

THE LIBERAL STATE AND THE OTHERS

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ABSTRACT

This paper investigates what obligations liberal states have with respect to those aliens who apply for settlement and with respect to those who are already settled. It argues that the equal moral standing of every person requires affluent liberal democratic states to admit an extensive number of immigrants, but rejects the idea that they should admit all applicants regardless of any economic or cultural consequences. Additionally, it argues that within the liberal doctrine nor the 'value of self-respect,' neither the 'value of autonomy' can be used to justify minority rights. However, both societal peace and fairness may require liberal states to reconsider some of their formerly held legal prohibitions that clash with minority cultural norms or practices, and may require liberal states to grant weak (polyethnic) rights to minorities.

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INTRODUCTION

Over the past few decades, especially over the last couple of years, immigrants from non-Judeo-Christian cultural background have become subjected to growing hostility, threat and suspicion all across Europe. Partly for economical reasons, partly as a result of terrorist attacks and other dreadful events associated with immigrants, citizens of affluent Western European countries tend to sympathize growingly with political forces that make opposition to immigration and multiculturalism the central issue of their campaigns. Accordingly, many of the liberal states have adopted new public policies and laws that restrict the conditions of settlement and put more emphasis on integration than ever before. These new legislative provisions (among other things) gear political inclusion on acquiring the language and history of the host country and have decreased the legal and financial support that has been provided previously for minority groups to maintain their distinct identities.

Taking this situation as a starting point, two different – but closely connected – families of questions offer themselves, not only for the makers of public policies, but also for philosophers trying to understand how it might be possible for people with different conceptions of the 'good' and the 'right' to live together in accordance with the principles of justice. First, there is a family of questions on whether, and on what grounds, liberal states have right in justice to exclude people who want to settle within their territory. To mention some of the queries that occur: May an affluent liberal state decide not to admit immigrants at all for the sake of preserving the abundance of their actual citizens? May it decide to do so for the sake of preserving existing cultural patterns as much as possible? If a liberal state decides to admit some immigrants, what may it take into account in the selection process? May culture be considered a factor in selection? If so, may it be used to (entirely) exclude some

potential immigrants on grounds of cultural difference, or may it only be used to include some potential immigrants rather than others on grounds of the shared culture?

Second, there is a family of questions about the appropriate attitude toward internal cultural affairs attested by the liberal state. For example: To what extent and in what ways, if any, may a liberal country legitimately expect immigrants (and their descendants) to conform to the dominant culture of the country they have entered? May it issue incentives aiming to ease cultural assimilation? Or is the right approach exactly the opposite? Should liberal states help – by legal or financial measures – immigrants to preserve their preexisting cultural identities and pass on these identities to their children? If they should, are there any restrictions on what kind of minorities would qualify to what kind of 'helps'? Should 'illiberal minorities' be incapacitated with respect to such helps?

Finding answers to these questions is a difficult task. Even if we think that the moral equality of every person requires (liberal) states to attest 'equal respect and concern' for all, most of us will be led by a double, and actually conflicting intuition. In connection with the first family of questions, our immediate intuition would call us to say: no states should close their borders in front of people who want to settle there, since migration is almost always based on serious reasons. Few people would abandon their family, their friends, the land they grew up on gratuitously. On the other hand, there is an intuition that tells us that 'we' are entitled to decide whom to include and whom not to. To put the contradiction in another way, we may see the boundary between 'native' and 'immigrant' unimportant, annoying, arrogant, the product of selfish impulses to hoard and protect resources, and still, most of us are inclined to think that after all this is a legitimate distinction.

In connection with the second family of questions the persistence and in some cases the

fierceness of demands for recognition (not only of the claims for a fair share from the social pie but for a 'distinct identity') have led many to accede that recognize them we must. Some think that this recognition is a natural consequence of the basic principles of liberal democracy, according to which in such political systems there should be some room for tolerance and hence the freedom to lead the life that one prefers. This includes the freedom to associate and form a group that holds norms, values and practices different from those the 'majority' thinks are right. On the other hand, most of us will also agree that cultural practices that violate human rights (exercised against some members of the group or against non-members) should discredit groups from their rights to non-interference. In other words, it seems that by the demands for recognition there emerges a conflict between two claims. First, that the dignity of the individuals should be recognized (by respecting and ensuring their fundamental rights); and second, that the assertions of the cultural group to which individuals belong to should be recognized.

My concern in this paper is to argue that the moral equality of every person does not require liberal states by justice to admit all immigrants regardless of cultural or economic circumstances, and it does not require them to give collective rights to those already admitted.

In the first chapter I shall propose that the arbitrariness of birth requires just liberal states to admit an extensive number of immigrants, however, contrary to an ideal world justice, real world justice does not require them to completely open their borders. To defend this thesis I shall show how open borders would endanger the well-being of both who are already members of and those who would like to be members of a given society. I shall argue that liberal states have rights in justice to issue some restrictions in their immigration policies not only out of economical, but of cultural reasons, too. My arguments will be based upon ethical universalism, or what Gewirth (1988, see in Mason 1997: 431) calls 'the general principle of

human rights,' that states that all persons have equal rights to freedom and well-being. The guiding idea behind this standpoint is that we have equal rights to freedom and well-being because freedom and well-being are necessary conditions of agency or the achievement of purposes.¹

In the remaining part of this paper I shall investigate how the concept of cultural membership fits into the liberal theory and, consequently, what a liberal state should offer for immigrant groups. It is important to note that while every liberal theory is committed to the principle of equality, it is far from consensual as to what counts as a legitimate form of human flourishing a state should be committed to endorse equally. Though it is a highly debated issue, in this paper I shall simply assume that human flourishing requires that the individual be capable of autonomy or have the capacity to choose his or her way of life on the basis of critical reflection on a range of options.²

The thesis I want to argue for here is that culture might be a necessary precondition of autonomy, however, the value of autonomy does not require liberal states to give collective rights to minority groups. In order to accomplish this task, in the second chapter I shall introduce Will Kymlicka's arguments on multiculturalism. The reason why I chose his theory as a starting point is that in *Liberalism, Community and Culture* (1989) he attempts to point out how the value of autonomy (and the commitment to equal respect and concern for all) requires liberal states to give cultural rights to their minorities. I shall point out that it is not the value of autonomy to which he grounds his claims, and the measures he seemingly calls for would jeopardize the goal of ensuring the autonomy for every citizen. In addition, I shall

¹ Since the scope of this paper is limited, I shall concentrate on the question that what are the possible implications of my standpoint. This means that I will not consider arguments at length that are committed to such ideas that justice is a 'domestic affair' in a certain sense (e.g. Walzer 1983) or that special obligations are grounded in the notion that the attachment compatriots have to one another is constitutive of their identity and sense of self (e.g. Tamir 1993).

² See e.g. Kukhatas (1992a, 1992b, 1998) or Kymlicka (1995: Ch.8)

argue that the provisions he puts forward in *Multicultural Citizenship* (1995) in connection with immigrants are more attractive than his general theory, however, their underpinning is not sufficient. In the third chapter then I will examine Susan Moller Okin's (1997, 1998, 2003) autonomy-based liberal attack on multiculturalism. I shall show that although her theory is flawed in many respects, the problems to which she calls our attentions are worth considering. The fourth chapter will be devoted to elaborating on the lessons that can be drawn from the foregoing two approaches, trying to find out how liberal states should treat immigrant communities, especially the ones that are internally illiberal. It will be followed by the conclusion, in which the problems analyzed in this paper will be outlined again.

Let me finish my train of thought with an important *caveat* here. While I think that liberalism (at least the form that is committed to the value of individual autonomy) does not require states to give collective rights to culturally different people, it might not be easy for politicians to stick to this idea. Social tensions and the ferocity of demands sometimes might require politicians to choose measures that are in opposition to what the basic values of liberalism call for. Since my basic concern here is philosophy and not politics, I shall not propose anything about how European countries should approach their immigrant communities in the contemporary situation. My only aim is to point out that not recognizing the demands of minority groups for (legally) acknowledging their different concept on what is right and what is wrong should be regarded as a normative ideal to which we should always get closer and closer, as circumstances allow.³ The same should be noted with regard to the issue of immigration. Though I contend that more open policies would be desirable, I will not give any idea as to how states should accomplish this goal.

³ By different here I mean those values that are irreconcilable with those of the liberalism.

CHAPTER ONE - IMMIGRATION

Despite the fact that virtually no European country recruits immigrants any longer, immigration is emerging as a key issue across the continent. Every year hundreds of thousands of people put up for settlement to all affluent Western democracies as asylum seekers, as spouses of already admitted newcomers or simply as common people who wish to improve their lot in life. If they had the possibility, even more would arrive. 'What stops them, in no small measure, is force. Borders keep people out, ultimately because people with guns are prepared to enforce the boundaries' (Carens 1995a: 2). But is it justifiable on any moral grounds to exclude a person who wants to enter a country? Why should people not be free to settle wherever they desire as long as they are peaceful and law-abiding? Or should they?

