

Multicultural Citizenship A Liberal Theory of Minority Rights

(by **Will Kymlicka**, Clarendon Press, Oxford, 1995)

Introduction

A traditional criticism of liberalism is that it is based on a conception of human beings as atomistic individuals, unconnected in any deep way with their fellows. On this picture, individuals are the primary thing, and associations of humans occur only as a secondary phenomenon when these individuals judge that it is in their rational self-interest to join together. Hence a social contract is involved in some way when individuals form themselves into a society, and within that society private contracts are what continue to join rational, self-interested, utility-maximisers together outside the limited sphere of kith and kin.

Socialists, communitarians and conservatives have argued that this picture fails to acknowledge the social nature of humans. One of the points typically being made here is that humans are and always have been creatures who lived in groups, not as isolated individuals. As social animals, they need connection and community with others to achieve fulfilment and happiness. But a deeper point is that the communities in which individual humans are embedded are not just secondary phenomena which the ontologically prior individuals created, rather they are preconditions for individuals being formed in the first place. Steven Lukes describes this position in his book *Individualism*:

"In contrast to the individualist picture of individuals as like onions which, once their outer, culturally-relative skins are peeled off, are 'much the same in all times and places', the sociological apperception reveals society as irreducibly constitutive of or built into the individual in crucial and profound ways. His distinctively human qualities, even his very capacity (and of course opportunities) to achieve autonomy and self-development are in large measure socially determined...As George H. Mead...acutely observed, 'a person is a personality because he belongs to a community, because he takes over the institutions of that community into his own conduct.' The individual self is not merely essentially social in its formation and nature; its very individuality is to be seen as formed of social elements."¹

Some critics go on to argue that because liberalism gives this primacy to the individual and ignores the role of the group, liberal bills of rights have a distinctive bias. In the French Declaration of the Rights of Man and the Citizen (1789) and the American Bill of Rights (1791), individuals are given rights that they can exercise against the state, but rights protecting communities or groups are neglected. It is true that some modern liberal bills of rights do recognise minority group education, language, and religious rights, and also assert that affirmative action to help disadvantaged groups does not constitute

¹ Steven Lukes, *Individualism* (Oxford, Blackwell, 1973) pp. 150-151

discrimination². However, these group right innovations are often criticised today as inconsistent with liberal principles. It is said that affirmative action and minority group rights violate the liberal principle of equality before the law, and simply reintroduce the very differential treatment on the basis of race, ethnicity etc. that they were seeking to remedy.

In Will Kymlicka's recent book, *Multicultural Citizenship*,³ he takes a strong stand in favour of the sort of group rights under attack today. His position is that notwithstanding the absence of minority group rights from the classical liberal bills of rights and the current distaste for them in much liberal thinking, the protection of such rights is not only consistent with liberal principles, but is actively required by these principles.

I believe it is legitimate, and indeed unavoidable, to supplement traditional human rights with minority rights. A comprehensive theory of justice in a multicultural state will include both universal rights, assigned to individuals regardless of group membership, and certain group-differentiated rights or 'special status' for minority cultures.⁴

A particularly interesting thing about this book is how he justifies this conclusion. He takes criticisms that have been levelled at liberalism, such as the one sketched above, but instead of defending liberalism against them, he accepts them and then uses them to support his position. The criticisms are not deflected, but absorbed and made part of a reworked liberal argument, as I shall describe below.

Multinational and Polyethnic states

Kymlicka's analysis only deals with two types of groups, national minorities and ethnic groups. National minorities come about by the incorporation of previously self-governing territorially concentrated cultures into a larger state. They want to maintain themselves as separate societies alongside the majority culture, and want autonomy and self-government. Ethnic groups come about through individual and family immigration. They want to integrate into the larger society, but want to modify the institutions and laws of the mainstream society to make them more accommodating of cultural differences.⁵

Kymlicka points out that although most states are both multinational and polyethnic, Western political theory tends to ignore this fact and proceeds "with an idealised model of the polis in which fellow citizens share a common decent, language, and culture."⁶ Liberal thinking was not always so guilty of this. The

² For example the New Zealand Bill of Rights Act and the Canadian Charter of Rights and Freedoms.

³ Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford, Clarendon Press, 1995). Hereafter "Kymlicka".

