

UNCERTAIN THEORETICAL FOUNDATIONS OF CULTURAL RIGHTS

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ABSTRACT

Uncertain Theoretical Foundations of Cultural Rights

Will Kymlicka's *Liberalism, Community and Culture* attempted to explain why cultural identity was important to people, and how liberal theory could accommodate cultural identity. Kymlicka's book argued that minority cultures deserve to have certain kinds of rights to help them survive. Cultural membership, he argued, was such an important good that liberal political theory was amiss in overlooking it; it needed to be amended in order to recognize that the self-respect of most people was tied to cultural membership, and that people needed a secure cultural context in which to make choices. Yet the importance of the self-respect argument fades in Kymlicka's later book *Multicultural Citizenship*, which gives more emphasis to larger cultural groups that are marked off by language. In this article, I focus on the shift that Kymlicka makes between the two books, arguing that the revisions that Kymlicka made to the argument in *Liberalism, Community and Culture* were necessary, while making the argument less theoretically satisfying.

KEYWORDS: Kymlicka, cultural rights, multiculturalism, liberalism, minorities, nationalism, community, pluralism, culture

IZVLEČEK

Negotovi teoretični temelji kulturnih pravic

Prispevek se ukvarja s knjigo Willa Kymlicke *Liberalism, Community and Culture*, ki skuša pojasniti pomen kulturne identitete za ljudi ter način, na katerega bi jo lahko sprejela liberalna teorija. V knjigi je avtor trdil, da si manjšinske kulture zaslužijo določene pravice, ki jim pomagajo preživeti, in da je kulturna pripadnost tako pomembna dobrina, da se je liberalna politična teorija zmotila, ko jo je spregledala. Za spoznanje, da je samospoštovanje večine ljudi povezano s kulturno pripadnostjo in da za sprejemanje odločitev potrebujejo varen kulturni kontekst, jo je bilo treba dopolniti. Vendar pa argument po samospoštovanju v njegovi poznejši knjigi *Multicultural Citizenship* zbledi, saj v njej bolj poudarja večje, z jezikom omejene kulturne skupine. V članku se osredotočam na premik, ki ga je Kymlicka naredil v novejši knjigi, z utemeljitvijo, da so popravki argumenta v knjigi *Liberalism, Community and Culture* sicer nujni, vendar pa to ni v njegov prid.

KLJUČNE BESEDE: Kymlicka, kulturne pravice, multikulturalizem, liberalizem, manjšine, nacionalizem, skupnost, pluralizem, kultura

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The year 1989 was one to remember: the Berlin Wall fell and Eastern European countries rushed to embrace national identity, with some also embracing liberalism. This was a political earthquake, but also a theoretical one: the common idea that liberalism could simply dismiss cultural or national identity as an anachronism was no longer tenable. As this earthquake erupted, Will Kymlicka's *Liberalism, Community and Culture* (LCC) was published (Kymlicka 1989). It was well-written, thoughtful, and timely, since it supplied an explanation of both why cultural identity was important to people, and how liberal theory could – in fact, needed – to accommodate cultural identity. Kymlicka's book argued that minority cultures deserve to have certain kinds of rights to help them survive. Cultural membership, he argued, was such an important good that liberal political theory was amiss in overlooking it; it needed to be amended in order to recognize that the self-respect of most people was tied to cultural membership.

Liberal theory was also ready for an argument about community, culture and identity. The revival of liberal theory in the early 1970s led by Rawls and Nozick focused on the individual. Rawls's argument asks us to imagine what principles of justice we would choose behind a "veil of ignorance" (Rawls 1971). In Rawls's original position we don't speak a particular language, or live in a particular state, or belong to a particular community. In the original version of Rawls's argument, the principles of justice applied everywhere in the same way. Similarly, Robert Nozick's libertarian argument is universally applicable, with its focus on the individual and her property rights (Nozick 1974). Communitarians such as Michael Sandel and Michael Walzer responded in the 1980s, arguing that the disembodied individuals in liberal theory bore little resemblance to how people viewed themselves, since most people are embedded in particular communities (Sandel 1998; Walzer 1983). But liberals responded that liberal theory actually allows people to live among different communities – one could be an Italian-American, a Catholic, and a Red Sox fan; liberals then asked the communitarians which community mattered the most, which identities had political claims, and which did not, and in what ways did they want to posit the community over the individual. The communitarians did not have much of an answer to these pointed questions.