Though in general political philosophers tend to neglect the topic of immigration and investigate distributive justice as a matter of domestic rules or state-to-state relations only, the way states respond to outsiders who wish to live under their authority (whether they give them citizenship or permanent resident status or not) is most certainly a matter of distributive justice for at least two reasons (cf. Hampton 1995). First, membership in a political society influences one's access to the land and other natural resources that are located within a certain territory. Second, as Stephen Perry (1995: 94) points out, membership is connected to the access of goods 'that depend for their existence on the activities and ways of life of people living in the state.'⁴

In the first part of this chapter I shall investigate what is the appropriate conception of justice one should apply when assessing immigration policies. I shall argue that 'justice as self-

⁴ Or, to put it differently, membership is a primary good that we distribute to one another and what structures all our other distributive choices: 'it determines with whom we make those choices, from whom we require obedience and collect taxes, to whom we allocate goods and services' (Walzer 1983: 31).

interested reciprocity' is unacceptable from any moral point of view, since it does not treat the individuals who are not able to contribute to the cooperative surplus appropriately. Following Perry and Robert Goodin (1988) I shall argue that a different conception of justice is needed, one which does not deny the right to certain kinds of goods to those who are (or who would be) net burdens on the society.⁵ In my understanding the moral equality of human beings requires us to accept the human needs and not their existing or potential contribution to the cooperative surplus as the ground of justice.⁶

In the second part of this chapter I shall discuss what this latter conception of justice (the need based approach) requires in connection with immigration. I shall argue that political borders have more significance than what Goodin seems to propose, and this significance allows states to impose restrictions on the number of immigrants admitted.⁷ Moreover, I shall argue that in certain cases states may have the moral right not only to impose numerical limits on immigration, but also to discriminate among immigrants on cultural reasons when deciding whom to give permanent residence or citizenship.⁸ However, by suggesting that affluent nations may have the moral right to constraint immigration (both for economic and cultural

⁵ While I assume that there *is* a conception of justice that is appropriate for assessing whether immigration laws are just, it should be noted that this issue in itself is contested too, see e.g. Dauvergne (1999).

⁶ I have to note here that contrary to Perry (1995: 96) I think that *justice as fair reciprocity* according to which 'every participant in a cooperative enterprise who benefits from the contributions of other participants owes something to those persons, but only to the extent they do or can contribute to the cooperative surplus' is reconcilable with the second approach drawn up above and does not necessarily lead to exclusion. Since in my understanding justice as fair reciprocity (at least defined the way as Perry does it) is not committed to the idea that basic rights to resources are grounded in the individual's strategic capacities, but rather to the idea that everyone – according to his or her capacities - should undertake certain sacrifices and make efforts to contribute to the cooperative surplus that he or she will enjoy anyway, I shall not investigate this conception separately from the model that grounds these rights in human needs. As I see it, it is not contradictory to hold that every human being has right in justice to a minimal share of resources and all of them are to contribute to the common good to the extent their capacities allow them.

⁷ One may argue that even Goodin would allow some restrictions in certain cases, but what I would like to emphasize here is that the states' obligation to admit immigrants is more limited than what follows from his theory.

⁸ More exactly, I shall argue that restrictions on immigration may be legitimate, even from an impartialist point of view. (As I see it, justifying exclusion from a partialist point of view – eg. how Walzer does it - does not require too much effort.)

reasons) I would not like to propose that currently Western European countries live up to the moral requirements they would have to. On the contrary, I think that the rights to constrain are rather weak rights and the rights and demands of potential immigrants override them in most cases. I believe that any situation where these rights to constrain would be applicable are still far away from coming true.

My undertaking in this chapter is limited in at least three sense. Firstly, I shall provide only rather vague guidelines for assessing immigration policies, and – as I indicated in the introduction - I shall not attempt to draw up a detailed provision for a morally legitimate immigration law for any state. Secondly, I shall not distinguish between the different kinds of memberships a state can provide for immigrants and investigate whether there are circumstances that make one eligible to one kind but not for another.⁹ Thirdly, I shall not refer to any existing comprehensive theory of justice that – according to my understanding – would underpin my claims, but build my argumentation only to some intuitively plausible presuppositions. Since this latter deficiency cannot be treated as a negligible imperfection of my argumentation, this piece should be regarded as a first draft only.

⁹ On this issue I agree, at least roughly, with Carens (2005) who asserts that most immigrants and their children have a moral right to citizenship and that resident non-citizens ought to possess most of the legal rights of citizens. Given the limited scope of this paper, however, I wish to set this issue aside. On a broader discussion of the different kinds of membership goods see also eg. Coleman and Harding (1995) or the essays in the New Democracy Forum section of *Boston Review of Books* October/November 1998.

1.1 General Duties, Special Obligations

To approach 'justice in immigration' one should scrutinize what is the morally appropriate attitude of nation-states toward their own citizens and toward outsiders preeminently.¹⁰ If membership is a good, and as such, a matter of distributive justice, two questions should be addressed here: first, whether there are obligations for redistribution across the borders, and second, whether and to what extent differential treatment of compatriots can be justified in allocating goods and resources. In answering these questions two concepts of justice will arise: one which grounds justice in the individuals' strategic capacities ('justice as self-interested reciprocity'¹¹) and one which grounds justice in the equal respect to every person regardless of their strategic capacities. In this section, following Goodin I shall argue that justice as self-interested reciprocity is unacceptable from any moral point of view, thus a different conception is needed to assess immigration policies. However, as I shall point out in the next section, in my understanding this different conception of justice does not necessarily entail directly the need of such a radical relaxation in restraints in immigration as Goodin's propositions (at least according to Perry) imply.

Goodin, proceeding from the idea that special obligations in the actual world do exist and rightly exist, in his *What Is So Special About Our Fellow Countrymen?* (1988) points out that while according to our everyday unreflected assumption we owe especially good treatment toward those who stand in a special relation to us (toward family members, friends, kins, fellow citizens, etc.), a closer inspection reveals that this assumption is not completely right.

¹⁰ Naturally, one may proceed from the presupposition that the nation-state system is undesirable, but, as I see it, this idea is flawed, and even if it were not, it would not provide an appropriate baseline for assessing immigration-policies (cf. Walzer 1983).

¹¹ For the sake of simplicity in what follows I will refer to this conception as 'justice as reciprocity'. Thus, in my paper 'justice as reciprocity' will always denote the self-interest based conception and never the fairness based one. On this issue, see more in Note 6.

Compatriots are to be treated differently, and - in accordance with the unreflected view - our duty toward compatriots sometimes requires us to treat them in a favorable way, but also sometimes we are required to treat outsiders more scrupulously. In other words, by domestic and international law (and in accordance with morality) compatriots can be subjected to some obligations and can be asked to make sacrifices that would not be appropriate to demand from outsiders.

As Goodin proposes, this phenomenon may inspire some to conceptualize states as mutual-benefit societies. According to the inner logic of this model, it is entirely permissible to impose sacrifices on some individuals if they themselves benefit later (and in overall the net of harms and benefits is positive for the society); and since outsiders cannot enjoy the cooperative surplus (deriving from efforts and sacrifices made within a certain community), states have a stringent (negative) duty not to harm outsiders. For example, it might be permissible to allow domestic firms to cause environmental damages within the state's territory, as long as the benefits provided by them for the society (eg. the growth of the national income) are greater than the harms caused. However, it is not permissible to allow the harms to overreach the borders, since the inhabitants of the neighboring countries, contrary to the citizens of the first state, do not enjoy for instance the benefits made possible by the taxes paid by the firms at stake.

In the mutual-benefit model states are justified to provide a favorable treatment to the members of the society, since they are the same people who bear the burdens of the cooperation from which (a considerable part of) the resources come into being. As Perry rightly notes, to the extent that such a conceptualization is underpinned by an account of justice, it will clearly be a justice as reciprocity: according to this model one is morally required to undertake his share of the burdens of the cooperation, if he enjoys the advantages

provided by it, and one's right in justice to his part is rooted in his 'productivity.'

But Goodin argues that the special duties we have toward our compatriots and our negative duty not to harm outsiders can be explained and justified by an entirely different understanding of justice also (and since the mutual-benefit model suffers a relevant drawback I shall point at later, according to him they should be explained and justified by this different understanding). In his conception basic human rights to resources are grounded in human needs, not in the person's capacity to contribute, or in her actual contribution to the cooperative surplus. According to this need-based approach justice is grounded in the fundamental moral equality of the persons and in the respect and concern for the persons that is thereby due to them.¹²

The basic assumption of Goodin's theory is that while there certainly are justifiable special duties (which may imply preferential treatment), the special duties are not genuinely special duties but only derivatives of universal duties that all human beings owe to one another. In his instrumentalist 'assigned-responsibility model' the general duties that constitute the model's starting point are subdivided in order to obtain the advantages provided by the division of labor and specialization: special responsibility for particular parts of the larger duty is accordingly be assigned to particular persons or institutions.¹³ In Goodin's understanding, if the boundaries of a state are to function justly they are to visit upon particular state agents special responsibility for discharging those general obligations vis-à-vis those individuals who

¹² Richard Dagger (1985, in Mason 1997) gives a compelling justification for the mutual-benefit model: according to him when compatriots fail to take their share of the burdens, they violate the rights of other citizens to autonomy because, in Kant's terms, they thereby treat them simply as means to their own ends. However, it can be argued that if one does not take 'her share' because she is incapable of contributing to the cooperative enterprise, then she does not treat the others as means.

