as Canada, this will mean ensuring that a cultural minority like Quebec is not routinely outvoted on matters of crucial importance to its sense of identity, such as decisions having to do with funding for cultural and linguistic programs within the province. Since English Canadians are generally less concerned than are Québécois about the preservation of French-language theatres, for instance, if these sorts of cultural matters were left to be resolved through the pan-state debate, the ‘contributions’ of English Canada to the ‘resolution’ of such issues would not be much appreciated within Quebec. In other words, as discussed in a previous section, to make sure everyone that is a party to the pan-state debate can identify with the particular vernaculars of that debate and the particular participants in it, some issues of paramount concern to individual constituent groups may need to be taken off the pan-state agenda and resolved in the context of separate political debates operating at the sub-state national level.

What this points to, then, is that we have another reason (in addition to the arguments that self-government at the sub-state national level may be necessary to ensure that members of national minorities perceive their government as legitimate, and that it may enhance democratic participation and increase the likelihood that citizens will fulfill their obligations of justice) for why liberal multinational states may wish to devolve political autonomy to national minorities. Specifically, self-government for these groups
may be essential to the *stability* of a multinational polity, since members of national minorities may not feel that they can adequately influence the way in which the pan-state debate gets carried out without such self-government powers.\(^{331}\) In turn, if these individuals feel as though decisions of vital importance to them are being made by members of an uncaring cultural majority, they will be unlikely to identify with either the larger debate itself or with their debate partners. As Kymlicka puts it, given the importance which people attach to their cultural membership, “[p]eople from different national groups will only share an allegiance to the larger polity if they see it as the context within which their national identity is nurtured, rather than subordinated.”\(^{332}\) And, since self-government arrangements help to assure national minorities that their national identity can be nurtured within a multinational polity, the denial of self-government for such groups can itself cause great resentment and, therefore, be very destabilizing.\(^{333}\)

Now, it is important to stress that I have not attempted to offer a specific recipe by which a multinational state can ‘cook up’ lasting solidarity. In fact, I am quite sure I am not up to such a formidable task. Further, I agree with Kymlicka, and David Miller, that “[i]f two or more national groups simply do not wish to live together, it may be impossible to create solidarity from scratch.”\(^{334}\) However, I have suggested that

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\(^{331}\) This is, of course, a compelling argument only if we take the stability and continued existence of a given multinational state as desirable – something, as observed above in note 284, that the liberal should not assume will inevitably be the case.

\(^{332}\) *Supra* note 1, at 189.

\(^{333}\) See ibid., at 181-6, 192. I do not mean to suggest that granting self-government may not also threaten the stability of the country. As Kymlicka observes, “[s]elf-government rights do… pose a threat to social unity. The sense of being a distinct nation within a larger country is potentially destabilizing” (ibid., at 192). I am merely suggesting (and here, as in so many areas, I share common ground with Kymlicka) that in many real world cases it will be *more* destabilizing to deny national minorities’ claims for self-government than it would be to grant them.

Webber’s vision of nationhood, because it stresses the fact that we may come to value the particular public debate in which we are participants simply because its “unique character” has, over time, “marked us,”\textsuperscript{335} can help to provide a rough, general way of understanding how solidaristic multinational states like Switzerland, and to a somewhat lesser extent Canada, have built up these reserves of cross-cultural goodwill.\textsuperscript{336} That is, I have insisted on a possibility that I think Kymlicka does not pay quite enough attention to: namely, that the mere fact of finding oneself in a particular ongoing political conversation \textit{may}, by itself, generate a strong sense of identification with that debate, and the particular groups that make it up. Obviously, however, this possibility, while important, does not, in itself, represent a solution to the immensely complicated problem of how to secure solidarity in multinational democracies.\textsuperscript{337}

\textsuperscript{335} Webber, \textit{supra} note 245, at 193.

\textsuperscript{336} To give an example, if we were to see an elderly couple happily celebrating their 50\textsuperscript{th} wedding anniversary, I think we could plausibly offer a general, rough explanation for their marital success by suggesting that they must be able to communicate well with each other. However, this would provide us with no real insight as to precisely how we should communicate with our own spouse.

\textsuperscript{337} I think there is every reason to believe, in fact, that the precise recipe for generating sufficiently powerful national sentiment in actually existing multinational states will involve deliberate attempts to encourage individual members and constituent groups to come to relate to the particular debate they find themselves in, and to their particular debate partners. That is, I suspect it will require the sort of mundane, sometimes rather jingoistic nation-building efforts, such as myth-making and manipulation of national symbols, ceremonies, flags, sport, media, etc., that virtually all modern states currently feel the need to undertake.
CHAPTER SEVEN:

BACK TO THE REAL WORLD: ARE QUEBEC’S LANGUAGE POLICIES JUSTIFIED IN CONTEMPORARY CANADA?

Having explored Webber’s alternative conception of nationhood, let us return to the notion, raised earlier in this essay, that Quebec’s language laws, even if they represent deviations from liberal norms, might in fact be required in order to preserve the French Canadian societal culture, and thus may be justified as necessary to secure the autonomy of individual francophone Quebecers? What should we make of this idea? To lay the groundwork for an answer, consider these two arguments for why it might be essential, from a liberal perspective, for Quebec to maintain its visage linguistique rather than allow English to supplant French as the public language: 1) at least some francophone Quebecers will not be able to identify with a societal culture or public debate centred on a language other than French, with the result that these Quebecers will be left without access to the cultural preconditions of autonomy; 2) even if francophone Quebecers could integrate into and come to identify with an English societal culture, and a public debate taking place predominantly in English, this would be asking them to pay too high a price in order to secure their autonomy. Now, as I hope the first half of this essay showed, I believe that the latter argument is at least in principle open to the liberal. Whether such an argument can in fact be made out in the circumstances of present-day Quebec will be discussed at the conclusion of this chapter. As for the former claim, let me say here, to anticipate the argument somewhat, that I am inclined to agree that at least some Quebecers, perhaps those who still regard themselves proudly as pure laine, would fail to integrate into an Anglicized Québécois culture, and instead would ensconce themselves
within the comfortable confines of a narrow, increasingly marginalized French Canadian culture that would no longer be capable of providing them with the range of meaningful life-options required for their autonomy.