But Kymlicka did, and he did so from within liberal theory, as someone who wanted to amend liberal theory, not tear it down to replace it with something vague and uncertain. Kymlicka's aspiration was to combine the liberal focus on the individual with the human need to live within communities. *Liberalism, Community and Culture* spawned an important literature in contemporary political theory, centering around a complicated question: what is the role of the cultural group in liberal political theory? The traditional focus of liberalism on the individual seemingly allows private groups, but grants little public recognition for groups. However, the fall of the Berlin Wall in 1989 and the persistence of some groups within liberal polities – indigenous peoples, various national minorities, and ethnic groups – strongly suggested that something was missing from liberal theory.

What set Kymlicka's argument apart from the liberal idea that communities and associations of all kinds exist within liberal states (and can exist readily within liberal theory) is that his arguments for group rights (or as he defined more precisely later, group differentiated rights, as I explain below) was based on the idea that certain groups were important to individual autonomy. Yet ultimately what constituted a group, and what kind of rights they have, is something that changed as Kymlicka refined his argument. My argument here will focus on some of the important changes between Kymlicka's first book, *Liberalism, Community and Culture*, and his second book, *Multicultural Citizenship* (MC), published in 1995 (Kymlicka 1995); some of these changes are obvious to the reader, but others are subtle. Few scholars have remarked on these changes, but they are important in order to gain a clear understanding of Kymlicka's argument. What I hope to show here is that Kymlicka is right to argue that liberal states cannot always ignore certain kinds of identities, and that no state can be completely neutral in how it treats language and other cultural markers. Yet the theoretical foundations of his argument became less certain as his argument quietly changed from *Liberalism, Community and Culture* to *Multicultural Citizenship*.

CULTURAL STRUCTURE

The first part of Kymlicka's *LCC* defended liberalism against its communitarian critics. Kymlicka denied that the fundamental basis of liberalism is abstract individualism or skepticism of the good. Whether the charges of atomism might fit the liberalism of John Locke was left aside by Kymlicka. He undertook to defend a certain liberal tradition that stretched from John Stuart Mill through Ronald Dworkin and John Rawls, which focuses on the individual but is not atomistic. Drawing on these theorists, Kymlicka argued that liberalism is about people living what they consider to be the good life, to live life "from the inside." Rawls tried to argue for this view by distinguishing between the right and the good. Rawls argued that liberalism properly focuses on the right – protecting the ability of people to choose and pursue the good life as they choose. Perfectionists, some of whom are liberal, are wrong to specify some content of the kind of life people should live.

Kymlicka argued that Rawls was right on the substance of his argument, but wrong to characterize it as a clash between the right and the good. Part of what it means to lead a good life is to lead our own life; no life is made better when one is forced to choose one value over another for its own good. Achieving this kind of life means a state that is committed to allowing people to choose the life they want. To do this, we have to be able to figure out what this life is, so we have to be able to deliberate, think and choose. What is crucial for Rawls (and for Kymlicka) is the "freedom to revise our projects, as well as the freedom to pursue existing projects." This all is in fact important "for leading a life that is in fact good" (Kymlicka 1989: 34-35). But what this means is that the liberal good life is based on choices from which to choose. Kymlicka's argument places autonomy at its (liberal) center, with the choices and options from which to choose crucial to the liberal good life.