¹³ As opposed to Goodin's understanding, special responsibilities might be justified on non-instrumentalist grounds (arguing that special, non-instrumentally valued relationships are vital constituents of the life as a moral agent), too, e.g. as Scheffler (2001) does it. Though this latter approach seems to be more sound, as Abizadeh (2006) points out, even on non-instrumentalist grounds one may give up the idea of special responsibilities under certain circumstances.

happen to be their own citizens (regardless of whether they can benefit the other members of the society or not).¹⁴

As it is rather obvious, regarding the issue of immigration the first approach (the mutual-benefit model) involves that the 'entry tickets to a mutual-benefit society should, logically, just be conferring net benefits on the society' (Goodin 1988: 678). In other words, whether an outsider has a right to join a society based on 'justice as reciprocity' is a matter to be determined by the society at stake, in accordance with its assessment on the outsider's capacities to contribute to the society's own well-being.¹⁵ Though many would accept this idea without further deliberation,¹⁶ I contend that the logic of the model is apparently unacceptable from any moral ground: according to it not only the genuine outsiders but the seriously disabled people who born as children of the members of the society will be left without a right to join to the community and enjoy the access to goods produced by social cooperation.¹⁷

¹⁴ In some respect, this proposition resembles the Rawlsian understanding of the duties of justices: according to the assigned-responsibility approach every person owes duties toward every other person, but these general duties come to be mediated by the intervening institution of the state. As Perry (1995: 98) proposes, one could then say (although Goodin does not) that 'the desirability of having relatively local mediating institutions is one factor in the justification of a system of sovereign states, as opposed to, say, a world government of some kind.'

¹⁵ As I see it, it is not too far-fetched to contend that this model is very similar in some relevant aspects to the one Rawls proposed in the *Theory of Justice* (1971). There, the principles of justice are to be applied only to the members of a certain society since justice is about the cooperative surplus produced by them. To outsiders, the principles of humanity should be applied.

¹⁶ As Joseph H. Carens (1995a: 6-7) notes, the conventional, everyday assumption in debates about immigration is that immigration policy should be guided by the economic interest of those in the receiving country, and 'states are entitled to adopt whatever immigration policy they judge to be in their economic interest. On this view, if immigration increases unemployment or drives down wages or increases the tax burden associated with social entitlement programs, states may decide to reduce or even altogether prohibit immigration. By contrast, if immigration proves economically advantageous, say by increasing the national income or reducing the average tax burden, then that is generally taken to be reason for accepting immigrants.' Since immigration may create economic benefits for some current members and economic harms for others, here may be dispute even within the conventional assumption over the weight to put on different interests. But either one assumes that immigration should be allowed anytime when the overall effects of it would increase the national income, or that immigration should be allowed only if it would improve the conditions of worst-off citizens also, he or she takes it for granted that moral status of the states as institutions that are to advance the interests of a particular population is unquestionable and their special responsibilities to their citizens beyond doubt override the demands of those who wish to settle within their territory (at least regarding discretionary immigrants).

¹⁷ Moreover, justice as reciprocity should be rejected, since according to it - as Buchanan pointed out - the useless will not only be left without right in justice to certain goods, but they will have no moral standing at

But what is the implication of the assigned-responsibility model that stands on the grounds of the fundamental moral equality of every person to immigration? To answer this, as I see it, one should scrutinize the following questions first: Do nation states really have special responsibilities according to this model? If so, to what and to what extent? Do these special responsibilities involve that they have to take care of their domestic poor first and only then take care of outsiders who are in need?

It is important to lay down here again, Goodin (1998: 678) thinks that special duties are 'devices whereby the moral community's general duties get assigned to particular agents,' because such an assignment of special responsibility is the most efficient way to discharge general duties globally. In Goodin's model states are mediating institutions that bear the responsibility of universal justice toward their own citizens and inhabitants. However, according to him this does not mean that by the existence of the state system every other state would be relieved of all duty toward other country's citizens or residents. If a state cannot or do not take care of its responsibilities (either because of the lack of natural resources provided by its territory or as a result of the rule of an ineffective or repressive regime) the others have an imperfect duty to ensure it.

For this reason, I think, the special responsibilities states owe to their own citizens according to this theory – though Goodin himself does not emphasize it – are practically null and void in the real world and they would hold only among ideal circumstances. As Abizadeh (2006: 6) puts it, 'in the actual world, characterized by deep global inequalities, we cannot – as we might in ideal theory – say that the citizens and government of an industrialized country have a special responsibility to their own domestic poor: on the instrumentalist view, a special responsibility to care for the domestic poor is justified only if the general duty to provide care

all (see Perry 1995: 97).

to all humans is most efficaciously fulfilled by assigning special responsibility over subsets of humanity to particular political jurisdictions. But under present conditions of deep global inequality, general duties to care for the basic welfare of all human beings are obviously not best discharged by assigning special responsibilities for the care of citizens of impoverished countries to their own fellow citizens and polity, who are equally impoverished.'

The above characteristics infer that in the non-ideal world assigned-responsibility model diverges from the mutual-benefit society model in two ways, both of which have implication for immigration-policy. As Perry points out, the first divergence pertains the membership of the 'useless,' such as the severely handicapped, and 'helpless,' such as refugees and stateless persons. On the mutual-benefit society model, states have essentially no duties in justice toward the useless, and will admit and assist the immigrants only if admitting them would provide a net benefit to the state.¹⁸ On the assigned-responsibility model, however, states have unavoidable obligations toward those in need. Refugees in this model become the residual responsibilities of all states, which taken together have a duty to admit them (even if the domestic poor would do with the money the inclusion costs).

The second divergence touches upon the international distribution of resources. According to the mutual-benefit model, transfers across borders should be made only if they are constituted by mutually beneficial exchanges (thus e.g. foreign aids will be given only if the instability caused by the need in one country would endanger the others' well-being). Modifications of borders could be justified if it were beneficiary for the members of the political society on a cost-benefit analysis. Contrary to the mutual-benefit theory, as Perry claims it, the assigned-responsibility model calls for a roughly equitable allocation of resources to states, taking

¹⁸Nevertheless, one might say that this holds only if we define 'contribution' as actual, materialistic contribution to the welfare of the others. If we define contribution with a wider scope, including moral contribution for example - similarly to how Richards (1982) does – the whole opposition between justice as reciprocity and justice grounded in the moral equality of persons dissolves.

account of the number of persons within each state. If there is a misallocation, then redistribution should occur.

In Perry's (1995: 98) understanding, it is obvious that there are three possibilities that follow from Goodin's theory as means for achieving the morally appropriate allocation: 'first, the redrawing of the borders, second, wealth transfers, in the form of, for example, foreign aid, and third, immigration from states that are, taking account of the proportional availability of natural resources, relatively overpopulated to those that are relatively underpopulated.' To put these implications in other words: the existence of the state system is justifiable insofar as states are helpful in allocating and producing resources optimally. However, since the current borders do not ensure optimality, corrective measures should be taken to rectify distributive inequalities on the global scale.¹⁹ Redrawing of the borders, foreign aids policies and immigration policies may provide a corrective to the actual allocation and production arrangements, responding thereby to the imperfect, but administratively convenient production and distribution mechanism of the nation-state system. While all the three measures introduced above would be worthy of investigation, the scope of this paper does not allow me to do so - in the next part of this chapter I will scrutinize the third one only.²⁰

1.2 Justice in Non-Ideal Circumstances

An understanding of the states' responsibilities similar to Goodin's offers a good starting point

¹⁹ Coleman and Harding (1995) develop an understanding very similar to this. Though they do not refer to Rawls directly (as opposed to e.g. Pogge) they argue that they are the representatives of the world's people who should come together to draw up the principles by which the world's resources are to be produced and allocated, and the optimal solution they will come up with will be a nation-state system amended by corrective measures such as liberal immigration policies, foreign aid policies etc.

²⁰ An interesting question would be also to address whether there could be legitimate trade-off between the three measures, that is, whether a state could opt for more foreign aids instead of admitting immigrants. Nonetheless, investigating this issue also goes beyond the scope of this paper.

for a liberal egalitarian for determining what criteria should be applied in the moral assessment of immigration policies issued by abundant nation-states. However, even the road to hell is paved by good intentions. As I see it, one may acknowledge that the principle of 'equal respect for every person' does not allow the arbitrariness of the place of birth to play such a big role in the individual's life prospects as it plays today, and a more equitable allocation of resources would be desirable, and still, it is possible that she (rightly) does not call for an immediate abolition of restrictions in immigration.²¹ As Carens (1992: 28) points out, 'free movement is an aspect of the liberal egalitarian ideal which we should ultimately try to achieve but to adopt the practice of open borders now would jeopardize those liberal egalitarian institutions and practices that currently exist.'

