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THE ASSESSMENT OF CULTURES AND THE AUTONOMY OF COMMUNITIES[1]

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ABSTRACT

The Assessment of Cultures and the Autonomy of Communities

Cultural rights are one response to the mistreatment of minorities by dominant groups. Their protection has become a litmus test for the liberal nature of democratic states. At the same time, criticisms of cultural rights abound in scholarship and popular discourse. These include concerns that cultural rights distort and essentialize culture, that cultural protections shield gender discrimination, and that cultural rights legitimize a false narrative about the capacity of Western states to act justly towards subjugated minorities and, in particular, indigenous peoples. The question addressed here is whether the protection of cultural rights, as defended by Kymlicka in his 1989 book *Liberalism, Community and Culture*, is still an important project today in light of these criticisms and against the background of recent political circumstances which find some political leaders distancing themselves from multiculturalism and where, once again, cultural difference is used to exclude minorities from the full rights of citizenship.

KEY WORDS: Kymlicka, liberalism, multiculturalism, cultural minorities, colonialism

IZVLEČEK

Vrednotenje kultur in avtonomija skupnosti

Zaščita manjšin je postala lakmusov test za liberalno naravo demokratičnih držav. Čeprav so kulturne pravice eden od odgovorov na zlorabe manjšin s strani prevladujočih skupin, se hkrati tako v akademskem kot tudi v javnem diskurzu vse pogosteje pojavljajo kritike na njihov račun. Te izražajo zaskrbljenost, da kulturne pravice izkrivljajo in esencializirajo kulture, da kulturna zaščita zakriva diskriminacijo na podlagi spola ter da legitimirajo lastno pripoved o zmoti zahodnih držav, da so pravične do podrejenih, zlasti avtohtonih manjšin. V članku se avtorica sprašuje, ali je danes, »v luči omenjenih kritik ter glede na nedavno distanciranje nekaterih političnih voditeljev od multikulturalizma«, varovanje kulturnih pravic, kot jih je v svoji knjigi *Liberalism, Community and Culture* iz leta 1989 branil Kymlicka, še vedno pomembno, ter kje se s pomočjo kulturnih pravic manjšine ponovno izključuje iz polnopravnih državljanskih pravic.

KLJUČNE BESEDE: Kymlicka, liberalizem, multikulturalizem, kulturne manjšine, kolonializem

1 Thanks to Colin Macleod for his helpful comments on a previous draft. Like many scholars who write about these debates, I have benefited not only from Kymlicka’s scholarship but also from his encouragement and support. He is well known for his generosity, which extends to a wide diversity of scholars, including many who disagree with him.

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Over the last 50 years, minorities have sought recognition and protection of their distinctive interests and have offered several now-familiar arguments for why their claims ought to be recognized. These arguments are sometimes met with familiar counterarguments by those who worry that cultural rights distort culture or who consider these rights a threat to individual freedom because of their group-based nature or who worry that minority rights fragment the public sphere and undermine a sense of common good.

As familiar as these arguments and counterarguments are today, they did not receive much attention before the 1980s, except perhaps in Canada, where, in the 1980s, the Canadian public and political elite were focused on the threat of Quebec's secession and constitutional reform. At that time, Canadians debated 'individual versus collective rights' and the nature and scope of indigenous rights. Terms like 'communitarianism' and 'individualism' made their way into our national newspapers. So, in 1989, when Will Kymlicka published *Liberalism, Community and Culture*, the book made a significant impact on how Canadians came to understand issues of diversity.

As we know, Kymlicka's book had a similar impact in Europe where, starting in 1989, debates shifted away from left-right, Cold War issues to focus instead on the upsurge in conflicts about national self-determination. Nested in these conflicts were questions that happened to be at the heart of Kymlicka scholarship, about whether each national community has the right to a state of its own and, if not, whether multinationalism and multiculturalism could be reconciled with the liberal ideal of the nation-state. Whereas Kymlicka couldn't have written his book with all of these issues in mind, his scholarship shows remarkable foresight about the need to trace the connection between liberal justice, culture and self-determination, and it helped set the stage for considering late 20th century conflicts about diversity from a fresh perspective.