While Kymlicka argued persuasively that the best interpretations of liberalism need not be atomistic, he also argued that liberal theory wrongly overlooked the ways in liberal states actually did recognize minority rights – and how in other places liberal theory influenced liberal practice to ignore minority rights, with unfair results. Many liberals took Black Americans as their model – excluded from mainstream society, what Black Americans wanted was inclusion and respect for their individual rights. This desire fits in with the standard liberal view of focusing on the individual and her or his rights. But this is not necessarily what all minorities want: many indigenous peoples want to be separate from mainstream society, for example, and they want protections that will enable them to maintain their cultural distinctiveness. Further, many indigenous people have some collective rights. They are Canadian or American citizens, but some parts of tribal law applied to tribal lands; and many wanted to keep it this way, or in fact, have even more tribal autonomy than what they currently have. Black Americans opposed forced separation; indigenous peoples opposed forced integration. When former Canadian Prime Minister Pierre Trudeau called for the end of recognition of indigenous peoples, he was calling for integration – and, against the wishes of many indigenous peoples – the end of many tribal identities.

What Kymlicka did was combine the liberal emphasis on choice and the human reality of cultural groups (and their importance to their members) to produce a liberal theory of minority rights. Kymlicka argued that liberal states recognized cultural groups for good reason, even if that reason was rarely articulated. If we recognize indigenous peoples only as Canadian citizens, the choice to retain one's tribal identity, and perhaps way of life, becomes much harder (if not impossible) to do. It is the importance of choice to the autonomous individual that led Kymlicka to protect minority rights. People don't make choices within a vacuum. Kymlicka argued that they must be situated within a culture to make their choices. Cultures give meaning to our options and to the practices around us. But culture is certainly amorphous, and Kymlicka quickly formalizes what he means by culture: it is through a "rich and secure *cultural structure* that people can become aware, in a vivid way, of the options available to them, and intelligently examine their value" (Kymlicka 1989: 165–166). Cultural membership is not a means used in the pursuit of one's ends. It is rather the context in which we choose our ends. The ideas

of freedom and choice are not particularly meaningful in a vacuum. Cultural structure is what gives us options; cultural structure is what makes sense of who we are and the possible roles we can play and the choices we can pursue.

Kymlicka added a second argument, maintaining that Rawls was correct to think of self-respect as a primary good – a good that all citizens need if they are able to pursue their plans and projects. If our cultural community was not held in respect by the larger outside community, then it follows that the community's members would have their self-respect diminished. If people in the dominant community ridiculed those in minority communities, those in the minority would feel a loss of self-respect. They might also feel a loss of self-respect if they were simply ignored, particularly if their group was small and had a hard time surviving. Members of a cultural group that was left to wither might find themselves unable to navigate the world with the same kind of confidence as those in the dominant community. If people had their self-respect undermined, then they would not feel empowered to pursue their plans and projects; they would not pursue their vision of the good life. In Kymlicka's argument, the right to a culture – or rather a right to a cultural structure – was a primary good, something that all people would want in the original position.

Kymlicka's argument at this point combined two intertwined streams. First, cultural structure provides people with a context of choice, and second, it is a source of self-respect. If indigenous peoples, for example, are not given the right to define their membership, then whites can easily outnumber them in their communities, and outvote them to redefine land ownership rules. This would mean that the indigenous tribe would lose their context of choice and their self-respect. The idea is not necessarily to protect a specific cultural content, but to protect the ability of the cultural community to control itself, so it can control its culture. This formula allows for cultural change from the inside, but also protects it from outsiders who may destroy the cultural structure. This is why Kymlicka discussed cultural structure, and not simply culture, in *LCC*.

Kymlicka added a third argument based in equality and fairness. The problem with many liberal theorists, Will Kymlicka says, is that they work with a "very simplified model of the nation-state, where the political community is co-terminous with one and only one cultural community" (Kymlicka 1989: 177). The different political communities that exist, Kymlicka notes, contain all sorts of communities, but in general only the dominant community receives cultural support. This argument is a response to the idea that it is unfair for smaller cultural communities to receive "special" benefits from the state that the majority does not receive. Kymlicka's response is that the majority does in fact receive all kinds of cultural support from the state, it is just not that visible: "the special measures demanded by aboriginal people serve to correct an advantage that non-aboriginal people have. . . . For the whites who wish to bid for resources in Northern Canada, the security of *their* cultural community is not in question" (Kymlicka 1989: 189). But of course, the security and survival of smaller cultural communities are in question, and are much more likely to fade if they do not receive state support.