But before conceding that my favoured view of national identity does not, in fact, eliminate the need for potentially illiberal language policies in order to protect Canada’s francophone national minority, let me venture a few comments on how I understand nations to take form (comments that may help clarify my later conclusions on the complicated issues of identification and language in contemporary Quebec). For instance, the species of civic nationalism I am espousing does not deny that it is important for a political community to have a national identity, and to be able to give a determinate answer to the question “who are we?” In fact, I have argued that belonging to a national public debate helps ensure that individuals are able to participate fully in the public life of the community, and that they have incentives to fulfill their obligations of justice to others. However, I have contended that what defines us as a nation is ultimately our commitment to our ongoing public debate. In other words, I’m of the view that sharing in a common political endeavour and negotiating the terms of public life within a given territory – not ethnic ties or common cultural practices – is the stuff of which nations are made.338

This is not to say, of course, that ethnicity, cultural practices and beliefs, or even land, may not come to define, in the minds of members, what the nation ‘really’ means. Indeed, not least because it has proven easier to motivate people to make the sorts of

338 In this sense, I agree with Kwame Anthony Appiah that states, which bear at least some relation to geographic features and the vicissitudes of empire and conquest, are less arbitrary, and more ‘natural’, than nations. Appiah writes: “I’m inclined to doubt that nations ever pre-exist states…. I want, in fact, to distinguish the nation and the state to make a point entirely opposite to Herder’s; namely, that if anything is arbitrary it is not the state but the nation” (supra note 20, at 244).
sacrifices required for the nation to prosper by invoking *blut und boden*, as opposed to a more abstract commitment to common modes of argumentation, we often simply assume that all nations ultimately rest on ethnic or cultural foundations. Instead, I am suggesting that it is often mere accidents of history which create political communities, and it is the shared political life within those communities that gives rise to a sense of national solidarity. In turn, so the theory goes, a nation, in order to perpetuate itself and see that its shared public life continues, will attempt to distinguish itself from other nations. The manner by which a nation comes to identify and distinguish itself, however, will usually involve seizing upon those traits (which can plausibly be said to be shared by most members, but not by members of other nations) most likely to motivate members to fealty and move them to acts of personal sacrifice – supposedly ‘natural’ ethnic or cultural characteristics being particularly well-qualified candidates.339 At this point, with the nation defined in relation to shared cultural practices and values, a sense of nationhood, almost like a self-fulfilling prophecy, develops accordingly – that is, along explicitly cultural lines.340 In the result, if our simplified sociological picture has it that a shared culture is, in the first instance, generally a product of nationhood, and not its cause nor its essence, it is also true that cultural similarities can eventually come, in the eyes of members, to supplant a shared political life as the basis of the nation.

One could argue, therefore, that if the ‘true’ basis of nationhood is political rather than cultural, the actual cultural characteristics shared by members of the nation do not need to be preserved in order for them to have access to a meaningful context of choice.

339 According to Yael Tamir, for instance, “[t]he set of specific features that enable members of a nation to distinguish between themselves and others is culture” (*supra* note 59, at 67).
340 In addition, I assume that, as a sociological matter, it is quite natural for people living, working, and arguing together to take on certain cultural similarities, in a similar fashion to the way in which children at a particular school, say, come to adopt broadly similar speech patterns, modes of dress, hobbies, etc.
On this view, while our common cultural traits may be an effective shorthand way of identifying our fellow nationals, not one of these cultural markers, *not even language*, bears a necessary relationship to ‘our’ nation. In short, any of these cultural markers could be altered without it affecting our ability to identify with this nation as our nation, since what ultimately defines the nation are the terms of our public debate.

Now, as I hope the reader will have anticipated, I find this argument (which one might describe as ‘Waldronesque’ or ‘Tomasian’) ultimately unconvincing, since it fails to meet the claim that, while it may not be strictly necessary that one have access to a societal culture centred on one’s mother tongue, having to integrate into a different societal culture in order to secure one’s autonomy could nonetheless be so personally costly that one should not be required to do so. As I will have more to say on the issue below, what I would prefer to address here are two different objections. The first maintains that it is legitimate to use somewhat illiberal means, such as Quebec’s language policies, in order to preserve the language of a minority societal culture, on the grounds that allowing the minority culture to become infiltrated by the language of the wider society would cause it to lose its distinctiveness. The second objection, by contrast, holds that even if what brings nations into existence *in the first instance* is a shared public life, the fact that members later come to see their nation as defined by ethnic or cultural features is sufficient to transform the essence of their nationhood. Another way of framing this second objection is to ask (if national identity ought to be about a commitment to a particular ongoing public conversation), whether the public debate in Quebec, say, is so thoroughly and self-consciously dominated by the French language that the fact that the conversation occurs predominantly in French is a defining aspect of the debate itself.
Turning first to the claim regarding Quebec’s distinctiveness, would allowing French to be supplanted by English as the public language of Quebec efface Quebec’s distinctive identity? On this issue, one is forced to admit that language is the greatest distinguishing feature of modern Quebec society, vis-à-vis the rest of Canada. However, I don’t think the liberal should be terribly preoccupied with preserving ‘distinctiveness’ per se. For instance, liberalism does not suggest that ‘anything goes’ when it comes to the particular sort of distinctive cultural life a group may embody. A culture that chose to oppress a neighbour in a particularly novel and sadistic way, for instance, would have little to say for itself, from the perspective of liberalism, even if it were quite distinctive in its cruelty.