My focus here is on the real-world impact of Kymlicka's arguments. In the course of putting to rest the liberal-communitarian debate of the 1980s, Kymlicka's work gave credibility and moral resonance to claims for cultural protection from a liberal and individualist perspective and in doing so attached considerable importance to the presence of cultural differences and the survival of real-world cultural communities. As we know, arguments about protecting cultural communities gained traction not only in scholarly circles but eventually also amongst public policy-makers, in court decisions, and in dozens of constitutional reform processes. This was partly because Kymlicka's work illuminated what the abstract principles found in liberal scholarship could look like in practice.

That being the case, the legacy of this influence is mixed in two senses explored here. First, Kymlicka's arguments raised questions about how culture ought to be assessed and who should make such assessments. His approach seemed to require that decision-makers sometimes assess the importance of a cultural practice to a minority group and decide what kind of accommodation a group's culture merits. In doing so, his account opened the doors to distorted and problematic readings of culture by state actors who frequently are poor judges of cultural difference or of the nature and salience of cultural practices. Second, these distortions were especially acute in relation to indigenous peoples whose core concerns are not adequately addressed by cultural accommodations. In subsequent scholarship, Kymlicka clarified the distinction between different kinds of minorities and different kinds of minority claims,[2] but the sometimes confusing overlap between minority claims for cultural accommodation and for group-based jurisdictional autonomy and self-determination can be traced to the attempt made in *Liberalism, Community and Culture* to justify both these claims in terms of a liberal approach to cultural difference.

2 See especially Kymlicka 1995: 26–33.

THREE AIMS OF CULTURAL RIGHTS

Whereas the leading accomplishment of Kymlicka's book was to guide a generation of scholars through the terrain of liberal philosophy and to uncover the normative resources within the liberal philosophical tradition that addressed cultural diversity, it's worth recalling that his work also sought to uncover a legacy of failures by liberal states to treat minorities fairly. This legacy was, in part, the result of racist and imperialist ideologies that shaped public policies which systematically excluded and coercively assimilated minorities and colonized peoples.[3] Although the book was written primarily as a philosophical examination of liberal theory, the many examples it employed throughout point to this political project. In this regard, one aim of Kymlicka's argument was to consider liberal theory against the background conditions found in actual liberal states which included, in the 19th and early 20th centuries, states that relied on the complicit participation of elites, dominant majorities and state actors in social, political and legal cultures of domination. In some cases, these cultures of domination were supported by philosophical theories that betrayed the very principles they defended to justify the subjugation of cultural and religious minorities.

The second aim of Kymlicka's arguments was to consider how postwar liberal principles and policies, which favoured individual rights and personal choice, had systematically ignored the collective dimensions of people's attachments to their cultures, languages and other markers of identity. Postwar individualism, though seemingly neutral about the survival of sub-state communities, was often hostile to the collective measures needed to sustain minority cultures or languages.[4] Kymlicka argued that the neutrality of postwar individualism could lead to disadvantage and injustice for minorities. This is because, in the absence of minority protections, the public sphere is shaped by majority cultural practices and language, and so minorities, whose practices are different from the mainstream, will be faced with either choosing to participate in the public sphere in order to access the benefits there or choosing to exclude themselves from the public sphere and thereby relinquishing access for themselves (and their children) to these benefits.

Even at the level of abstract theorizing, this postwar liberal outlook ignored the dilemmas that some minorities faced and the ill effects of cultural insecurity on them. Kymlicka argued that, for members of some minorities, abandoning their cultures and assimilating into the mainstream was the only way to meet what liberals had identified as the conditions required for individual freedom. He argued that cultural membership is a primary good to which people have a basic right and that protecting this good sometimes requires using the legal and political force of liberal rights discourse and state institutions to limit majority rule when it has a direct and disadvantageous effect on the cultural security of minorities.

The third aim of his arguments was a pragmatic one – to illuminate what the abstract principles of liberal multiculturalism look like in practice and to formulate principles by which state policy could be reformed in order to improve cultural security for minorities while remaining faithful to the principles of liberal equality. Kymlicka's book was full of examples of many kinds disadvantages minorities faced and how these should be assessed in light of liberal principles and addressed by reforming public institutions and policies. Reforming liberal political ideals was thereby intended to be part of a project to effect policy change in liberal states.