This is contrary to what many liberals argue who say that cultural identity, like religion, should be a private matter; the state should respond to religious and cultural affiliation with "benign neglect" (Kymlicka 1995: 3). Just as the state usually ignores whether its citizens are Catholic, Protestant or Hindu, it should be uninterested if they are Italian American, Sikh Canadian, or French Algerian. Liberal neutrality, on this argument, demands ignoring all cultural identity. But Kymlicka correctly insisted that this argument ignores the ways in which states must support some ethnocultural groups: neutrality is not an option because it is not possible. Every state in the world supports a limited number of official languages. Kymlicka notes that a state can avoid having an official religion, but "the state cannot help but give at least partial establishment to a culture when it decides which language is to be used in public schooling, or in the provision of state services" (Kymlicka 1995: 111). While it is conceivable that France could accommodate some members who do not speak French, it is harder to conceive of a France that gives equal footing to all languages. If someone only speaks Breton, her opportunities in France will be severely limited in a way that will not be the case for a French speaker. Equality, then, cannot mean

ignoring all groups in the same way; it means instead recognizing that majority ethno-cultural groups receive state support, which is unfair to small groups. In other words, public space is never neutral. Some people will find that the public space is more inviting to them than to others.

WHICH GROUPS?

Kymlicka's argument, which he refined in a series of articles that became the basis of his book *Multicultural Citizenship*, spawned a huge literature. While that literature has slowed down, it is still with us today. Many questions arose: which groups should receive group-differentiated rights? Do some groups deserve more robust rights than others? What about illiberal groups? Does it make sense to talk about group differentiated rights in an era where the world is more globalized and in many ways less diverse than ever before?

One of the most difficult of these challenges that Kymlicka's argument faced was the issue of "which groups"? While Kymlicka's main example in *LCC* was indigenous peoples, the argument was a general one, that was meant to be widely applicable. It could be and was readily used to make sense of the nationalist claims popping up all over Eastern Europe after 1989, as well as Quebec. But within the Western democracies, questions also arose: there are dozens of immigrant groups in many large cities in the Western democracies: do they all deserve group differentiated rights? Do they all have the right to keep outsiders from challenging their norms and customs? Indeed, one irony about Kymlicka's argument was that its focus was on indigenous peoples, yet many indigenous peoples disappeared over the course of the nineteenth and twentieth centuries. Many that remain are quite small, perhaps too small to sustain themselves. Some responded that if some cultures disappear, and others change, why do we need a right to something as amorphous as culture or cultural structure?

Moreover, some argued that people need to be attached to some culture (or cultures), but this does not mean they must be attached to a *particular* culture – people, after all, move between cultures all the time (Waldron 1991). Immigrants are often between two cultures, with the children firmly part of the culture in the new country, but sometimes they are able to straddle two cultures. So why should we worry about attachment to culture? Few people, if anyone, would be without *any* culture. Prime Minister Trudeau didn't want aboriginal peoples in Canada to be without any culture; he wanted to integrate them into the Canadian culture. Some people move from one culture to another; other cultures may fade over time; those cultures that do survive change over time, sometimes considerably.