Further, to give a less provocative example, I believe, as argued above, that it is prima facie illiberal for a group to adopt a cultural life whereby members are required to forego their ability to democratically influence the community’s public language. Now, if we were possessed of a powerful, independent argument for why linguistic diversity is, in itself, of such value that it overrides the interests of individuals in having a say over which languages they will work and learn in, then we would have reason to believe that maintaining Quebec’s linguistic distinctiveness is worth the cost. But, since there is insufficient space to canvass this issue thoroughly here, let me just say that I am not aware of any such argument for the value of linguistic diversity per se. Consequently, if we wish to argue that Quebec’s language laws are justifiable deviations from liberal norms, we will need to rely on an argument that goes beyond merely pointing out that

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341 As Kymlicka points out, and as we saw above, while the list of common values shared by Quebec and English Canada since the Quiet Revolution has grown, the salience of the linguistic difference between the two solitudes has likewise increased, with the result, according to Kymlicka, that “to be ‘Québécois’ today simply means being a participant in the francophone society of Quebec” (supra note 1, at 87).
these laws endeavour to protect Quebec’s ‘distinctive’ Frenchness. (I attempt to provide such an argument below).

I do not mean to suggest that preserving a distinctive public life is an irrelevant concern from the point of view of liberal theory. However, I doubt that national distinctiveness is intrinsically valuable. Rather, I suspect that being able to point to some feature of one’s national identity as belonging distinctively to that nation is instrumentally valuable only insofar as this enables members to come to identify with, and participate in, a collective political life. Even if this is the case, however, we are still left with the hypothetical question of whether the Quebec debate, if it were to come to take place predominantly in English, could remain distinct enough from the debates of the other provinces to attract the allegiance and participation of Quebecers. And here I think the answer must be yes. For example, a Quebec debate en anglais would continue to revolve around political issues that impact the everyday lives of Quebecers (just as the predominantly French debate does today). Moreover, even where two political communities debate in the same language, they will do so in importantly, if only slightly, different vernaculars. Thus there is every reason to believe that even if Quebec’s debate were Anglicized it would have a vernacular, or flavour, that was distinctively Quebec’s, just as the vernacular of Newfoundland politics is not quite the same as that of Ontario, whose debate is, in turn, distinct from the way in which Albertans typically argue about political issues.

Of course, it could be argued that francophone Quebecers are so committed to their distinctively French collective identity that many of them could simply not identify with an English public debate in la belle province. And, as we will see shortly, I think there is something to this concern. However, this proposition is quite different (‘distinct’,
if you like) from the dubious contention that by shedding its French *visage* the Quebec debate would lose its ability to remain distinct from, say, Ontario’s political conversation. Rather, if francophone Quebecers could not join in a public debate in Quebec unless it were to continue in French, this would suggest that these individuals are deeply committed to *that particular way of being distinct*. It is this possibility that I wish to consider more fully in the pages to follow.

In order to analyze this possibility, in fact, it’s helpful to look at the second potential objection to the idea that one’s nation does not have any necessary cultural elements. This objection forces us to ask whether the phenomenon I mentioned earlier, whereby a nation, in the eyes of both insiders and outsiders, becomes defined with reference to the ostensibly shared cultural features of its members, could actually have the effect that that nation *just is* the people that instantiate those cultural characteristics? But first, I think, we have to ask why this question is being posed. That is, what would follow even if this were the case? It might be thought, for instance, that we have a right to live within our nation, and that this places the state under a duty to let us preserve the cultural features that make our nation what it is. Kymlicka, as we saw above, ventures such an argument. However, as mentioned, I do not believe that there is a general right to live within one’s national culture. Instead, when I argue that refusing to allow a national minority the means of preserving itself as a distinct culture (whether it be by rejecting their pleas for political autonomy, or denying them the ability to pass restrictive language laws such as Quebec’s Bill 101) may ask too much of certain members of the minority for whom integration into a different linguistic community would be an acutely difficult process, I do not point to a general ‘right to culture.’ Rather, I believe that such people, while they do not possess a right to live in that culture *per se*, do have a right, in light of
their particular circumstances – circumstances that could potentially change in the future if they developed an affinity for the wider society’s language and culture, or if their identification with their native language or cultural practices weakened – to have their societal culture preserved.\textsuperscript{342 343}

But notice that this contextual right to be given the means to preserve one’s societal culture does not arise purely from the putative fact that one’s nation has come to be defined by the cultural characteristics it embodies. Rather, the interest that I see as giving rise to a right to have one’s societal culture preserved is merely one’s interest in avoiding the severe hardship that one might face if forced to leave one’s culture for another. In other words, I am maintaining that while one does not have a general right to any particular culture, one does have a right not to be required to give up a culture with which one identifies very strongly in favour of another culture with which one may not identify at all, unless the only means of sustaining the former culture are deeply illiberal.

Now, it should be immediately clear that the culture with which most people strongly identify is in fact a particular one – namely, their own (that is, the one in which they were raised). Further, if one’s national public debate socializes members by driving

\textsuperscript{342} Here I assume, borrowing from Joseph Raz’s notion of what it is to have a right, that, in light of the importance of belonging to a societal culture for one’s autonomy, some members of minority cultures have an interest in having their cultures preserved that is of sufficient weight as to place the state under a duty to respect that interest. (See Raz, “Liberating Duties”, in \textit{Ethics in the Public Domain}, supra note 88, at 31; See also chapter 7 of Raz, \textit{The Morality of Freedom} (Oxford: Clarendon Press, 1986).)

\textsuperscript{343} Of course, the whole reason that the (‘Kymlickian’) liberal is concerned with ensuring that individuals do not face inordinate costs in gaining access to a societal culture is because the latter is assumed to be part of the cultural preconditions of autonomy. Thus, the question of whether certain measures needed to ensure the preservation of a societal culture are ultimately justified will also depend on the extent to which these measures infringe on the autonomy of members of the culture (or outsiders). That is, it is one thing to enforce Bill 101’s somewhat illiberal restrictions in order to preserve a distinctively Québécois societal culture. It is quite another matter to require that all members follow specific cultural practices or abide by particular religious tenets, even if the flouting of such practices or beliefs could in fact threaten the survival of the culture as such, thus forcing members to undergo a painful process of integration into another societal culture.
home the message that culture is what defines the nation, this will have an obvious impact on the extent to which members feel tied to their particular cultural traditions. Thus, it is true that where a nation defines itself in light of the supposedly shared cultural traits of its membership, this will increase the likelihood that members of the group will face real difficulty in integrating into another culture. However, the reason why these individuals should not have to do so is ultimately because of the psychological hardship that integration would entail, not because the nation has come to be ‘defined,’ in some objective sense, by a shared culture.