With these three aims in mind – 1) to illuminate the racist and imperialist history of liberalism's treatment of minorities, 2) to address the failure of postwar liberal individualism to recognize the importance of cultural security to individual well-being, and 3) to identify policy-relevant principles which could address injustice towards cultural minorities – Kymlicka developed a liberal framework for the protection of cultural rights (also referred to here as the 'liberal framework'). By the late 1980s, several

3 Kymlicka 1989, especially Ch. 7.

4 Ibid. See also Ch. 10.

political theorists had developed theoretical approaches which shared these aims (Young 1989; Taylor 1992 and Tully 1995). And over the next two decades, their reflections on the ongoing real-world struggles of minority groups contributed to changes in policies towards minorities,[5] including changes to dozens of state constitutions in North America, Europe and Latin America to address minority and indigenous disadvantage.[6] This era, which is often described as the era of 'identity politics', consisted of both optimism about the potential for policy reform towards minorities and skepticism about status quo ideals and policies about minority rights, especially those informed by liberalism's past.

THE BENEFITS AND BURDENS OF ASSESSING CULTURE

The practical reforms recommended by the liberal framework were designed to have an impact on legal and political decision-making in at least three key respects. First, the framework encouraged public decision-makers to be more sensitive to the collective dimensions of minority injustice. When cultural, linguistic, and religious ties are considered part of a person's cultural identity, rather than a matter of individual and voluntary choice, they tend to be viewed by those who hold them as non-negotiable features of the self which the state must respect in order to treat people as equals.[7] From a perspective sympathetic to cultural and other forms of identity-based rights, states that fail to respect legitimate group-based ties risk placing some citizens in the impossible position of having to choose between being true to their deepest attachments and having access to the benefits of citizenship.

The recognition of the collective dimensions of minority rights can be found in numerous recent legal decisions about minorities. For instance, in the late 1980s, Canadian courts began citing 'respect for minorities' amongst the reasons to legally accommodate religious and cultural practices that had previously been restricted. In one of the leading Canadian cases about minority discrimination, *Multani v. Commission Scolaire Marguerite-Bourgeoys,*[8] a school's no-weapons policy is found to unfairly restrict Sikh boys from wearing kirpans to school.[9] The court states that "[a]ccommodating [Multani] and allowing him to wear his kirpan under certain conditions demonstrates the importance that our society attaches to protecting freedom of religion and to showing respect for its minorities."[10] In this way, the court looks beyond the impact of the restriction on the individual and recognizes how legal restrictions on individuals can affect the larger identity group and the respect it enjoys in Canadian society.

The concern that legal restrictions on minority practices may lead to disrespect for groups as a whole also informs many cases in Europe, including, in 2008, a case about the Roma right to beg in Italy. In this case, the Italian Supreme court overturned the conviction of a Roma woman of reducing her 4-year-old child to servitude partly on the basis that the Court was convinced that begging is a 'deeply rooted' cultural tradition of the Roma people that deserves some respect. The court states:

5 For example, both Kymlicka's and Taylor's work have been used extensively by courts and policy-makers in Canada and elsewhere in the world. See Kymlicka (1998) for a collection of research papers written originally for the Canadian government. Also see the Bouchard Taylor Report (2008) which was written for the Quebec Government to assess government policy about the accommodation of minority rights in Quebec.

6 Explicit mention of 'identity', or articles that directly address cultural rights or 'indigenous identity', can be found in the constitutions of Argentina, Belize, Bolivia, Brazil, Bulgaria, Croatia, Ecuador, Guatemala, Kosovo, Mexico, Nicaragua, Panama, Paraguay, Peru, Poland, Romania, Slovakia, Slovenia, Venezuela, as well as statutes passed by regions in Italy, Spain (Cataluña), and Germany (Lander). In most cases, these provisions have been entrenched in the last thirty years. See Ruggiu (2012: 219–24, 224–33).

7 For a discussion of identity politics that focuses on the non-negotiable character of identity claims see Waldron (2000: 155) and Weinstock (2006: 15).

8 Multani v Commission scolaire Marguerite-Bourgeoys [2006] 1 SCR 256.

9 A kirpan is a ceremonial dagger worn by devout Sikh males to symbolize, amongst other things, their commitment to defend their faith.