Taking the current nation-state system (and the problematic nature of the advantages ensured by the place of birth) as a starting point, at least six (in my view partly overlapping) arguments can be raised in support of the provisional maintaining of the restrictive measures in immigration. First, given the current level of inequality, the volume of poor immigrants streaming in rich countries that would impose no restriction on the numbers of immigrants admitted would result in the collapse of their economies.²² Second, given the existing scope of global inequality, if abundant liberal countries were to open their borders, the mere multitude of the consequent levels of immigration could overwhelm the capacity of the society to cope with it and that would lead to chaos and a breakdown of public. Third, as Abizadeh describes Kymlicka's (2001, in Abizadeh 2006) argument, 'open borders might precipitate letting in

²¹ It is important to note here that Goodin does not say anything about how the process of the 'opening up' should take place. However, as I see it, he takes for granted that it is an unproblematic matter: affluent states should open their borders and after a certain period of time the just allocation of goods per capita will be achieved.

²² This argument has many different forms, but as I see it the most interesting one is proposed by Buchanan (1995). Buchanan insists that not only the direct costs of immigration could ruin the economic conditions of wealthy states; the effect of adding new members to a community extend well beyond those that can be measured in economic terms. Richness is grounded in fragile political-legal-constitutional parameters, and giving membership involves giving power and authority to modify (and thus – unintentionally - ruin) them.

large numbers of immigrants who, regardless of their political values, are so culturally different from current citizens that their presence in large numbers would threaten liberal states' capacity democratically to effect socio-political integration.' Fourth, open borders might unconditionally let in large numbers of 'fundamentally anti-liberal' immigrants to liberal states and thereby the open borders would threaten the survival of domestic liberal democratic institutions.²³ Fifth, for sociocultural reasons it would be the (Enlightened) intellectual elite of the poor countries who would decide to settle in another country. Since they play a crucial role in the progress of their home country's economy and political-cultural life (their being there is a key factor in any positive political or economical transformation), letting them in without restrictions would just increase the global inequality both in terms of economic well-being and in liberty. Sixth, people elaborate life-plans that retain their meaning and value only if their cultural background does not change radically. If the number of immigrants exceed a certain level in a given society (and it would happen if affluent states were to open their borders), the culture changes significantly and many of the citizens will be condemned to a life that is not valuable anymore.²⁴

What is common in all of the abovementioned arguments is that they hold that (provisional) restrictions on free movement are necessary in order to promote well-being and equality in the long run and all of them consist of a normative and an empirical element. In connection with the former, two issues should be addressed: first, whether they are justifiable even in the eyes

²³ Some distinguishes this argument from the one which states that those are not the immigrants alone who would threaten the liberal institutions, but the liberal institutions are weak and the number of supporters of existing illiberal political forces would substantially grow if illiberal immigrants were included. (See eg. Carens 1992). Another (subtype of the) argument can be raised in connection with existing illiberal forces and immigration is that everyday tensions produced by cultural differences would make people support illiberal political forces. The more culturally different immigrants the state admits, the higher likelihood there is that tensions will arise and people will want to solve them by illiberal measures. If this desire reaches a certain point, the liberal institutions would be abolished.

²⁴ The first four arguments have been collected by Abizadeh (2006), the fifth can be found in Carens (1992) and the sixth is my own invention inspired by Kymlicka (1989). In the remaining part of this section I will rely heavily on Abizadeh's argumentation.

of the potential immigrants (seeing them as rational, unbiased moral actors), and second, their strength.

As Abizadeh points out, in case of the first argument the normative premise is justifiable: the interest in settling anywhere one wishes to on its own does not seem so urgent as to outweigh the net global welfare losses entailed by the destruction of industrialized economies. In case of the second one since the breakdown of the public order makes everyone worse off both liberty and welfare, then, if the empirics is true, we have a strong reason to accept the assertion. Regarding the third argument, the normative premise – which concerns the danger of social disintegration – could be justified if the long-term viability of liberal democracies internationally depends the short-term restrictions on the number of immigrants admitted. As for the fourth, where the open borders would destroy existing domestic liberal democratic regimes due to the intentions or character of immigrants, the normative premise could be justified as a temporary means for ensuring the survival of liberal democratic institutions. The fifth argument resembles in a significant respect to the first: the interest in settling anywhere does not seem to outweigh the overall loss involved by the further weakening of the economies (and/or political culture) of the already worst-offs.²⁵ The sixth argument could be justified if the loss in well-being experienced by those who are already citizens would overreach the loss in well-being (by the rejection) of those who were rejected.

To measure the strength of the normative premises, one should investigate what kind of moral interest could be taken to the other scale-pan, or, to put it differently, one should investigate the reasons why people want to settle in a foreign county. Obviously, people almost always have serious reasons to move, let behind their family, their friends, their roots, and attempt to

²⁵ It should be noted here that Abizadeh (and following him, me too) presupposes that maintaining *liberal* democracy is a justifiable aim even before the eyes of the would-be immigrants. Nevertheless, for justifying this presupposition some further assumptions are needed, but I would like to set aside this question now.

find a new home in an at least strange but sometimes also hostile or suspicious environment. Nevertheless, their interest in settling in an other country is not equally weighty. As I see it, three categories of potential immigrants should be distinguished: people whose life is in danger in their home country, people who have family ties to current members and people who simply want to improve their lot in life.²⁶ In my opinion when life is at stake, closed borders are beyond doubt immoral; for refugees the borders should be open in any case. People with family ties to current members – if the family ties are close enough – should similarly be admitted in most cases, acknowledging how important a role family plays in one's life. Economic immigrants (those who 'just' wish to have a better life in terms of material well-being) have the less weighty interest among the immigrants, against them, as I see it, the normative claims announced above - if the empirical premises of the arguments are right - stay on foot.

Naturally, I am not capable of proving irrefutably the validity of the empirical parts of the arguments discussed. However, I think that it is only the fifth and sixth argument described before that does not necessarily work. As Joseph Carens (1992: 38) points out in connection with the fifth, 'emigrants contribute in various ways to their communities of origin (often though direct financial remittances) and it is far from clear that making them stay home would lead to the desired political and economic transformation. Thus, in case of justifying the closed borders with the worsening effect on the worst-offs, means a great uncertainty about the effects and certainty of a limitation of an important freedom.' The sixth argument is dubious, since while some of the citizens would surely experience some loss by the change in the culture and may not be able to adapt to it, liberal states are not to protect the traditionally

²⁶ The Geneva Convention defined refugees as people who owe a well-founded fear of political persecution and for this reason they apply for assistance. However, as I see it, this description is clearly insufficient, famine, for example, may generate just as desperate need for a new home (cf. Carens 1995: 2-4). Thus, here I regard 'economic refugees' as refugees also.

held values from being replaced by other values (but they are to enable citizens to adapt to such changes). Moreover, it seems that the loss in well-being experienced by the citizens would not be weightier than the loss of those whose 'original' material conditions are so bad that it does not enable them to live any good life.²⁷

The other arguments – those that operate with the situation of the host countries – sound more convincing: it is easily comprehensible that no country could cope with a radical shift in cultural or economical conditions. However, the hypothetical possibility of the threat is not enough, there must be reasonable expectation that damage will occur in the absence of restrictions. As I see it, it is more than likely that if affluent countries were to open their borders abruptly, the consequent level of immigration would be with many order of magnitude beyond the current level. Though one may think that the immigration would automatically stop at a healthy equilibrium, in fact, it is mistaken to assume that potential immigrants would see the danger of their coming because of the time lag between cause and effect, and because of collective action problems. The situation would be the worst if only one affluent nation was to open its borders, but, given the current level of inequality, it is not too far-fetched to contend that even if all the affluent countries were to issue such a measure the outcome would still be worse than the outcome of the provisional restrictions. Open borders, if they were introduced abruptly, on one hand would endanger the well-being of the current citizens of the First World states, and on the other hand would ruin those conditions for which those countries were desirable to live in previously (cf. Carens 1992).

Since the basic concern of my paper is the rights of immigrants coming from a different, non-

²⁷ Here I do not elaborate on this issue at length, but I will take a closer look at cultural change in the next chapter. Yet, I want to mention one intuitive argument at this point that underpins my standpoint: Technological changes may affect the 'character' of a culture also, still, no liberal would say that since some of the citizens will be affected by them badly, technological development should be stopped altogether. Nevertheless, as I see it, the argument is not flawed, just dubious - one could argue for limiting the pace of the change from a liberal ground (also).

liberal background (for this is the problem Europe currently faces), let me return for a little while to this topic before concluding this chapter. To emphasize the main point asserted in this chapter again, liberal states are obliged to admit as many immigrants as they can without risking the collapse of their (liberal) institutions. Accordingly, liberal states are obliged to tolerate the intolerant people and admit them so long as they do not pose an actual threat to the maintaining of liberal institutions. When they do pose a threat, however, their liberty to settle may be curtailed in order to preserve the regime. Completely open borders would result in an unimaginably huge number of illiberal persons settling in liberal countries. If they get citizenship, that I assumed is morally desirable to give to any long-term residents,²⁸ they could change the character of the regime by practicing their political rights.²⁹

To conclude, I contend that the appropriate baseline in the moral assessment of the immigration policies of affluent Western liberal states is not an imaginary world where all of a sudden all the rich counties would open their borders, but the number of immigrants they could admit without suffering economic collapse, disintegration or some other potential harms described previously. Thus, the real question is the scope, that is, what extent of immigration could ruin the economy, the public order, the liberal institutions or would lead to the socio-political disintegration. As I see it, compared to the present conditions, though there might be a price for admitting more immigrants, affluent western liberal nation states could do with more immigrants without risking the chance of the collapse of their economy. All the other issues are more problematic, and might be used for underpinning restrictive policies in these days. Western liberal states apparently have proved to be incapable of integrating even the

²⁸ See Note 9.