Let’s turn now to the alternate way of framing this objection, which has it that the French language has come to define Quebec’s ongoing public debate. Here, I think, most would agree that Quebec’s public debate not only takes place in French, and is drenched, as it were, in a specifically French vernacular (something which could equally be said about English’s impact on the public debates in the rest of the country),[^344] it is largely about how to keep the conversation going in that particular language (something, of course, that cannot be said of English Canada’s political communities, which have the luxury of not needing to worry about another tongue supplanting English as the language of public debate).[^345] This is not to suggest that Quebec politics is purely concerned with the health of the French language. Obviously, the political debate in Quebec is also concerned with such apparently non-linguistic matters as how to manage resources, deliver health care and social services, stimulate investment and economic growth, and a host of other issues of this kind that also make up the bulk of public debates within the

[^344]: As Kymlicka writes in *Politics in the Vernacular*, “political communication has a large ritualistic component, and these ritualized forms of communication are typically language-specific. Even if one understands a foreign language in the technical sense, without knowledge of these ritualistic elements one may be unable to understand political debates” (supra note 121, at 213).

[^345]: One is tempted to say, with apologies to Marshall McLuhan, that as far as the Quebec government is concerned, French is not just the medium, it’s the message.
other provinces. However, it seems fair to say that a background concern for the vitality of the French language is present even here, informing the way in which these sorts of raw political issues are discussed. Thus, the belief that the French language should prosper in Quebec is, apparently, not merely the partisan position of a certain group of participants in Quebec’s debate, but has come to delimit how the conversation takes place. That is, it has become not just a goal, but also an essential term, of the debate, a vernacular unto itself.

Again, however, it must be asked: what follows from this? One might argue that if Quebec’s commitment to its French identity is a fundamental term of her debate, if participants appeal to this commitment to justify their policy prescriptions in the same way that some may appeal to ‘social justice’ when discussing welfare reform, then disallowing Quebec’s language laws would be (on the assumption that they are necessary to preserve Quebec’s visage linguistique over the long term) to radically remake Quebec as a nation.

However, the mere fact that a formerly defining term of a political community’s public debate loses favour should not, in itself, trouble the liberal democrat. Our question becomes, then, whether, as liberals, we should demand that the Quebec government neither accede to, nor propagate, what is a central term of its contemporary debate – namely, the adamant, less than liberal insistence on the survival of French as the

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346 In this context, it is worth noting the existence of the Office Québécois de la Langue Française, which operates with a mandate “To see to it that French is the normal and everyday language of work, communication, commerce and business in the civil administration and in enterprises”, and with an annual budget of $19,000,000 (2007-08) (Office Québécois de la Langue Française, “Rapports de l'Office québécois de la langue française, October 2008”, at 31. May 26, 2009. <http://www.olf.gouv.qc.ca/>), and of the Conseil Supérieur de la Langue Française, whose mandate is to “advise the minister responsible for the application of the Charter of the French language on any question relative to the French language in Quebec”, and which had an annual budget of $1,500,000 in 2007-08 (Conseil Supérieur de la Langue Française, “Rapport Annuel de Gestion 2007-2008”, at 5. May 26, 2009. <http://www.cslf.gouv.qc.ca/>).
dominant language in the province – in the same way we presumably would if the debate’s vernacular were premised on an explicitly racist ideology.

For some, to raise the question may be to answer it. It seems clear, for instance, that Quebec’s national identity is worlds apart from uglier forms of nationalism that insist on the genetic superiority of a particular ethnos. Moreover, I want to suggest that although Quebec’s language policies are indeed significant deviations from liberal norms, purging Quebec’s debate of its insistence on the privileged place of French would represent a cure worse than the disease. For example, I think we have to admit, as we did above, that the disease is a relatively mild one, even if those of us doing the diagnosing are staunch liberals; preventing me from sending my children to provincially funded public schools in the language of my choice, or displaying English-only commercial signs, does infringe my liberty, but it is a far cry from “restricting the language of newspapers, churches, or private schooling.”347 Quebecers whose liberty is restricted by that province’s language laws, for instance, unlike those living under the latter sorts of draconian restrictions, are clearly still capable of leading very autonomous lives. On the other hand, if Quebec were forced to repeal its language laws, the prognosis for the Québécois societal culture would not be good. In the long-term, it is likely that English would come to dominate Quebec to the extent that French culture within Quebec would cease to be able to lay claim to being, in Kymlicka’s parlance, a societal culture. As a result, to reiterate, many francophone Quebecers would be forced, in order to have access to a meaningful context of individual choice, to undertake the difficult and lengthy process of integrating into an English societal culture marked by a divergent history, a different language, and unfamiliar vernaculars, idioms, customs and rituals. Because this

347 Kymlicka, supra note 121, at 288.
demand would be such a costly one for at least a substantial number of individual Quebecers, I believe we can conclude that the relatively minor curtailment of individual liberty caused by Quebec’s language policies is acceptable in the circumstances.

In addition, it should probably be noted that the foregoing discussion assumes that all francophone Quebecers could integrate into an Anglicized societal culture, even if this would be very difficult for some of them. In fact, however, I think it is reasonable to expect that some of these individuals either would not be able to successfully integrate, because the obstacles to integration would prove too great for them, or else, in a more likely scenario, they would not attempt integration in the first place. The latter scenario could come about, for example, if some francophone Quebecers simply regarded the Anglicized culture as totally foreign. Specifically, if these individuals fail to identify in any way with this new societal culture, or even look upon integration into it as a form of treachery, they may opt to remain in a francophone culture that can no longer provide them with the range of meaningful life-options required for them to be able to lead fully autonomous lives. Consequently, even if it would not be unfair for the state to ask most Quebecers to forego their societal culture and integrate into the wider English culture, if a number of Quebecers either cannot or will not integrate, failing to preserve the French societal culture may leave a considerable segment of Quebecers out in the cold, as it were, unable to access the cultural preconditions of full autonomy.