10 See Mulanti (introductory remarks to majority opinion). Respect is also discussed in Multani, para 79.

"begging is a traditional way of life deeply rooted in the culture and in the mentality of the people… It is important to consider the real situations in order to avoid criminalizing behaviours that are part of a group's cultural tradition."[11] The sensitivity to the group-based dimension of the case allowed the court to consider that begging is not merely an individual choice, nor only a matter of economic necessity, but a cultural tradition worthy of respect.[12]

The second impact of the liberal framework was to make decision-making more sensitive to the background social and historical dimensions of injustice. Again, the framework has been somewhat successful in this respect. This sensitivity is apparent even in contexts where states steadfastly maintain that the restrictions they impose on minority practices are legitimate and fair. For instance, those in France who have been critical of the state's laws that prohibit the full-face veil worn by some devout Muslim women worry that these legal restrictions contribute to a broader narrative of anti-Muslim sentiment in France and other parts of Europe. This concern is shared by many outside of France including some judges (albeit a minority) on the European Court of Human Rights in the case of *SAS v France*.[13] The arguments made in these various contexts suggest that, without considering the background context, policy-makers and judges miss the injustice the community claims to experience, which is not simply a matter of having the activities of its members restricted, nor even a matter of restricting their right to religious freedom. Legal prohibitions can also be part of a history of group-based exclusion and a narrative of persecution that constitutes a pattern of injustice which is far more profound than what is revealed by a snapshot assessment of how individuals are treated today. Where the discourse of rights is employed solely in order to consider current restrictions on individual actions, it can fail to address many kinds of injustice. Even where judges and legislators decide against protecting a minority's practice, as they did in *SAS*, the capacity of state actors to recognize the collective, social and historical dimensions of minority injustice in their decisions and policies while using the language of rights contributes to a powerful and important public discourse which can track a broad set of injustices and can be employed to effect change.

The third respect in which the liberal framework of cultural rights has had an impact on legal and political decision-making is that today, the protection of minority rights is more likely to require that state actors such as judges and legislators explicitly assess the culture of a minority group in the course of their decision-making.[14] Such assessments are sometimes required in order to determine whether a law unfairly restricts a cultural practice. They can require that judges address controversial questions about the centrality and importance of a practice to a minority in order to weigh the importance of the practice against the importance of the law that restricts it. In some cases, judges must decide whether a law unfairly restricts a disputed practice by first deciding whether the practice is part of a recognized cultural or religious tradition. For instance, they must decide whether begging is a Roma cultural tradition, whether the kirpan is a symbol of Sikh religion, or whether wearing the burka is a practice of faith. They must also decide whether the practice is important to the tradition. Is begging a widespread and important tradition of the Roma or an infrequent and marginal practice? Is the kirpan a requirement of faith or is it an excessive display of religious orthodoxy? Answering these kinds of questions is often contentious not only because judges can make mistakes but also because minority communities are pluralistic and members disagree about the significance and centrality of particular group traditions. State actors who are members of the majority can easily misinterpret minority practices, and import their own crude stereotypes into decision-making. At the same time, minorities can disagree about the

11 See Ruggiu (2016: 32–3).

12 In the end, the Court changed the charge to 'maltreatment of a child' and ordered a new trial.

13 SAS v France (43835/11, ECHR, July 1, 2014) para 149.

14 For a more complete discussion of this shift, see Eisenberg 2009.

value and importance of particular practices and about whether laws that restrict their practices are unfair impositions or a means to welcome change.[15]

The risks and problems that public institutions have confronted as a result of this third feature of the liberal framework of cultural rights have generated by far the strongest criticisms of multicultural theory and policy. These criticisms were largely unanticipated by Kymlicka's theory. In fact, in 1989, Kymlicka avoids questions about cultural interpretation and about whether particular cultural practices ought to be protected. Instead, he emphasizes that the liberal framework is designed only to protect the cultural community as a context or structure for people's choices (i.e. the 'cultural structure') and not to protect the particular 'character' of the community or its traditional ways of life at any given time. The particular character of the community, including its traditions and practices, he argues, is the product of choices, which people should be free to endorse or reject (Kymlicka 1989: 172, 178). Cultural protection is intended to protect the primary good of cultural membership or cultural structure, not to protect the particular character of cultural communities at any given time.