²⁹ As Carens (1992) notes, this entails the conclusion that it is legitimate to exclude people for holding beliefs and values that are also held by people who are already members only because of the presumed cumulative effect of their (future) presence. This might seem morally disturbing at first sight, but on closer inspection I think it is acceptable.

already settled immigrants (whose number, I contend, is relatively small compared to what would be economically feasible) to the political society appropriately and have experienced problems in the public order on one hand and attacks against the liberal values on the other.

Two retorts can be made here, if someone wants to argue for relaxation in immigration policies: first, they did not try hard enough to integrate them (though they would have had a moral obligation to do so), second, they tried it in a wrong way and better public policies are needed now. Personally, I agree with both of them; but this controversy, again, cannot be settled here. This issue, however, raises the second family of questions I marked in the introduction of this paper, that is, questions about the appropriate relationship between states and cultures. I would like to devote the remaining part of my paper to examine what would be desirable in these questions from the point of view of (autonomy-based) liberal equality.

CHAPTER TWO – THE VALUE OF CULTURAL MEMBERSHIP: KYMLICKA'S APPROACH(ES)

Are liberal states obliged to treat all citizens in the same way, regardless of their cultural background? Or is it obliged to differentiate between them by their birth and growing up? Is it obliged to help cultural groups to preserve themselves by economic incentives or other legal measures? If so, what are the appropriate measures? These questions I will explore in this chapter, using Will Kymlicka's *Liberalism, Community and Culture* (1989, hereafter LCC) and *Multicultural Citizenship* (1995, hereafter MC) as *foci* for discussion.

As it is well-known, liberalism is often seen by its opponents as a theory that aims to describe the proper relationship between individuals and the state, but that is essentially flawed since cannot account for the value of communities and cultural membership. In his books Kymlicka attempts to defend liberalism against such charges. He argues that cultural membership give rise to legitimate demands, and some scheme of minority rights respond to these demands in a way that is required by the principles of liberal equality. Because Kymlicka's defence of minority rights appeals to widely accepted liberal values, his theory has become highly influential among liberal philosophers and intellectuals in the past (almost) two decades. I have chosen Kymlicka's books as vehicles for reflection on the appropriate relationship between states and cultures for two reasons. First, they are regarded as the ultimate scholarly works on liberalism and cultural membership. Second, it is usually assumed that Kymlicka provides a justification for minority rights on the value of autonomy (that is argued to be the central value of liberalism) and that of equality, thus, his theory is in accordance with my basic presuppositions, namely that autonomy is the central value of liberalism and liberal states are to ensure the access to this value for all.

This chapter will aim to introduce and criticize Kymlicka's theory on cultural membership as

connected to his thoughts on human well-being. In the first part of the chapter I shall sketch out a brief overview of the main line of the argumentation he elaborates in *LCC*, especially in Chapter 8. In the second part I shall investigate whether his argumentation is sufficient for establishing minority rights within the liberal – autonomy based - doctrine. Finally, in the third part, I shall point out that it is dubious whether his ideas on the rights of immigrants (elaborated in *MC*) are consistent with his basic assumptions.

I shall conclude – on one hand - that, ultimately, Kymlicka is incapable of providing a basis for an (autonomy based) liberal multicultural policy. On the other hand I shall argue that though his provisions in connection with already settled illiberal immigrants are appealing, the justification he provides for them is not sufficient. My purpose in this chapter is threefold. First, I would like to point out that if we take seriously what Kymlicka proposes, the consequences we (may) face are such, that most liberals (would) not be entirely happy to accept them.³⁰ Second, Kymlicka's defence of cultural rights, contrary to what he says, is not based on liberalism's foundational principles; he relies on a different, not squarely liberal pattern of justification. Third, Kymlicka's ideas on polyethnic rights are acceptable from a liberal egalitarian point of view, but polyethnic rights are more a matter of societal peace, than justice.

³⁰ The reason why I use parenthesis here is that the measures Kymlicka argues for do exist in the real world; Kymlicka's purpose is not to propose completely new kind of public policies or statutes, but more to justify existing ones on a liberal ground.

2.1 Autonomy and Cultural Rights

In *Liberalism, Community and Culture* Kymlicka contrasts two sorts of community, that of the 'political community, within which individuals exercise the rights and responsibilities entailed by the framework of liberal justice,' and the 'cultural community, within which individuals form and revise their aims and ambitions' (135)³¹. As he asserts, these two community do not necessarily coincide; a political community may contain two or more groups of people who belong to different cultures. For instance, besides the Francophone and the Anglophone community there lives a significant aboriginal population in Canada (with distinct traditions, history, language), or one may also think of the multicultural countries of Western Europe, such as Switzerland or Belgium.

The lack of coincidence between the two kind of communities has a remarkable implication: in some countries individuals are incorporated to the state not universally (i.e. each citizen stands in the same direct relationship to the state), but consociationally (that is, through their membership in one of the cultural communities). While within the framework of universal incorporation all citizens are provided with the same rights, if people are incorporated consociationally the rights of individuals may vary with the particular community to which she belongs. To illustrate: in Quebec, Anglophones can send their children to the English or to the French educational system, while Francophones do not have an option with regard to schools, for them only French education is provided. Or, to cite Kymlicka's favourite example, within a certain territory in Canada only Inuits and the 'whites' who live on the Inuit land for more than ten years can vote on local matters. Whites living there for less than ten years cannot do so.

³¹ For the sake of brevity I will use only page numbers in parentheses, rather than a fuller reference, when citing pages from Kymlicka's *Liberalism, Community and Culture* in this and in the next section.

This may seem, at first glance, to be inconsistent with the liberal theory of justice, but, argues Kymlicka, it is not: minority rights (or restrictions on minority people's rights in order to preserve the existence of their community) are perfectly compatible with the main liberal principles, what is more, those liberal principles, rightly interpreted, directly call for minority rights. To put it alternatively, in conditions of cultural pluralism the liberal commitment to equally respect each and every person results in a liberal need for the recognition of special consociational modes of incorporation, in particular, those associated with cultural rights.³²

Kymlicka's defence of consociational incorporation proceeds in two steps. First, Kymlicka argues that 'the cultural membership has a more important status in liberal thought than is explicitly recognized' (162). Second, Kymlicka points to the discrimination and disadvantage to which members of minority cultural communities are subjected. From this basis he raises claims for minority rights.

As a first step, to ensure the place of his justification for minority rights within the liberal doctrine, Kymlicka accepts Rawls' premise that 'the freedom to form and revise our beliefs about value is a crucial precondition for pursuing our essential interest in leading a good life' (163). But how is then the cultural community relevant for the individual, how does it relate to autonomy? Kymlicka argues that in deciding how to live our life, what to value and what not, we do not start *de novo*, but accept or reject particular options we face: 'The decision about how to lead our lives must ultimately be ours alone, but this decision is always a matter of selecting what we believe to be most valuable from the various options available, selecting

³² In *The Politics of Recognition* (1992) Charles Taylor elaborates a very similar claim, though, contrary to Kymlicka, he does not think that consocial inclusion would be reconcilable with neo-Kantian liberalism. Taylor argues that neo-Kantian liberalism is not the only possible form of liberalism, as he sees it, in order to establish a just multicultural state, an alternative concept of liberalism is needed, which can adequately accommodate collective goals. The collective goal of survivance, if promoted by the state's laws, may restrict certain individuals' 'minor' rights - for example to educate their children in the majority school-system -; but, claims Taylor, to the extent this legal 'promotion' does not endanger the citizens' fundamental rights, it is still in accordance with the notion of liberal democracy.

from a context of choice which provides us with different ways of life' (164). According to Kymlicka, it is our cultural heritage that functions as our context of choice; one's language and history are the media through which one come to an awareness of the options available to her, and their significance.

Kymlicka's train of thought is the following: we need a range of choice, that is, a culture, in order to form and revise our life plans. The importance of our capacity to revise (to step back) is consists in (at least partly) it's being a precondition for seeing our life-plan as worth while to accomplish. We need to see our life as valuable in order to respect ourselves. Self-respect is a primary good in Rawls's theory, thus, as the above exposed connections imply, cultural membership should be included as a 'primary good' to Rawls's original position also.