348 As alluded to in the first half of the paper, I am inclined, with Jacob Levy, to the view that French and English Canadian societal cultures are not all that foreign to one another, and that many francophone Quebecers have attachments to English Canadian culture. However, when it comes to evaluating the hardships entailed by integration for individual Quebecers, what matters most may be the subjective beliefs of these individuals as to whether the larger English culture is foreign or familiar, welcoming or hostile. 349 Coming to regard English culture as foreign, or even as a kind of antagonist, seems most likely where one has come to view one’s own identity as bound up with one’s language – which, in turn, seems all the more likely to be the case with regard to individual francophone Quebecers, given that Quebec’s public debate has long given Quebecers the message that theirs is not just a liberal democratic society, but also a French one.
Moreover, the alternative to sitting by as some francophones see their range of life-options radically diminish would be to forcibly integrate them into the wider societal culture. While I am willing to leave open the possibility that this sort of forced integration of national minorities might be justified in some extraordinary cases, it would be a clear and marked departure from liberal ideals. Further, it would represent a much greater violation of individual liberty than that occasioned by the restrictive policies such assimilation would be designed to avoid, namely Quebec’s language laws. In other words, in the context of contemporary Quebec, such a cure, again, would be worse than the disease.

**Numbers**

It should be noted that all of this is, in an important sense, dependent on numbers. For example, if the number of francophone Quebecers for whom integration into a non-French societal culture would be a significant hardship (such that it would be unfair to require this of them) were to become quite small, and the number of people whose liberty is being infringed by Quebec’s restrictive language legislation were quite high, forcing the repeal of these laws, and, by hypothesis, thereby causing francophone Quebecers to eventually have to integrate into an Anglicized societal culture, could be the lesser evil. However, even if we assume that the number of people who will face severe difficulties in integrating is small, we need to ask whether we can expect that many of those facing these obstacles will, consequently, be left without access to any societal culture. In short, we need to consider not just the number of individuals whose liberty is being infringed, but also the magnitude of their unfreedom. Thus, if those few individuals for whom
integration is a real hardship would lose out entirely on the opportunity to lead fully autonomous lives, whereas those who would be able to send their children to public schooling in the language of their choice if Bill 101 were repealed would only become marginally more free, it might still be justified, all things considered, to retain the coercive language laws.

Likewise, if we assume that the number of Quebecers for whom integration would be a significant personal hardship is very small, it might be argued that we would even be justified in forcing their integration, in order to ensure that none are left without access to the cultural preconditions of autonomy. And I’m not actually sure that this is incorrect. For instance, if all Quebecers but one were not only able to, but also wished to, integrate into an English Canadian societal culture, I think it would be appropriate, on balance, to rescind coercive measures designed to ensure the preservation of a societal culture that was only really identified with by one lone individual, and to force this person’s integration into the wider culture. However, unless we are dealing with such an outrageously unlikely scenario, I would also tend to see legislation such as Bill 101, vis-à-vis forced integration, as the lesser of the two evils. The reason for this is because forcing someone’s integration (assuming this is practicable), while it would, in theory, ensure that they have access to the range of life-options autonomy requires, appears to represent an infringement of their liberty of a higher order than does restricting one’s ability to display commercial signs, or send one’s children to public schools, in the language of one’s choice.

In the end, then, even if we adopt a vision of nationalism that sees national identity as consisting in the broad outlines of a political community’s public debate through time, it seems that we will have to reconcile ourselves to the fact that national
minority groups may be forced to resort to rather illiberal measures in order to preserve themselves as distinct societal cultures. As liberals, we must admit that categorically refusing to countenance any of these sorts of deviations from liberal norms may force some members of minority cultures to make wrenching personal sacrifices in order to win access to the cultural narratives that are “a precondition of making intelligent judgments about how to lead our lives,” or may leave other members without access to a meaningful context of choice at all, or both. And, as liberals, we must recognize that these possibilities may be as – and, indeed, in some cases are far more – destructive of individual liberty and autonomy than restrictive language laws, for instance. This much, I believe, is what a liberal multiculturalism requires.

350 Supra note 1, at 83.
In this chapter, I wish to address a potential general objection to my critique of Kymlicka’s liberal theory of minority rights. For example, it might be argued that my entire critique of Kymlicka’s vision of liberal multiculturalism is premised on an erroneous interpretation of his concept of societal culture. Specifically, it might seem that my arguments in this essay assume that Professor Kymlicka takes ‘societal culture’ to be a kind of Kantian transcendental deduction of the preconditions of autonomy (as if he were arguing that it is part of the very meaning of autonomy that it presupposes a societal culture), or else an empirical ethnographic generalization (as if he were arguing that an army of ethnographers sent out to study the contexts of choice available to individuals around the world would all report back that ‘societal cultures’ provide this context of choice). Now, suppose we ask the question ‘what does having a meaningful context of individual choice require?’ I think that our conclusion in Chapter Two of this thesis, to the effect that sub-societal cultures can provide their members with meaningful contexts of choice, is sufficient to refute the proposition that ‘societal culture’ is – either as an analytic truth or as a sound ethnographic generalization – the only answer. However, it may be that Kymlicka employs ‘societal culture’ to answer a rather different question.