Kymlicka's context of choice argument does not fully respond to this criticism – we need a context of choice, but that does not explain why we need a specific context of choice. That leaves Kymlicka's two other arguments, one about self-respect and the fairness/equality argument. The self-respect argument is based on the simple idea that people are often attached to their culture; changing culture is not something that can be done easily or readily: "Someone's upbringing isn't something that can just be erased; it is, and will remain, a constitutive part of who that person is. Cultural membership affects our very sense of personal identity and capacity" (Kymlicka 1989: 175). Kymlicka then argues that facilitating assimilation often fails, pointing to failed attempts to assimilate American Indians (Kymlicka 1989: 176). This is why our self-respect is tied to our culture: our personal identity is intertwined with our culture; if our culture is denigrated, then we are denigrated as well. In some ways this is an empirical matter, something that Kymlicka does in fact suggest. The connection between individuals' self-respect and national culture, Kymlicka admits, does not hold for everyone, but it does for most people. While he is not quite sure where this connection comes from, he suspects "it lies deep in the human condition, tied up with the way humans as cultural creatures need to make sense of the world." In any case, "this bond does seem to be a fact" (Kymlicka 1995: 90); Kymlicka briefly cites one empirical book about language in his argument.

While the empirical evidence for the self-respect argument that is presented by Kymlicka is rather weak, it is not hard to see that many people are in fact tied to certain identities. The eruption of national identity after the fall of the Berlin Wall took many by surprise, and was surely evidence that at least some people, if not many, were attached to their national identity. Moreover, we can point to many examples where people are quite attached to their identities. That Kymlicka did not point to a bevy of evidence does not mean that the attachment to one's group is a mirage.

The challenge is that, if anything, the self-respect argument proves too much. If our self-respect is tied to our cultural membership, does that mean that all cultural groups deserve state support? And is the self-respect that one garners from group members inherently a cultural group, or could it be a wide variety of groups? How about religious groups, for example? While it may seem silly to toss sports teams onto the list of possible groups, the connection that some people feel for their team is deep and often tied to their self-respect.

Perhaps because the self-respect argument casts such a wide net, its role in Kymlicka's theory was quietly reduced in *MC*. In the more recent book, a claim for robust state support for a culture is only valid if that culture is also a societal culture. Other groups get some support, but they are what Kymlicka calls "polyethnic rights", and do not have a right to separation (I explain these groups in the section below). Separating groups into two categories is one of the key differences between the two books; Kymlicka says little about why he creates this division but determining why will tell us much about his argument.

Societal cultures have social, political and economic institutions, and so they can give people a variety of options from which to choose. Societal cultures are large enough so one can lead a fully modern life within them. One can go to school in the societal culture's language, attend a university and get one of many possible jobs within the societal culture. Kymlicka draws on Ernest Gellner's well-known argument which links modernization with the nation-state. As Kymlicka explains Gellner's argument, "modernization involves the diffusion throughout a society of a common culture, including a standardized language, embodied in a common economic, political and educational institutions." (Kymlicka 1995: 76) While Kymlicka does not give a precise number to be counted as a societal culture, it seems likely to be at least one million people, and probably more. Societal cultures, Kymlicka says, are in fact national groups (Kymlicka 1995: 80). This means that in the revised version of the argument, national minorities or national majorities provide the context of choice, and so deserve support to maintain a separate set of institutions from the mainstream society.

One can see how this definition of societal culture is needed to make sense of the context of choice argument: only cultural groups large enough to sustain a variety of institutions could actually provide a context of choice that gave their members many options. Cultural groups with hundreds or even thousands and perhaps even hundreds of thousands of members could not provide much of a cultural context to provide many choices. If protection of cultural structure or societal culture is about protecting people's choices, then the societal culture must be large enough to actually give people a large variety of choices.

While the context of choice argument is clarified in *MC*, what is less clear in all this is the role of self-respect, which was so prominent in *LCC*. Self-respect might play some role in explaining why our attachment to a societal culture means we are tied to a particular societal culture, but then why isn't self-respect attached to smaller groups? Or is it, but in a less important way?

Kymlicka never directly answers these questions. What he does do is reduce the importance of the self-respect argument in *Multicultural Citizenship*. Though Kymlicka never explains why he does so, I believe it is tied to the move from cultural structure, the terminology in *LCC*, to societal culture, the terminology used in *MC*. *Multicultural Citizenship* relies more on the idea of a context of choice argument than does *Liberalism, Community and Culture*, and Kymlicka also focuses more on large cultural groups in the newer book. In the first formulation of his argument, Kymlicka places self-respect within a cultural structure as a Rawlsian primary good, making it a robust liberal right. Doing so was one way that

made the initial argument so important and riveting – a liberal right held by individuals but one that supported cultural communities was a new and exciting idea. In the second formulation of Kymlicka's argument, however, the framework of a Rawlsian primary good drops out, and the role of self-respect takes an uncertain secondary role.