What is important to note now, is that in Kymlicka's theory it is the access the 'cultural structure' and not the 'cultural character' that should be regarded as a primary good. As he states, the 'cultural community continues to exist even when its members are free to modify the character of the culture, should they find its traditional ways of life no longer worth while' (167). The character of the French-Canadian culture, for example, was radically transformed in the 1960s. The 'Quiet Revolution' mopped up most of the the traditional institutions and practices, thus, it meant the end of almost all the substantial features of the culture. But, says Kymlicka, it did not call the existence of the French-Canadian community in question, there was 'no danger to the existence of people's context of choice, no danger to their ability to examine the options that their culture has made meaningful to them' (167). Consequently, Kymlicka thinks, there is no point (moreover, it would be contrary to liberal values) in protecting people from changes in the character of the culture, since it does not decrease their ability to choose. However, the concern with the cultural structure accords with the liberal concern for our ability and freedom to judge the value of our plans of life.

Apparently, to justify consociational incorporation, it not not enough to show that cultural membership is a primary good. In order to accomplish his task Kymlicka (on his own admission) is to meet two further requirements. He is to point out that first, assimilationist policies are not justifiable and second, members of minority communities are in an unfairly bad position that calls for remedy (and that the appropriate remedy is providing them with group rights). Even if cultural membership is a primary good, and people may require a cultural structure to make sense of their lives, it does not follow that liberal states ought to be concerned about their own culture; it does not follow that it is only one's original cultural structure that could serve as a context of choice. Moreover, it does not directly follow that liberal states should be concerned with defending/ensuring cultural acces at all.

As for the first requirement, Kymlicka asserts that people are bound, in an important way, to their own cultural community. They cannot be just transplanted from one to another, even if the state provide the opportunity to learn the other language and culture. Someone's upbringing in a certain culture is not something that easily can be erased; it is, and it will remain, a constitutive part of who that person is. Cultural membership affects one's very sense of personal identity and capacity. It is crucial to personal agency and development: when one is stripped of her cultural heritage her development becomes stunned. Thus, argues Kymlicka, respecting people's own cultural membership and facilitating their transition to another culture are not equally legitimate options. The affront minority groups feel at the latter proposal is grounded in the perception of real harm; consequently, the primary good of cultural membership should be interpreted as referring to the individual's own cultural community.

As for the second requirement, Kymlicka contends that culture is arbitrary from a moral point of view. He argues that people do not and cannot choose their culture. They instead are born into one and, in that sense, inherit cultural structures over which they have no control. Since

people do not choose their culture, they consequently cannot be held responsible for it, and should be protected from any disadvantage that either membership in it or experience of its demise might impose.³³ As Kymlicka asserts, (without empowering minority rights) people from certain cultural groupings are indeed subjected to unfair disadvantages. Most importantly: while members of the dominant cultural communities may be secure in their knowledge that their context of choice is protected, minorities – endangered by assimilation – are not. Since the worthiness of the life one lives (as perceived by the individual) is a fundamental interest and depends on the cultural structure she has an access to, this is a serious issue.

The inequality between majority and minority people would not have to be addressed by the liberal state if it were a result of the individuals' decision. But since it is not, since minority people are not responsible for their worse position with regard to their fundamental interests, the state should redress this situation by issuing minority rights that enable the worse-offs to secure the future of their cultural community.

In a nutshell, what Kymlicka attempts to show in his masterpiece is that the 'notion of respect for persons qua members of cultures, based on the recognition of the importance of the primary good of cultural membership, is not (...) an illiberal one. It does not say that the community is more important than the individuals who compose it, or that the state should impose (what it views to be) the best conception of the good life on its citizens in order to preserve the purity of the culture, or any such thing. The argument simply says that cultural membership is an important part of having equal considerations for the interests of each member of the community' (167-168).

³³ For some possible criticism to this idea see Carens (1997) and Johnson (2000).

2.2 A Critique on Kymlicka's *Liberalism, Community and Culture*

There is much to criticize in Kymlicka's justification for minority rights. As I see it, one may follow not only one but two ways of going about this task. The first of them is to examine Kymlicka's theory on its surface: that is, to examine whether the measures he proposes (would) lead to consequences most liberals would be content with.³⁴ The other is to ask the intellectually more demanding question – whether Kymlicka's premises hold and thus whether his argumentation is successful in grounding minority rights within liberalism. While my basic interest here will lie with the latter question, first I shall make some comments with regard to the former. This review-section will be respected to four (closely interconnected) issues that I see as most important. They are respectively (1) Kymlicka's insistence on non-intervention, (2;3) the role of self-respect in his theory, (4) his homogenizing conceptualization of cultural groups, (5) the cultural structure/character distinction he develops.

³⁴ More precisely, those liberals who believe that autonomy is the central value in liberalism. Nevertheless, not all liberals believe so.

2.2.1 Autonomy and (non)intervention

One of the most known complaint against Kymlicka is that he allows illiberal minority groups to oppress some of their members, thereby not concerning with the fundamental moral interests of those who have a bad power-position within a certain group. In fact, Kymlicka's standpoint is rather blurry in connection with illiberal groups. Some, for example Susan Moller Okin (1998), argues that Kymlicka does not wish to give support to groups that are illiberal. This interpretation, as I see it, is mistaken: Kymlicka claims that minorities should be internally liberal, but does not want to make their entitlement for group rights dependent on their 'level of inner liberalism,' he is clearly uneasy with the idea of imposing liberalism to minorities. As Spinner-Halev (2001: 87) puts it, 'Kymlicka argues that any liberal theory of minority rights must also safeguard individual rights, but in practice, he is not willing to interfere in national minorities.'³⁵

This is surprising because Kymlicka, from a liberal perspective, holds that the violation and suppression of basic individual rights of group members by their own group as unjust. Nevertheless, he believes that the state has no authority to intervene in those practices.³⁶ In my opinion such a view clearly detracts from his admittedly autonomy-based liberalism. As Galenkam (1998) rightly argues, in case of the having of liberal principles does not commit states to stand up for them, 'those liberal principles are, so to speak, 'up for sale.' The net result of non-intervention is that members of illiberal minority groups are rendered vulnerable to

³⁵ One may argue that in *Multicultural Citizenship* (1995) Kymlicka is more scrupulous in this respect, but this suggestion, as I see it, is not true. In *MC* Kymlicka does not entitle immigrant groups for autonomy-rights (but to polyethnic rights only), however, this is not because that they are more illiberal than national minorities.

³⁶ In *MC* he draws a parallel between interfering to other states matters and interfering to cultural communities matters. Interestingly, he seems told that sovereignty overweights even some systematic and severe human right violations, and liberal states should intervene, if ever, only in very serious cases. However, it should be noted that if our well-being ultimately depends on the *existence* of a cultural structure (what Kymlicka seems to suggest) it is really not clear why should we prefer liberal societies over non-liberal societies (cf. Apperlei 2000).

infringement of their basic rights', suffer a fundamental loss in their capacity to choose and revise their life-plans.³⁷

As a consequence, if it is the concept of autonomy that is the most important element (the basic value) for Kymlicka in justifying minority rights, his argumentation seems to be inconclusive, or at least, seems to require an amendment regarding the level of liberalism a group should achieve in order to successfully demand for self-government rights. But autonomy being the cornerstone of Kymlicka's theory is questionable. As I see it, the (illusory) centrality of autonomy (as a/the basic liberal value) in Kymlicka's argumentation serves as a bait for liberals, his defence of minority rights relies more on a different (in my opinion not squarely liberal) pattern of justification. In the following subsections I will show that by elucidating his half-hidden premises Kymlicka's proposition (that is, the state's obligation to provide even illiberal groups with self-government rights) will seem more conclusive, however, it is not clear that his justification could still be regarded as liberal.

2.2.2 Self-respect and autonomy

In my view, Kymlicka's argumentative strategy is the following: first, he emphasises that his argumentation is based on a/the central liberal value, that is, on autonomy. Since autonomy seems not be enough to provide justification for giving self-government rights to those groups that are illiberal, he needs an other basic (claimedly liberal) value based on which he can prove that those rights are in accordance with liberalism. It is the value of self-respect. Since

³⁷ In *Multicultural Citizenship* Kymlicka partly addresses this problem: he argues that the compulsive public education for immigrants' children in liberal states is to ensure their developing the capacity to choose and revise their values. However this do not apply for national minorities.

he is not sure that an argument based on solely (or primarily) on the concept of self-respect would be appealing enough for liberals, he attempts to develop an inextricable bond between autonomy and self-respect. However, I believe, this attempt is not successful, and by using self-respect as a justification for consociational incorporation he falls back to a fairly communitarian argumentation.

To secure the place of self-respect among the core liberal values Kymlicka uses the same strategy as in case of autonomy: he attempts to exploit the framework of Rawls' *A Theory of Justice*. There Rawls (1971: 440) defines self-respect as having two aspects: 'first of all... it includes a person's sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying out. And second, self-respect implies a confidence in one's ability, so far as it is within one's power, to fulfil one's intentions.'