Kymlicka, for example, makes it clear that he is a liberal in the mould of Ronald Dworkin and (the early) John Rawls.\textsuperscript{351} Specifically, Kymlicka is an \textit{egalitarian} liberal, and, as such, is committed to the liberal goal of ensuring the autonomy of individual

\textsuperscript{351} \textit{Supra} note 1, at 81, 83, 86-7, 108-15, 126. To see how Kymlicka takes issue with the ‘political liberalism’ espoused by Rawls in his later writings, but not his egalitarian sympathies, see \textit{ibid.}, at 158-64.
citizens, and to the egalitarian goal of remedying unchosen disadvantages. Thus, Kymlicka has a great affinity for the theory of justice developed by Rawls, which is a theory about what Rawls calls the “basic structure” of society. And, famously, according to Rawls, the way in which to determine what the basic structure of a liberal egalitarian society entails is to ask what principles for organizing public institutions would be agreed to behind a veil of ignorance in an original position.\(^\text{352}\) It could be, then, that the real question Kymlicka was attempting to answer when he developed his concept of societal culture was not an analytic or ethnographic one (i.e. not ‘what does having a meaningful context of individual choice require?’), but rather a normative one (i.e. ‘which institutional principles regarding languages, boundaries and powers in a multiethnic state are most likely to advance autonomy and remedy inequality’).\(^\text{353}\) In other words, Kymlicka’s notion of ‘societal culture’ and its connection to individual freedom can be seen as part of a larger philosophical argument for why, in the original position, people would agree to rights of multicultural accommodation and self-government as part of the basic structure – i.e. why people, not knowing whether they will wind up as members of the majority, or of a national minority, or of an immigrant community, would adopt rights to self-government and to multiculturalism.

If this is the case, if Kymlicka did not offer his concept of ‘societal culture’ as a transcendental deduction of the preconditions of autonomy or an ethnographic generalization, then it will not do to simply argue that ‘societal culture’ is neither analytically ‘true’, nor empirically generalizable. Instead, Kymlicka’s normative


\(^\text{353}\) The idea that societal culture can be interpreted as a purely normative concept was raised by Professor Kymlicka in his comments on an earlier draft of this thesis, and my formulation of this possible interpretation is drawn in part from his comments.
argument must be met on its own terms. That is, to refute the normative argument, we must, it seems, show that Kymlicka’s account of minority rights either fails to ensure autonomy, or fails to ensure a fair distribution of costs and benefits. Before doing this, it might help to take a moment to summarize the main features of the normative argument Kymlicka could be seen to be making. For instance, if we take Kymlicka to be offering his account of societal culture as a normative model for the pursuit of liberal egalitarian justice, it appears that he believes the liberal state best lives up to liberal egalitarian principles of autonomy and equality if it (a) integrates people into societal cultures; (b) adapts those societal cultures to be more inclusive of immigrants; and (c) enables national minorities to sustain their own societal cultures.

So, how exactly does Kymlicka’s account fail to properly advance liberal egalitarian justice? That is, in what ways does it either fail to ensure autonomy or fail to ensure a fair distribution of costs and benefits? To be clear, I don’t want to indict Kymlicka’s autonomy-based argument for sustaining the societal cultures of national minorities as in some way automatically failing in either of these ways. I agree, for instance, that traditional modes of integration, whereby the state requires minorities to assimilate into the majority group’s culture, are unfair, and that Kymlicka’s alternative of allowing national minorities to sustain their own societal cultures is generally to be much preferred from the point of view of an egalitarian liberal concerned with equality and individual autonomy.354 (That is, if we had to choose between the latter and the former, I believe that the latter approach embodies the kinds of institutional principles regarding

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354 Further, as discussed above, even if we move towards a more culturally inclusive pan-state identity, there may well still be good reasons (having to do with the furtherance of liberal values such as democratic participation, legitimacy and the consent of the governed, and the fulfillment of citizens’ obligations of justice to one another) for opting for self-government for national minorities.
languages, boundaries and powers in a multiethnic state that are, in general, most likely to advance autonomy and remedy inequality.)

However, I do think that, in particular cases, Kymlicka’s approach could fail in either or both of these ways. For instance, I believe that in some cases to truly allow a national minority to sustain their own societal culture will involve allowing them to take deeply illiberal, preservationist measures that restrict their own members, and in particular their internal minorities. Further, I believe that if we allow this, on the grounds that according self-government to national minorities, so as to allow them to sustain their societal cultures, is written into the basic structure of well-ordered liberal societies, this would in fact be more harmful to the autonomy of members than would demanding their integration (which could be eased somewhat by strong poly-ethnic rights) into the majority culture. (This is not even to mention the alternative of requiring members of the minority nation to integrate into the inclusive, culturally thin national identity I advocate striving towards, which I believe could not only further individual autonomy (vis-à-vis allowing the group to sustain itself as a societal culture), but would also greatly mitigate the unchosen disadvantage that minority members would be made to face if they had to integrate into the majority’s thickly cultural public life.) Moreover, sustaining a societal culture in these circumstances seems almost certain to involve imposing an unfair share of the costs of cultural preservation on internal minorities (as well as ‘ordinary’ minority members who wish to gain greater access to a wider surrounding culture). In this way, and in this case, sustaining the societal culture would come at the cost of bringing about what from the point of view of liberal egalitarian principles is a greater evil.

Consequently, I think a liberal egalitarian concerned with maximizing autonomy and
equality should reject the proposition that self-government for national minorities is part of the basic structure of a liberal society.

Kymlicka might respond to this, it seems to me, by insisting that ‘ensuring access to one’s societal culture’ remains the best answer to the normative question of how, in general, we can best secure liberal egalitarian justice when it comes to matters of culture, internal boundaries, state symbols, and the like. Further, he might say, if we are faced with a situation in which a minority culture is losing members despite enjoying rights to self-government, we may then have to ask whether the state is under a moral duty to rescue that culture. (This approach would have the benefit of not abiding illiberal internal restrictions from the outset.) However, I find it wildly implausible that the state would be under a duty to rescue the imperilled culture in all of these cases.355 If that’s right, then, on what I take to be Kymlicka’s approach, either we allow the national minority the opportunity to sustain their societal culture regardless (at the cost of bringing about what from the point of view of liberal egalitarian principles is a greater evil), or we deny them this opportunity (on the grounds that it could only come at too high a price). But if we do the latter, then we deny them what self-government was supposed to provide in the first place (and what makes it generally valuable from the perspective of liberal egalitarian justice) – namely, secure access to their minority societal culture. And, if this good is out of reach, what’s the point in having accorded self-government to the minority group in the first place? That is, if their societal culture is decaying and can only be saved by resorting to intolerably illiberal measures, then I believe that as liberals we ought to wish