Emphasizing context of choice more than self-respect in *MC*, enables Kymlicka to give more robust rights to societal cultures than polyethnic groups. Members of each group may have their self-respect tied to each group membership – though this is uncertain in *MC* -- but only societal cultures provide a context of choice, which gives them a claim to rights that give them protection and separation from others. Or so it seems.

MODERNIZATION AND CULTURAL RIGHTS

Kymlicka's third argument, one about fairness and equality, subtly changes between the two books. The fairness/equality argument in *LCC* focuses on cultural structure in a broad way, but in *MC*, the focus is mostly on language – language is a key marker of societal cultures, which are typically either national minorities or majorities. In *LCC*, the kinds and sizes of cultural groups eligible for state support are numerous, but the move to a focus on language in *MC* is a move toward the larger societal cultures, reducing the number of groups that should receive robust group differentiated rights. Kymlicka does grant what he calls "polyethnic rights" to immigrants, religious groups, and other non-national cultural groups in *MC*, a category of group that does not exist in *LCC*. Polyethnic groups want to integrate, but not at the price of complete assimilation. Sikhs may want to become Canadian Mounties, but without giving up their turban, for example (Kymlicka 1995: 31). Some members of these groups may want some financial support for their associations, magazines and parades. Kymlicka argues that since members of those groups mostly want to integrate, the state should look upon these sorts of requests as reasonable. Kymlicka notes that granting these requests is not giving any rights to the group as a collective, which is one reason why he prefers the term group differentiated rights. A Sikh should be able to choose to wear his turban as a Mountie if he wants to do so, but the right to wear the turban does not mean he must do so. The choice remains up to the individual Sikh; here we see how group differentiated rights is compatible with individual rights. And while giving money to an ethnic association is, in a way, giving money to a collective, this does not give the ethnic group any power over its members. Ultimately, though, the meaning of polyethnic rights is vague, perhaps because they are so context dependent.

Members of societal cultures deserve to have their context of choice (and self-respect) protected. Those that are members of immigrant or religious groups do not receive this kind of protection. What about national minorities that are small? Kymlicka says we should leave the decision of support for their truncated societal culture up to the members. Even if they lack a strong societal culture now, they can rebuild it: "weakened and oppressed cultures can regain and enhance their richness, if given the appropriate conditions" (Kymlicka 1995: 100). One could see how relatively large societal cultures, like the Quebecois in the 1970s, could rebuild or strengthen their societal culture, but could cultural groups with a relatively small number of members do so? What if they have thousands or tens of thousands or even hundreds of thousands of members? How can they ever become a societal culture, with universities, school systems, and an economy in a language spoken by only a few people?

The tension here is that societal culture, as Kymlicka defines it, is a product of modernity: it is a mass society, which is why he invokes Gellner when discussing it. But Gellner's argument explains why so many small cultures have a hard time surviving in the modern world, so Kymlicka's argument that smaller cultures should be allowed to become societal cultures is hard to understand. To be sure, this is a brief argument in *MC*, only about a page, but because it marks out a crucial difference between the two books, it is important, and it is unfortunate that Kymlicka discusses it in only a cursory fashion. If

self-respect is a Rawlsian primary good, and self-respect is tied to group membership, then all groups that confer self-respect should receive state support. This expansive argument is compatible with *Liberalism, Community and Culture*, but not *Multicultural Citizenship*, where smaller groups do meet the definition of a societal culture that receives robust group differentiated rights.