Rawls (1971: 440) asserts that self-respect is a primary good: 'when we feel that our plans are of little value, we cannot pursue them with pleasure or take delight in their execution. Nor plagued by failure and self-doubt can we continue in our endeavours. It is clear then why self-respect is a primary good. Without it nothing may seem worth doing, or if some things have value for us, we lack the will to strive for them. All desire and activity becomes empty and vain, and we sink into apathy and cynicism. Therefore the parties in the original position would wish to avoid at almost any cost the social conditions that undermine self-respect. The fact that justice as fairness gives more support to self-esteem than other principles is a strong reason for them to adopt it.'³⁸

Kymlicka first asserts that Rawls is right, self-respect is a necessary precondition for human well-being. Next, in order maintain the (illusionary) centrality of autonomy in his

³⁸ Nay, some argue that it is the most important primary good in Rawls's theory. See eg Keba.

argumentation, he attempts to show that autonomy and self-respect are inextricable. Autonomy is our capacity to form and revise our life-plans. Without autonomy, we are not able to step back and reconsider our standpoint on what is valuable and what is not. Kymlicka contends that the value of autonomy in fact lies in it's being a precondition for self-respect: 'the idea of seeing the value of our activities is very important. It's crucial to what Rawls calls self-respect, the 'sense that one's plan of life is worth carrying out' (164). In short, Kymlicka's train of thought is the following: We need self-respect for our well-being. In order to gain self-respect, we need autonomy. Autonomy requires membership in a cultural community. Thus, membership in a cultural community is precondition for human well-being and should be seen as a primary good. Since membership is a resource that is needed for any good life, if the inequality with regard to this resource is not a result of the faults committed by the individuals, liberal state should redress the unjust situation by providing them remedy (that consists in minority rights).

The first problem in connection with this argumentation is that the link between self-respect and autonomy is flawed. Self-respect, that is, seeing our life as valuable, does not presupposes that we should have a capacity for having a birds-eye view.³⁹ Self-respect in Rawls's argumentation is a subjective notion, that is, it means simply and solely a certain kind of positive attitude toward ourselves that can be adequately defined in psychological terms.⁴⁰ Individuals may have the moral interest for autonomy, but not because it is tied to their (factual) self-respect. In real world, most of the heteronomous people are more convinced that their life is worth living than those who regularly reconsider their values and ends.

³⁹ While Tomasi (1995: note 10) states that the 'way of emphasizing the idea that liberty is important to liberals not only because of its direct role in allowing people to make their own choices but especially because it is a means to self respect is one of Kymlicka's distinctive, and most important contribution to the recent debate,' as I see it, this is an apparently flawed idea.

⁴⁰ Self respect can also be seen as an objective notion, and along this line of thinking 'a self-respecting person must not simply value himself, but properly value himself, however the notion of 'properly' valuing oneself is defined' (Barry 2001). For justifying that Rawls's position is indeed subjectivist in this respect, see Keba.

The second - and in connection with the purpose of this chapter the more important - problem is that after elaborating the connections between autonomy, self-respect and cultural membership in a way I described above, in the later part of his argumentation Kymlicka does not keep to the connection-line.⁴¹ Sometimes it seems that Kymlicka contends that autonomy is directly related to well-being: it allows us to correct our failiures with regard to the belief we hold on what is worth while to accomplish.⁴² But again sometimes he just (unrecognizedly) deletes autonomy from the line and connects cultural membership directly to self-respect. Since the autonomy serves in the line as a means to ensure that the argumetation is distinctively liberal, as I see it, the above described movement makes his conception, at best, less distinctively liberal. Though he uses a rawlsian framework to point out that self-respect is one of the most important liberal values, it does not mean that it cannot be (at least) equally important for communitarians, and in fact, it is.⁴³ In the next subsections I will show that Kymlicka is more communitarian than he would like to appear and his theory suffers from the same basic problems as, for example, Taylor's account on the consociational incorporation.

⁴¹ See the appendix of this paper, p. 30.!

⁴² To fully understand this thesis, it should be noted that the individual is viewed by Rawls as a conscious and purposive agent – she acts so as to achieve certain goals or purposes, based on beliefs she has about what is worth having, doing or achieving. These beliefs give meaning to her life, they make sense of why she does what she does. But, and it is a crucially important feature of human life, one may be wrong. Since no one would wish to lead a life on flawed premises concerning what is good and what is bad, what is valuable and what is not, social conditions in which our beliefs can be questioned, where everyone can intelligently decide for themselves what is valuable in life are crucial for one's well-being. (Though this is a convincing argumentation on why we should value autonomy, I am not sure that autonomy should be regarded merely as an *instrument* in correcting life-plans.)

⁴³ This is clearly not the case with respect to individual autonomy.

2.2.3 Self-respect and identity

As it was mentioned above, Rawls's passage to which Kymlicka (really) grounds his theory, clearly speaks in subjectivist language.⁴⁴ It strongly advocates social conditions which favour the cultivation of each citizen's stable positive attitude toward herself. For Rawls, and thus for Kymlicka, it matters, from a moral point of view, how citizens regard themselves, and it matters that the basic structure of the society allows them to regard themselves favourably. As Keba points out, when these kind of claims 'coupled with the assumption that considerations of identity deeply affect how persons regard themselves, one ends up with a persuasive case for identity-recognition. The grounds for instituting identity-politics are, as the multiculturalists would have it, that no rational person would decide against it in view of their self-respect.'

Though to maintain the distance between himself and the communitarian thinkers Kymlicka is eager to avoid the usage of the term 'identity' and that of 'recognition', in fact, it seems that Kymlicka presupposes really strong ties between one's identity and cultural membership: 'Someone's upbringing in a certain culture is not something that easily can be erased; it is, and it will remain, a constitutive part of who that person is. Cultural membership affects one's very sense of personal identity and capacity. It is crucial to personal agency and development: when one is stripped of her cultural heritage her development becomes stunned' (170). What he has in mind, I think, is that we identify ourselves with some values and attachments, and our cultural identity is important because feeling the worthiness of our lives depends on the others surrounding us (who share similar patterns of thinking). On other words, to secure self-respect we need reaffirmation of our choices as valuable ones. To put it alternatively, identity has really strong ties with self-respect: if individuals are systematically and forcefully made

⁴⁴ I mean here the passages I quoted above. .

to behave as if things that matter to them are in fact worthless, the real danger is that they will begin to think of themselves as worthless.

Ultimately, it seems that according to Kymlicka cultural membership is vital for us, but not because we need some context in order to make intelligent decisions about our lives. We need membership in our culture, because this membership gives us identity. And if our identity is under attack, we cannot respect ourselves, therefore we cannot live a good life. Consequently, we need a secure identity, a stable access to our culture, for our well-being.⁴⁵

Thus, my opinion is that Kymlicka's real argument is not that minority groups should have a cultural structure, otherwise individuals would not have a range of choice on which they could choose and reconsider the values to believe in. The real idea, very similar to the one Taylor holds, is that public suppression of identities harms individuals that are affected by it. Not because they would lose the context necessary to life that would have meaning, but because if the state stands in the way of persons freely expressing their deepest cultural and other attachments and, in turn, receiving recognition from their cultural group they identify themselves with, this diminishes their well-being. And (it is supposed that) states by not helping the people to have an access to their born-into cultures actually stand in the way.

I think Kymlicka's argumentation does not really differ to the one Taylor uses. The justification for consociational incorporation eventually in both cases 'moves through something like the following three steps:

- Identity merits respect because it contributes to persons' well-being (by affecting their self-

⁴⁵ In his later work this half-hidden assumption becomes more clear. In *Multicultural Citizenship* Kymlicka (1995: 75-90) asks why culture is so important for people, and why it is their own or their original culture which it is so important to maintain. He argues that 'freedom is intimately linked with and dependent on culture,' culture is a 'context of choice,' it 'provides options,' 'determines the boundaries of the imaginable,' and 'provides an 'anchor for [people's] self-identification and the safety of effortless secure belonging.' As he asserts, *a sense of belonging, not accomplishment, affects and shapes our self-identity and self-respect*' (1995: 89-90).

respect).

- Respect for identity entails cultivating social conditions that are not detrimental to the pursuit of authenticity.
- Such favourable social conditions are best cultivated through policies that protect and foster identity-pursuit through institutional means' (Keba).

2.2.4 Prioritizing identities

As I see it, thus, in a very important feature there is no real difference between the (modest) communitarian standpoint Charles Taylor (1994) represents and Kymlicka's liberal theory.⁴⁶ Taylor's goal is to ensure that the fundamental moral interests of members of minority groups are not to be harmed, that is, to allow them off to find or achieve who they really are. Kymlicka is convinced that one's access to her own culture is a fundamental moral interest, the loss in the culture (in the cultural structure) is a loss in who one is. While both of them stand on the ground of defending plurality, both can be charged by homogenizing tendencies. In this subsection I shall point out what the problems with Taylor's argumentation are (that is clearly follows the line Keba draws up). After doing so, I will measure up to what extent these criticisms apply to Kymlicka also.