355 In fact, in the situations we are most concerned about here – namely cases where sustaining a minority societal culture requires illiberal preservationist measures – I am not sure talk of a duty of rescue is helpful at all. For example, the duty to rescue generally only holds where the risks of harm to the rescuer are nil or low, and I am suspicious that if we are going to analogize the liberal state and the individual bystander we ought to think of the state countenancing illiberal restrictions as akin to the individual enduring some sort of personal injury.
for the members of the group to integrate into some other cultural community that can provide them with a meaningful context of choice. But, we can expect that such integration will be all the more difficult for individual members, and more disorienting and destabilizing for the larger state, due to the fact that the state granted this minority group self-government rights at the outset, without any concern for the particular circumstances of the group. And if that’s so, why not, I ask, take a more contextual, case-by-case approach to the question of how to accommodate national minorities?

In the end, then, I can’t help feeling that if Kymlicka did intend his account of societal culture purely as a normative model for the pursuit of liberal egalitarian justice, he is perhaps trying too hard to see political autonomy and language rights for national minorities as written into the basic structure of a liberal democracy. By contrast, I reject the notion that the provision of self-government and language rights to national minorities is required by liberal egalitarian justice – i.e. that it is a part of Rawls’ basic structure. Now, to be clear, although I reject Kymlicka’s central contention that “we should aim at ensuring that all national groups have the opportunity to sustain themselves as a distinct culture, if they so choose,” I don’t disagree with Kymlicka that a liberal egalitarian state may endeavour to integrate their citizens into some liberalized societal culture or other; in fact, I’m inclined to believe that this general concern for the cultural resources of citizens should be a part of the basic structure of modern liberal democracies. Rather, I don’t think the further, more particular question of whether national minorities should be accorded self-government rights so as to sustain themselves should even be answered at the level of the basic structure.

\[356\] Supra note 1, at 113.
An example may help. It may be, for instance, that unemployment insurance schemes are properly regarded as part of Rawls’s basic structure. As I see it, however, it is no part of the basic structure that specific categories, proportions, or numbers of people receive such insurance payments. I take it that these sorts of details can legitimately vary across liberal egalitarian democracies, and that it’s up to bureaucrats to fashion fair policies for determining who is deserving of benefiting from the scheme (e.g. those who quit without cause are often barred).

I think something like this is the way we should look at accommodating cultural minorities. For example, I think it is rightly part of the basic structure that the state should actually, in good faith, attempt to accommodate minorities, and that it not require their members to assimilate in order to have the same life opportunities as members of the majority. However, Kymlicka’s recommendation of self-government for national minorities is not, like unemployment insurance, a sort of nation-wide scheme that ‘the least well-off’ may dip into. Rather, Kymlicka recommends a targeted set of measures aimed at a specific class of cultural minority group – namely, national, or homeland, minorities. Thus, it seems to me that on Kymlicka’s account, what qualifies a particular minority group for these rights is simply their status as a national minority – they need not, in other words, be a deserving national minority. This would, I think, be like giving unemployment insurance benefits to all unemployed persons, even those that are undeserving in the sense that they do not even seek work. Now, I realize it may be controversial to say that some national minorities are not ‘deserving’ of self-government, and I don’t mean to suggest that some cultures are of low objective value or are painless to leave (although some will be easier to leave than others); what I mean is that some national minorities may be ‘unsuitable candidates’ for political autonomy, in the sense
that the only sort of self-government that could serve to effectively sustain their societal culture would have intolerably illiberal features.\textsuperscript{357}

So, I would suggest that we should view some commitment to fairly accommodating members of cultural minorities (including a commitment to being open, in principle, to the notion of minority self-government, or perhaps even including something like a rebuttable presumption in favour of it, based on our knowledge of how thickly cultural national identity tends to be, and how strongly cultural allegiances are felt) as part of the basic structure. However, we should not see the further commitment to actually providing national minorities with self-government rights in all cases in this way.

To give another example, I think we should, as a matter of liberal egalitarian justice, be committed to some affirmative action policies to help remedy the systemic disadvantage faced by members of certain ascriptive groups. But I don’t think we should insist that some particular benefit or right (akin to ‘self-government’ for ‘national minorities’) must, as a matter of justice, be accorded to ‘disadvantaged groups’ \textit{per se}, since certain groups, despite qualifying as ‘disadvantaged’, may be unsuitable candidates for particular benefits in light of their peculiar circumstances. \textit{The Economist} magazine, for instance, once sought to make the same point by suggesting, tongue firmly in cheek, that it was high time ‘SHRIMPS’ (severely height-restricted individuals of the male persuasion) were made the beneficiaries of affirmative action employment measures.\textsuperscript{358} I am inclined to

\textsuperscript{357} Now, it may be that Kymlicka intends self-government rights to be accorded only to those national minority groups capable of supporting a viable and broadly liberalized societal culture, or something to that effect. However, even if we read Kymlicka in this way, I don’t think the stipulation that national minorities must be capable of having broadly liberal societal cultures is sufficient to narrow the field to only deserving candidates. That is, I think a particular societal culture could qualify as broadly liberalized, yet still need to resort to quite illiberal measures to sustain, say, its linguistic visage. For instance, few would contend that Quebec’s societal culture is not broadly liberal, yet there is great debate among liberals about whether or not it has taken unacceptably illiberal measures in order to \textit{sustain} that societal culture.