Kymlicka does say that we should not give states a perverse incentive to undermine national minorities – it is unfair to ensure that a small culture have a hard time surviving by undermining it, and then say it is too small to justify extra resources. But this argument is just too brief to answer the many questions it raises. Many indigenous peoples in the past have had their culture structures undermined, yet it is also the case that the process of modernization would have undermined or transformed many of them in any case. Does that matter? Indeed, many were never a societal culture in the modern sense. What if a national minority has a relatively small number of members (say, less than one million, or less than half a million), and the chances of them ever becoming a societal culture is nearly zero. What then?

The tension between the rights that Kymlicka wants to grant and the modernization process that he accepts can be seen in his view of linguistic rights for immigrants. He argues that the host community's linguistic expectations of new immigrants are often misguided. In the U.S. and Canada, which have dozens of immigrant communities, policies aim for immigrants to learn English and put their native tongue – if not for them, then for their children – behind them: “current policy has operated on the assumption that the ideal is to make immigrants and their children as close as possible to unilingual native-speakers of English,” rather than bilingual (Kymlicka 1995: 97). Supporting immigrant languages is a polyethnic right, according to Kymlicka, though not at the expense of English; helping immigrants maintain their native tongue need not compete with learning English, since it is not hard to be bilingual. Yet a few pages earlier, Kymlicka announces that immigrants' language cannot survive in their new state, except on the margins. This is because in industrialized countries the languages that will survive are those that are used publicly (Kymlicka 1995: 78). Other languages, including the languages of immigrants, will survive only among a small elite, or in ritualized form, “not as a living and developing language underlying a flourishing culture” (Kymlicka 1995: 78). Indeed, Kymlicka is emphatic that immigrant languages should not be sustained in the same way as the languages of national minorities. Yet taking Kymlicka's two arguments together means that the state should support dozens of languages that are bound, according to Kymlicka, to die off or become marginalized.

Kymlicka claims in *LCC* that assimilationist policies do not work (Kymlicka 1989: 176), but many of them have in fact worked, as Gellner's argument, which Kymlicka approvingly invokes, suggests. Immigrants the world over have successfully assimilated, while many smaller language groups have disappeared.¹ Perhaps some assimilationist policies do not work; but we need to figure out which ones work and which do not and why. Or perhaps assimilation is the wrong concept: new groups integrated, and while they gave up many of their cultural practices, they often help change the culture of their new home. Are some groups less willing or able to integrate than others?

Kymlicka is in fact clear that immigrants do not have a right to the societal culture they just left behind. Kymlicka argues that immigrants voluntarily waive their right to their national culture (Kymlicka 1995: 96). Yet given the number of people who leave their country behind because of oppressive political conditions or lack of economic opportunity, the idea that most immigrants left their country voluntarily is hard to sustain, as Kymlicka admits. Kymlicka also argues that refugees have a claim to make about rights violations, but against the government that persecuted them, who obviously will not honor that rights claim. Yet this still leaves the millions of immigrants, who are not refugees, but who leave their homeland because of limited economic opportunity. Beyond that questionable assumption that immigrants voluntarily leave their homeland, Kymlicka never explains why people can waive this right. As Joe Carens points out, liberals usually assume that rights are not alienable: people can't generally give up their right to free speech, to assemble, to a free trial and so on (Carens 2000: 81).

1 For an example of assimilation in one country, see Weber 1976.

If the right to one's societal culture is an important liberal right as Kymlicka believes, then it is hard to understand why it can be waived.

Navigating between the idea of cultural rights and the fact that modernization is, in many ways, a process of assimilation is not an easy road to travel. If everyone's self-respect is tied to their cultural group, and this self-respect is a primary good, then everyone deserves state support for their cultural group. This was the implication of Kymlicka's argument in *Liberalism, Culture and Community*. It was an exciting argument, important and innovative. But also unsustainable. There are simply too many cultural groups for them to all have a menu of robust rights, which makes the move to societal culture sensible but also paradoxical. Many societal cultures have become so through a process of assimilation, by absorbing many smaller cultural groups.