But in real-world struggles, the distinction between cultural structure and cultural character is notoriously slippery. Even if we follow Kymlicka's lead and agree that 'cultural structure' includes matters crucial to the survival of cultural communities – e.g. a minority language, traditional territories or crucial resources, public works programs that support culturally specific work patterns (ibid., 183) – nothing about the distinction between 'structure' and 'character' helps sort out how to decide when a practice is crucial to cultural survival. In part this is because, with few exceptions, no cultural practice is so utterly integral to a culture that restricting it would undermine the whole cultural structure of a group. And in part this is because most cultural practices can be characterized as central and integral to a culture, depending on how the practice is characterized and whom one asks. For instance, in the case of the Roma mentioned above, how begging is protected depends on how it is characterized. Is the practice best described as 'begging with one's children' or instead, as 'making one's living from begging'? And if the latter, then what standard ought to be used to assess whether members of the community are free to make a living begging? Is it enough to protect the right of the Roma to beg as they did 100 years ago? Or should protections of the practice ensure a middle-class income for Roma beggars by protecting their access to begging so that they can reach a level at or above subsistence through the practice.

These are difficult questions and they are also an inevitable feature of the liberal framework of cultural rights. If we accept the argument that justice requires members of a minority to have access to a secure cultural context in which to make decisions about how to lead their lives, then resources crucial to that context must be protected from being overtaken or used up by majorities or dominant groups. Within the general parameters of this guideline, many questions have to be answered including how to identify which resources are crucial, how broadly or narrowly these resources ought to be characterized, and how to balance them against the interests and rights of non-members. In all these ways, the need to protect the cultural structures of minorities requires that a culture be assessed with the aim of deciding whether a disputed resource is integral to the survival of that culture. These assessments must consider not only whether a resource or practice has been traditionally important to the culture of the group, but whether it is currently part of the identity of the community; that is, how members actively identify with the resource or practice and by what cultural practices their identification is sustained. In this way, any concrete account of 'cultural structure' will be tied to an account of the current practices, resources, and values that sustain the structure today.[16] In short, any real world application of cultural protection requires state actors to engage in the controversial business of assessing cultures and identifying and characterizing crucial cultural practices. The distinction between cultural structure and cultural character provides no helpful guidance to this project.

15 Legal restrictions on sexist cultural and religious practices are potentially divisive in this way. For studies that focus on the impact of legal restrictions on such practices within communities see Deveaux (2006) and Shachar (2001).

16 Cf. Carens (2000: 61); Eisenberg (2009: 53–4); Forst (1997).

COMMUNITIES BEYOND CULTURE: MISIDENTIFYING INJUSTICE

So far, I've considered some of the leading benefits and burdens of the liberal framework of cultural rights. Amongst the benefits, the liberal framework has helped decision-making become more sensitive to the collective, social and historical dimensions of minority injustice. At the same time, the framework has placed a significant burden on public institutions, which must assess culture and sometimes determine the importance of a cultural practice to a minority in order to resolve cultural conflicts. These assessments are controversial. They present a significant challenge to the practical viability of Kymlicka's arguments, which on the one hand require such assessments in order to give practical force to the theoretical arguments for minority rights, yet on the other provide little helpful guidance about how such assessments can be successfully made.

The second challenge for Kymlicka's arguments is to correctly identify when injustice is cultural and when it has some other source or cause. In this regard, the liberal framework has been criticized for misrepresenting the nature of some minority claims and distorting some political struggles. According to this second challenge, the liberal framework has mistakenly characterized many minority struggles as struggles about the recognition of cultural difference when often the most pressing cases of minority injustice are better understood as problems of group-based dominance.