\textsuperscript{358} December 23, 1995.
think, then, that precisely how the liberal state ought to deal with a given national minority should be a determination that is made not from behind the veil of ignorance, but only after we have pierced it (in similar fashion to the way in which we determine which disadvantaged groups are deserving of which sorts of remedial, ‘affirmative action’ measures).\footnote{For what it’s worth, if a choice between Kymlicka’s favoured multicultural accommodations and the traditional, generally unfair method of cultural integration were required, I actually think rational choosers in the original position would opt for self-government for national minorities. That is, I think we’d probably have good reasons to believe that we stood a greater risk of mistreatment in a world where members of national minorities had to integrate into the majority’s culture, than we would in a world in which all national minorities were automatically given the powers of self-government necessary to sustain their societal cultures (mainly because those who would bear the brunt of the mistreatment in the first case – namely, members of national minorities – will likely be greater in number than those bearing the brunt of the unfairness in the latter scenario – namely, members of internal minorities). But this would not mean that Rawlsian choosers would have reason to whole-heartedly embrace the latter world. Instead, as I see it, they would have reason to wish that the means of accommodating minority groups could be tailored to fit particular groups, since this would most effectively minimize the extent to which individuals faced unfairness based on their cultural membership.}

So, to offer a general comment about my arguments in this paper, it seems to me that most of my observations do not have a direct connection to liberal egalitarian principles of justice, in the sense that they prove neither that the basic structure of a liberal egalitarian society rules out self-government for national minorities (as Brian Barry appears to believe, for instance), nor that this basic structure insists on such accommodations (as Kymlicka suggests). Thus, if my overall argument in the thesis is connected to Rawlsian principles for regulating the basic structure of society, the connection, I think, consists simply in the fact that my argument implies that we should not impute to ‘the basic structure’ a kind of wholesale, categorical ‘yea’ (nor a wholesale ‘nay’) to the question of whether we should accord self-government to national minorities.

In the end, then, while I have not spelled out exactly how to determine when self-government and language rights should be granted in specific cases, I have stressed that
these sorts of multicultural accommodations should not be denied *ab initio* as illiberal, nor guaranteed in all cases as part of the basic structure. Moreover, I believe I have come up with some key factors to look at when making these case-by-case determinations – i.e. whether and to what extent illiberal, restrictive measures are required to sustain the minority societal culture, the degree of personal hardship involved in leaving one’s culture and integrating into another (differences in language and culture, as well as age and upbringing, and the gradualness of exit, will be crucial here), and whether there are additional arguments from participation, legitimacy/consent, stability, or the fulfillment of our obligations of justice, that weigh in favour of self-government.

Now, in arguing that a contextual, case-by-case approach is to be preferred, I don’t mean to suggest that the sort of determinations that will need to be made will be easy. I think we would, for example, have to try to gain an understanding of the kinds of personal obstacles members would face if they had to integrate into another societal culture, and I’m not entirely sure how best to do this. It would likely involve listening to ordinary members of the cultures at issue, (bilingual) elites within both, and perhaps cultural anthropologists or sociologists, in order to gauge how distinct the cultures, languages and histories are from one another. But we’d also have to ask the larger question of whether members of the national minority would be likely to come to *identify* in a meaningful way with the wider societal culture. And, even if the personal obstacles to integration are low, if the answer to this question is no, we may, as I argued above, have additional reasons to devolve political autonomy to national minorities that have to do with ensuring that all citizens see their government as legitimate, or increasing democratic participation, or ensuring that citizens meet their obligations of justice to one another, or preserving the stability of the multinational state.
To provide a bit more in the way of specifics, I think that the decision to accord self-government and language rights to a national minority should probably be constitutionalized, since Constitutions are a particularly effective way of ensuring that the majority does not mistreat minorities. But making this decision at the Constitutional level does not mean it will be an acontextual, original position-type determination, or that it can never be revisited. I have no objection, in other words, to the idea that a liberal, egalitarian democracy might choose to constitutionally guarantee political autonomy for a minority group. What I do object to, however, is the notion that such self government for national minorities should, per se, be seen as part of the basic structure of a liberal democracy – that is, as one of Rawls’s “constitutional essentials.”

In addition, I believe that although we should take a ‘case-by-case’ approach, we would not be put in the bizarre situation of having to grant self-government to a national minority one year only to take it back the next, only to grant it again shortly thereafter, etc. The reason for this is that I believe self-government, once granted, will naturally tend to forge a sense of togetherness, and generate a more or less cohesive public debate, such that political autonomy for that national minority will continue to be both just (in that asking members to integrate into a new societal culture would be asking too much), and desired by the group’s members. In other words, I believe there will generally be a justice-based argument, as well as prudential reasons, for keeping self-government rights in place, unless the pressures on members to ‘defect’ become so high that the means required to effectively combat these pressures (in order to sustain the community as a societal culture) would significantly undermine members’ autonomy.
CHAPTER NINE:

CONCLUSION

This essay has argued that Will Kymlicka’s defense of a liberal theory of minority rights draws overly categorical conclusions about the relationship between individual freedom and culture. Specifically, it has been argued that Kymlicka’s autonomy-based argument for according self-government and language rights to national minorities fails to pay sufficient regard to both the fact that the personal costs associated with leaving one’s culture will vary depending on the individual and the cultures involved, and the fact that some national minorities, in order to sustain themselves as distinct societal cultures, will require not only external protections from the actions of the cultural majority, but also the ability to impose liberty-infringing preservationist measures against their own members. Consequently, since individual autonomy does not actually require that one has continued access to one’s societal culture, I have argued that both granting and refusing a minority nation the means to sustain its societal culture could be in keeping with a liberal conception of justice, depending on the particular circumstances of the groups at issue, and that the question of how to accommodate national minorities should, therefore, be determined on a case-by-case basis.

In the final analysis, then, it might seem that my discussion of how liberalism should approach the issue of accommodating national minorities is ultimately toothless, providing only wishy-washy conclusions. However, the finding that the preservation of minority societal cultures is not always required as a matter of justice, as Kymlicka argues, but that neither is it ruled out by liberal commitments to autonomy or equality, as
some more adamant commentators have argued,\textsuperscript{360} is itself a specific and important – if not a novel – insight. If my conclusions in this regard are not so clear and unqualified as those offered by either Kymlicka or those he labels “anti-multiculturalist” critics,\textsuperscript{361} I submit that this is no failing: a nuanced, contextual position is in keeping with the complexity of the issues and the range of real-world scenarios in which they arise.


\textsuperscript{361} \textit{Supra} note 84, at 8.
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