CONCLUSION

Ultimately, Kymlicka's argument seems to give little protection to many smaller cultures and to polyethnic groups, and more protection to larger, societal cultures. This is, I think, intuitively plausible, but the theoretical foundation of Kymlicka's argument is vague. Dividing groups into societal cultures and polyethnic groups seems theoretically unsatisfying, but it is pragmatic and sensible. To say that most people are quite attached to their cultural structure does not really say enough, since this leaves (at the least) the question of small cultures and immigrants at issue. It is surely true that having one's cultural context changed is very wrenching and disorientating, as Kymlicka suggests. Yet there are many ways in which one's cultural context can be changed in confusing ways: the fall of the Soviet Union changed the structure of many Eastern European countries in ways that many found disorientating; the industrial revolution was similarly wrenching and confusing for many; many people today, particularly older people, find new technology to be perplexing. Indeed the process of modernization was also a harsh one, and as cultures (or societal cultures) changed, many people were marginalized – people who held jobs that became obsolete because of mechanization, older people who felt at loss in a fast changing world. Similarly, any period of rapid technological change, like we are experiencing today, will be felt to be disorientating by some. It may be that society should help those at loss and adrift, but it is hardly clear that the *rights* of these people were violated.

Perhaps Kymlicka is simply making a pragmatic argument: the fact that we cannot protect all cultural groups does not mean that we should protect none of them. The fairness argument is correct – some groups get cultural protection for free, which others do not. Kymlicka's reliance on indigenous peoples as his prime example in *LCC* suggests another reason: that if a culture is decimated by the dominant culture, it is not fair if the people that remain are told they cannot receive any support for their cultural identity, an argument Kymlicka only briefly suggests (Kymlicka 1999). How and if this argument is compatible with the idea of cultural structure as a context of choice is another issue that may not be easily resolved, which may be why Kymlicka does not rely on it very much in his later works.

Kymlicka's argument pointed to the clear unfairness of the fact that some people were part of a dominant culture that was intertwined with a modern state; along with that entanglement came certain kinds of benefits that members of minority cultural groups did not receive. Kymlicka too was clearly correct to argue that cultural identity matters, and matters quite a bit, to many people. How these insights are linked to individual autonomy and to context of choice is unclear. Still, it is certainly true that few people give up the comforts of their cultural identity easily; if they do, it is almost always because they feel some duress. Bringing this to the attention of political theory and philosophy was a major achievement. The idea that a liberal state can only be about protecting individual rights and that a state can be culturally neutral were once reigning liberal assumptions. Yet these ideas today seem obviously wrong, in large part because of Kymlicka's argument, and in this important way, Kymlicka has changed the course of liberal political theory.

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POVZETEK

NEGOTIVI TEORETIČNI TEMELJI KULTURNIH PRAVIC

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V knjigi *Liberalism, Community and Culture* je Will Kymlicka trdil, da si manjšinske kulture zaslužijo določene pravice, ki jim pomagajo preživeti. Prav tako je trdil, da je kulturna pripadnost tako pomembna dobrina, da se je liberalna politična s tem, da jo je spregledala, zmotila. Treba jo je bilo dopolniti, da bi lahko prepoznali, da je samospoštovanje večine ljudi povezano s kulturno pripadnostjo. S trditvijo, da je zaščita določenih skupin pomembna za zagotovitev in okrepitev individualne avtonomije, je Kymlicka predstavil novo liberalno teorijo, ki je v politični teoriji ustvarila pomembno novo literaturo. Vendar pa je dopolnitev argumenta na koncu povzročila spremembo v tem, kaj konstituira skupino in kakšne pravice naj bi te imele. Trdim namreč, da so teoretična izhodišča njegovega argumenta s tem, da je z leti svoj argument spremenil, še zlasti v knjigi *Multicultural Citizenship* iz leta 1995, postala manj jasna. S preoblikovanjem svojega argumenta je Kymlicka nekatere skupine podprl bolj kot druge. To je pragmatično sicer smiselno, saj ne morejo biti vse skupine deležne močne podpore, vendar pa so teoretični razlogi za novo razlikovanje vse prej kot zadovoljivi.