Several critics of cultural rights have argued that the presence or absence of cultural rights is neither the cause nor cure of some of the worst disadvantages that minorities suffer, and yet the liberal framework of cultural rights frames minority injustice primarily in terms of cultural recognition and thereby places the onus on the state to address the problem. According to this view, most states, especially those with a colonial history, are enthusiastic to adopt the liberal cultural framework and even to recognize and offer some limited protections to minorities because to do so imposes less of a burden on them than would be imposed if they had to address deeper forms of injustice that better explain the disadvantages minorities suffer. One strong rendition of this criticism holds that the liberal framework of minority rights obscures the more damaging legacies of systematic racism and colonialism, including, for instance, the theft of land, the destruction of kinship systems, and the coercion and subjugation of indigenous peoples. The rendering of these injustices as 'cultural injustice' has led to false prescriptions for how to understand and address the claims of some minorities. For instance, indigenous peoples have long argued that their claims against colonial states are not, in the first instance, claims to protect or recognize their cultural distinctiveness but rather are claims for self-determination, self-government and territorial autonomy that do not depend on the presence or absence of cultural differences between them and dominant groups.[17] Some critics of the liberal framework argue that liberalism is incapable of addressing these deeper problems because it is built on the foundational ideal of retaining the state as the primary and best context of governance for all peoples within a territory. From the perspective of these critics, arguments for cultural rights appear to be, in the first instance, arguments to further expand the powers of the state by creating the perceived need for cultural justice and then empowering liberal states to address this need rather than considering the state to be the source of injustice in the first place.[18]

This is a powerful and important criticism, which cannot be fully addressed here. Yet, it is worth recalling that the liberal framework of cultural rights was developed, in part, as a response to the background legacy of the injustice of colonial policies towards indigenous peoples and thereby conveyed more skepticism about the capacity of liberal states to right past wrongs than these criticisms acknowledge. The liberal defense of cultural rights was not intended as a means to detect and protect cultural difference per se, and certainly not to provide a principled rationale for endorsing all cultural practices. Rather, one aim was to work out the kinds of cultural claims that merit protection within liberal states

17 Cf. Asch (2014); Coulthard (2014); Tully (1995).

18 Cf., in particular, Brown 1995.

while identifying the limitations of existing liberal states as contexts in which some minorities can securely live. At the same time, there is no doubt that the liberal framework was designed to improve the legitimacy of the liberal state and employs the apparatus of the state as an appropriate means for establishing just policies towards minorities.

At the same time, Kymlicka's approach allowed considerable scope for limiting the power of the state over some minorities, especially indigenous peoples. For instance, Kymlicka argued that some indigenous communities in Canada and the US must be protected from being outbid or outvoted in decisions about land use where their survival depends on access to land and resources. The protections he had in mind were to be instituted by the state and included restrictions on the voting rights of non-indigenous peoples within a given territory, and autonomous tribal courts with the capacity to decide matters internal to indigenous communities. He argued that, 'it would be wrong to override a consensus [within an indigenous community] about how best to entrench aboriginal rights' (Kymlicka 1989: 197) and further, that it should come as no surprise to the dominant groups that indigenous people would put greater trust in tribal courts given that external courts have an "absolutely appalling record" in respecting either the individual or collective rights of indigenous peoples. In these respects, his arguments point out that, sometimes, protecting cultural community demands removing jurisdictional power over a minority from the dominant group. Clearly, this doesn't amount to an argument to get rid of the state. But it suggests that, in some real-world contexts, the best way to secure cultural survival for a minority is to extend jurisdictional autonomy to that minority.

CONCLUSION

The liberal framework of cultural rights gave credibility and moral resonance to claims for cultural protection from a liberal perspective, and in doing so attached considerable importance to the survival of real-world cultural communities. Here I have argued that the liberal framework developed in Kymlicka's *Liberalism, Community and Culture* had three central aims which were to illuminate the racist and imperialist history of liberalism's treatment of minorities, to address the failure of postwar liberal individualism to account for the role that cultural security plays in individual well-being, and to identify policy-relevant principles which could address minority injustice. Arguments for cultural rights gained traction in scholarly circles and eventually also amongst public policy-makers, in court decisions, and in dozens of constitutional reform processes.

The analysis of the liberal framework offered here also shows that the implementation of cultural rights has encouraged public decision-makers to consider the collective, social and historical dimensions of injustice and sometimes requires the assessment of culture. These effects of the framework have, in turn, raised serious challenges to the protection of cultural rights, including that cultural rights have invited distorted and problematic readings of culture by state actors who are frequently poor judges of the nature and salience of minority practices. Finally, critics have pointed out that some of the most pressing cases of minority injustice are not best understood in terms of cultural injustice nor best addressed with cultural protections. The liberal framework has thereby been criticized for distorting minority claims and obscuring the root causes of some forms of injustice towards minorities.