⁴ Kymlicka, p. 6

⁵ Kymlicka, ch. 2. He is aware that not all minority groups fit into either of these categories. He notes black Americans and refugees as two groups that do not.

⁶ Kymlicka, p. 1

minority treaties developed by the League of Nations in Europe between the World Wars tried to protect the nationals of one country who found themselves within the borders of another. But after World War II liberals became actively hostile to minority rights for the reasons Kymlicka canvasses in his fourth chapter. The focus shifted from special minority rights to universal human rights:

Rather than protecting vulnerable groups directly, through special rights for the members of designated groups, cultural minorities would be protected indirectly, by guaranteeing basic civil and political rights to all individuals regardless of group membership. ... Guided by this philosophy, the United Nations deleted all references to the rights of ethnic and national minorities in its Universal Declaration of Human Rights ... On this view, ethnic identity, like religion, is something which people should be free to express in their private life, but which is not the concern of the state ... The separation of state and ethnicity precludes any legal or governmental recognition of ethnic groups, or any use of ethnic criteria in the distribution of rights, resources, and duties.⁷

The Basis for Liberal Group Rights

The core of the book is in chapters 5 and 6 where Kymlicka argues that multinational and polyethnic group rights are required by the liberal principles of individual autonomy and equality of rights.

In chapter 5 he first reaffirms that liberalism is based on individual freedom. But the next step in his argument is to accept the point which, as I noted earlier, has been stressed by critics of liberalism: a precondition for having the autonomous, choosing individual which liberalism valorises is that this person be embedded within a culture or community. Thus, he concludes, in a liberal state the different cultures that exist within a society need to be accommodated and protected, since they are what allow the members of those cultures to have the individual freedom liberalism defends.

I would have liked him to devote more space in Chapter 5 to expanding and justifying the central premise in this argument which he takes over from liberalism's traditional critics. What he gives us instead are a number of passages like these scattered through his book:

Freedom involves making choices amongst various options, and our societal culture not only provides these options, but also makes them meaningful to us.⁸

For meaningful individual choice to be possible, individuals need not only access to information, the capacity to reflectively evaluate it, and freedom of expression and association. They also need access to societal culture. Group differentiated measures that secure and promote this kind of access may, therefore, have a legitimate role to play in a liberal theory of justice.⁹

⁷ Kymlicka, pp. 2-4

⁸ Kymlicka, p. 83

⁹ Kymlicka, p. 84

Cultural membership provides meaningful options, in the sense that familiarity with a culture determines the boundaries of the imaginable¹⁰

Cultural membership provides us with an intelligible context of choice, and a secure sense of identity and belonging, that we call upon in confronting questions about personal values and projects.¹¹

Freedom of choice is dependent on social practices, cultural meanings, and a shared language. Our capacity to form and revise a conception of the good is intimately tied to our membership in a societal culture, since the context of individual choice is the range of options passed down to us by our culture. Deciding how to lead our lives is, in the first instance, a matter of exploring the possibilities made available by our culture.¹²

So, your culture and ethnic group provides you with the identity, interests, capacities, goals, and range of options that are the assumed background to any acts of individual choosing and autonomy. He is concerned to distinguish his position from that of conservatives who argue that because of this importance of the community for individuals, the community should be able to limit attempts by individuals to revise its values, practices, etc.¹³ As a liberal, Kymlicka is concerned always to maintain the right of individual members of a culture to seek to revise it and to integrate into it elements which they find admirable in other cultures. Ultimately the individual may choose to leave that culture and enter another, though Kymlicka thinks that this is not easy or common.

In his chapter 6, Kymlicka again dips into the criticisms that have been directed at liberalism, and uses one of them to advance his project. Some liberals have argued that liberal equality demands that the state give all individuals the same basic rights, and then leave them alone to make their own choices. For these people, the state should maintain a position of neutrality with respect to different ethnic groups. It should give the individual members individual rights, but should give no group any special advantage. This is consistent with broader liberal claims that the role of the state is simply to set up a neutral background framework of rules that individuals can then use to seek their own visions of the good life.

Critics of liberalism have denied that such neutrality is possible, and Kymlicka seems to echo this denial when he says that the state cannot be neutral when it comes to ethnic groups.