It's worth mentioning two counterarguments to these criticisms that bear on the protection of cultural rights. First, whereas the risks that judges will distort minority cultures are serious, the limitations of approaches that ignore cultural identity and consider only whether individuals are free to choose their practices and memberships can be debilitating for some minorities. State policies that ban veils and kirpans are appropriately the targets of criticism today in part because they buy into the myth of the liberal individual whose freedom is solely expressed through choice and voluntary commitments to others. The liberal framework for the protection of cultural rights sought to replace this myth by reminding us of the false neutrality of postwar individualism. The framework helps to support

the expectation that, today, democratic states cannot swamp minorities and then justify their actions by arguing that majorities ought to rule, but instead ought to recognize, as part of the shared narrative of public reasons, distinctive group standpoints and the struggles that have informed and shaped both minority and majority practices.

Second, the liberal framework for cultural rights is not hostile to the state, but it is deeply critical of how states treated minorities in the past and was developed against a partial account of this history. Whereas minority advocates and claimants are usually aware of the historical and collective experiences of their communities, the liberal framework encouraged decision-makers to be sensitive to these histories and the collective, social, and historical patterns of injustice. One aim of this awareness was to inculcate an institutional humility about the correctness of state-based decision-making and encourage state actors to consider disputes today from a historical perspective that was broader than the here and now.

Finally, in the real world, decision-making and advocacy about minority rights has always been strategic and deeply political in ways that sometimes distort the attractive aims that policies and principles are intended to serve. There is no reason to think that the liberal framework for the protection of cultural rights developed by Kymlicka would be exempt from this fate. But it seems important to distinguish principled ideals from political strategies, aims from political distortions, and accomplishments from setbacks. The enduring contribution of any theory or scholarly argument depends on making these distinctions.

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POVZETEK

VREDNOTENJE KULTUR IN AVTONOMIJA SKUPNOSTI

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Prispevek obravnava pomemben učinek knjige Willa Kymlicka *Liberalism, Community and Culture*. Sprašuje se, kako so liberalna načela, ki jih je zagovarjal, v realnem svetu vplivala na politično in pravno odločanje, povezano s priznavanjem in z zaščito kulturnih manjšin. Najprej identificira tri praktične cilje Kymlickovega pristopa, kar oblikuje kontekst za tehtanje dosežkov njegovih argumentov in izzive, s katerimi so se soočali. Prvi cilj je bil izpostaviti dediščino neuspehov liberalnih držav, da bi z manjšinami ravnale pravično, in v tem smislu liberalno teorijo premisliti v povezavi z okoliščinami, ki vladajo v dejansko liberalnih državah. Drugi cilj je bil premisliti, kako so povojna liberalna načela in politike, ki so favorizirali pravice posameznika in osebno izbiro, sistematično ignorirali kolektivne dimenzije navezanosti ljudi na njihove kulture, jezike in druge označevalce identitete. Tretji cilj je bil osvetliti, kako so abstraktna načela liberalnega multikulturalizma videti v praksi, in oblikovati načela, po katerih bi bilo mogoče državno politiko spremeniti in na tej podlagi izboljšati kulturno varnost manjšin, hkrati pa ostati zvest načelom liberalne enakosti.

Čeprav je bila LCC pri izpolnjevanju vsakega od opisanih ciljev delno uspešna, je liberalni pristop, ki ga zagovarja, naletel tudi na ovire. Izziv in ena od najmočnejših kritik liberalnega pristopa je, da so za presojo kulturne in verske prakse manjšinske skupnosti, s pomočjo katere se lahko reši konflikte, včasih potrebni državni akterji. Drugi izziv je bil ta, da liberalni okvir včasih vodi do napačne identifikacije »kulture« kot vira nepravičnosti. Več kritikov trdi, da liberalni okvir manjšinskih pravic zakriva škodljivo dediščino sistemskega rasizma in kolonializma. Trdijo, da ta pristop zmotno podpira državo kot panacejo za krivice do manjšin, namesto da bi jo obravnaval kot primarni vir krivic. Avtorica trdi, da so Kymlickovi argumenti ta problem deloma že predvideli.