The idea of responding to cultural differences with 'benign neglect' makes no sense. Government 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

¹⁰ Kymlicka, p. 89

¹¹ Kymlicka, p. 105

¹² Kymlicka, p. 126

¹³ Kymlicka, pp. 91-2

state unavoidably promotes certain cultural identities, and thereby disadvantages others.¹⁴

Many liberals say that just as the state should not recognize, endorse, or support any particular church, so it should not recognize, endorse, or support any particular cultural group or identity. But the analogy does not work. It is quite possible for a state not to have an established church. But the state cannot help but give at least partial establishment to a culture when it decides what language is to be used in public schooling, or in the provision of state services.¹⁵

Since the state cannot achieve neutrality by inaction, justice and equality demand that it acts so as to make up for any systematic disadvantages suffered by minority cultures by giving them special rights. Since identical treatment is not a possibility here, equality requires differential treatment in order to accommodate differential needs.

In so far as existing policies support the language, culture, and identity of dominant nations and ethnic groups, there is an argument of equality for ensuring that some attempts are made to provide similar support for minority groups, through self-government and polyethnic rights.¹⁶

In summary then, Kymlicka cleverly appropriates some traditional criticisms of liberalism in order to argue that the liberal values of individual autonomy and equal treatment by the state require special group rights for national minorities and immigrant ethnic groups.

The Nature of Group Rights

Kymlicka does not think that national minorities and ethnic groups should be treated the same in all respects and receive the same types of group rights. As already indicated, he sees national minorities as desiring to maintain themselves as separate societies. He sees immigrant ethnic groups as wanting to integrate into the larger society, although they would like this larger society to expand to incorporate some elements of their culture as well. He also thinks that because immigrant ethnic groups left their old culture voluntarily, they do not have as strong a case as national minorities to maintain their old culture intact in their new country. Thus while self-government rights and special representation rights in the legislature might be appropriate for national minorities, polyethnic rights will be different.¹⁷ They will deal with such things as anti-racism laws, changes to the education curriculum to recognise the history and contribution of minorities, public funding of ethnic associations, magazines, festivals, and art groups, and the exemption of ethnic groups from laws and regulations which disadvantage them (e.g. turban-wearing Sikhs should be exempted from the uniform requirements of the police department.)

¹⁴ Kymlicka, p. 108

¹⁵ Kymlicka, p. 111

¹⁶ Kymlicka, p. 115

¹⁷ Kymlicka, chs 2 and 7

Toleration and Its Limits

Finally, Kymlicka is careful to stress that his group rights do not entitle members of a group to limit or restrain the efforts of any other member of the group to rethink and revise group beliefs and practices. "Internal restrictions" which can be imposed in the name of group solidarity, religious orthodoxy, or cultural purity would violate the liberal principle of individual autonomy, he argues, and are not supported by his analysis. Instead he has advocated "external restrictions", which limit the power that one group, the majority culture, has over other groups, the minority cultures. His group rights are therefore not set up in opposition to individual rights.¹⁸

A liberal view requires freedom *within* the minority group, and equality *between* the minority and majority groups. A system of minority rights which respects these two limitations is, I believe, impeccably liberal. It is consistent with, and indeed promotes, basic liberal values.¹⁹

What would Kymlicka's response be if some self-governing national minority did not allow its members to question their culture or their role in it? Would he intrude to allow such questioning in the name of individual autonomy, or would he let the culture follow its own path in the name of toleration? He argues in chapter 8 that liberals should generally not force national minorities to accept liberal principles, anymore than he thinks liberal societies should force non-liberal nation-states to abide by liberal principles. Forced accommodations are unstable. Instead, persuasion and peaceful criticism and inducements should usually be employed to convince those within the self-governing national minority to amend their culture²⁰.

Conclusion

This is a very rewarding book which fills a gap in contemporary liberal political theory. It offers constructive, principled, and well-thought out advice to liberal states on how to respond to the national minorities and ethnic minorities within their borders. From a theoretical point of view, its innovation and charm was the way it utilised a number of standard criticisms of liberalism in order to develop and strengthen a liberal analysis. It also shows how liberal thinking on rights is not confined to the classical liberal tradition, but can be reworked and revitalized.

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¹⁸ Kymlicka, ch 3

¹⁹ Kymlicka, pp. 152-3

²⁰ Kymlicka, pp. 165-168