As Taylor (1994: 41-43) describes it, according to the 'politics of universalism' every individual is entitled to the same rights and opportunities as every other. However, Taylor argues, this politics of universalism is not sufficient enough for ensuring real equality among the citizenry. In liberal thought, he contends, equal respect is limited to the supposed equal potential inherent in all human beings (which idea is based on Kantian metaphysical assumptions), but does not necessitates equal recognition of the accomplishments of human

⁴⁶ Naturally, one can add that according to Taylor (as opposed to what Kymlicka holds), culture has an intrinsic value also, that is, a value independent from the interests of individuals who share that culture. However, as I see it, this idea plays only a marginal role in his argumentation.

beings, as individuals or as groups.

In Taylor's (1994: 43) opinion liberalism's commitment to 'difference-blind' politics often 'negates identity by forcing people into a homogeneous mold that is untrue to them.' Moreover, what is the most painful charge for liberals, this mold is often that of the hegemonic culture's, whose own values override and alienate the social identities of minority groups. As a result, even though everyone has an equal right to their cultural identity, in Taylor's understanding, members of the majority culture enjoy an unfair advantage. Difference-blind politics surreptitiously condemn minority people to an inauthentic life, thus, hurts their fundamental moral interest and treats them as second-class citizens. Despite all the talk about equality for everyone on the part of the universalists, posits Taylor (1994: 43), 'the supposedly fair and difference-blind society is not only inhumane (for suppressing identities) but also, in a subtle and unconscious way, itself highly discriminatory.'

Taylor suggests that if we integrate the recognition of minority identities into our legal system, the pressures on them can be calmed, and minorities will finally achieve an equal condition to the majority. Taylor's intention here is not to lift one minority group above the others, but rather to guarantee a 'first-class citizenship' to all, ensure the possibility of living a good, authentic life. The politics of difference therefore, as Taylor contends, through an acknowledgement of particularity, works towards an universal end.

Thus, for it is not able to, and does not want to differentiate between its citizens, Taylor rejects the concept of the neutral, procedural state based on neo-Kantian assumptions (or, with Michael Walzer's term, on Liberalism 1).⁴⁷ As he claims, in order to establish real equality,

⁴⁷ One of the reviewers, Michael Walzer, gives an excellent brief description on Taylor's conception of liberalism. According to it Liberalism 1, which is probably the most widespread concept these days, represented by such philosophers as John Rawls, Ronald Dworkin, and Bruce Ackerman, 'is committed in the strongest possible way to individual rights and, almost as a deduction from this, to a rigorously neutral state, that is, a state without cultural or religious projects or, indeed, any sort of collective goals beyond the

instead of the equal potential, it is the unique identity of the individuals or groups, their distinctness from everyone else what should be recognized. Taylor (1994: 59) thinks that liberal state is not to 'remain neutral on the good life, and restrict itself to ensuring that however they see things, citizens deal fairly with each other and the state deals equally with all.' He opts for an alternative concept of the liberal state, according to which a society can be organized around a conception of the good life (e.g., living as a French), and yet minorities in this society can be respected and their liberties preserved, even though they do not share the dominant view of the good life.⁴⁸

As it was introduced above, Taylor charges neo-Kantian liberalism by an incapability of recognizing the inherent differences among citizens. However, in my opinion, by not distinguishing between our individual and social identity, he denies the possible differences and contradictions between them, and sees us somewhat faceless, abstract group members, with no important features what are not characteristic to all the others.

In *The Politics of Recognition* Taylor implicitly uses a logic of substance to conceptualize groups. Under this logic a group is defined by a set of essential attributes that constitute its identity as a group. Individuals are said to belong to the group in so far as they have the requisite attributes. But, as Iris Marion Young (2000: 151) rightly points out 'whether imposed by outsiders or constructed by insiders to the group, attempts to define the essential attributes of persons belonging to social groups fall prey to the problem that there always

personal freedom and the physical security, welfare, and safety of its citizens' (Walzer 1994). On the contrary, Liberalism 2 'allows for a state committed to the survival and flourishing of a particular nation, culture or religion or of a (limited) set of nations, cultures, and religions--so long as the basic rights of citizens who have different commitments or no such commitments at all are protected' (Walzer 1994).

⁴⁸ Moreover, Taylor doubts that Liberalism 1 is really possible, or, more exactly, that it would be really neutral. In the last chapter of the essay Taylor (1994: 62) claims that 'Liberalism is not a possible meeting ground for all cultures but is the political expression of one range of cultures, and quite incompatible with other ranges.' Islam, for example, since it does not have the conception of separation of church and state, is not compatible with liberal Western culture (giving the most known example of this incompatibility, the Salman Rushdie case). Taylor emphasizes that 'liberalism can't and shouldn't claim complete cultural neutrality. Liberalism is also a fighting creed,' one 'has to draw the line.'

seem to be persons without the required attributes whom experience tends to include in the group or who identify with the group. The essentialist approach to defining social groups freezes the experienced fluidity of social relations by setting up rigid inside-outside distinctions among groups. If a politics of difference requires such internal unity coupled with clear borders to the social group, then its critics are right to claim that such politics divides and fragments people, encouraging conflict and parochialism.'

Taylor does not take into consideration that the idea of an essential group identity that members share (with which the politics of recognition apparently works), concerns an apparent denial of differentiation within and across groups. The attempt to determine the distinguished difference by which the state following the 'politics of difference' would treat minority people, implies that group members all have the same interests and values. But, in fact, everyone relates to a number of social groups and every social group has other social groups cutting across it. For instance, French language speakers in Quebec are differentiated by class, race, religion, age, and so on; Catholics, Muslims or Buddhists are differentiated by gender, nationality, and so on. Our individual identity is somehow an aggregate of our gender identity, race identity, class identity, and does not based on only one aspect. By not recognizing the existence of these 'inner' differences, Taylor hurt the (fundamental) interests of some group members. The endeavor to 'define a common group identity tends to normalize the experience and perspective of some of the group members while marginalizing or silencing that of others' (Young 2002, Ch3).

As I see it, Taylor offers his solution in such a way that treats cultural groups as discrete and relatively isomorphic entities; as monologically generated entities that seem to share many of the properties of individuals as construed by liberalism-1 (rejected by Taylor). Thus, in my opinion, Taylor has not resolved the problem he finds inherent in Kantian liberalism (that of

the incapability of recognizing the inherent differences among citizens), but simply displaced it to the group level.

As far as I see it, in *The Politics of Recognition*, Taylor misses his aim. While the politics of difference intend to ensure authentic identity for every citizen (and therefore, to ensure one aspect of the democratic ideal of equality), it reduces the chances of the individuals to experience the plurality of their personality. Being recognized through certain preset differences means that the state decides what are the really important, specific differences of a person. In such circumstances, the state urges the person to determine herself from outside, and not along her own freely chosen dimensions of identity extracted from the depth of her authentic existence. This recognition prevents one to decide freely what are the differences of his or her need to be respected, that is, his or her special, individual identity.

Clearly, Kymlicka could say that a similar critique does not apply to his theory, since first he does not categorize people as sharing (or should share) a common end, second, he does not take community ontologically prior to the individual and third, the reason why he speaks about national communities (as he later, in *Multicultural Citizenship* explicitly declared) that they are big enough not be able to oppress individual identities and purposes. He could say that the basis of his argumentation is the cultural structure, not the character – thus his propositions are perfectly compatible with inner differences, and do not suppress the fundamental interests of anyone in a certain minority group.

But this is dubious. Firstly, the practical propositions of Kymlicka and Taylor are the same. They are talking about the same units, that is, national minorities. As a matter of fact, Kymlicka, similarly to Taylor, does recognize a shared end – that is the survival of the culture. Both of them allows the restrictions of the rights of group-members in order to ensure the

continuing existence of the culture. Moreover, one could say that it is Taylor who sticks more to the liberal values: he is the one who says that there are limits on what kind of community practices should a liberal state tolerate (Kymlicka, as I have pointed out above, does not want to differentiate between the groups on the level of their inherent liberalism when deciding whether they are entitled to group rights or not).

Secondly, it is highly questionable that his cultural structure/cultural community distinction would really hold. In the next subsection I will point out that it seems that while Kymlicka first speaks about the importance of 'there being a cultural structure,' in the later part of his argumentation he speaks about the importance of a 'stable and secure cultural structure.'⁴⁹ And under both the security-, both the existential interpretation of his arguments, the distinction, it seems, collapses.

2.2.5 Cultural character/structure and security

In order to distance himself from the communitarian thinkers, Kymlicka introduces an important distinction, that is, a distinction between cultural character and cultural structure. As he sees it, cultural membership is a primary good, but not with respect to the 'norms, values and attendant institutions', but with respect to 'language, history and culture' a culture consists in.⁵⁰ But, as Tomasi points out, as his argument unfolds, his description of this good undergoes a subtle, but marked transformation. Firstly, the good Kymlicka is speaking about is only the

⁴⁹ This is connected to the shift I pointed out above – for autonomy it is only some kind of context we need. For self-respect, we need a secure one.

⁵⁰ As Charney (2003: 301) – probably rightly - argues, the character/structure distinction in itself (setting aside the question of stability) is problematic: 'It is not clear in what sense people can be said to share a common culture if they need not share, in at least some minimal sense, a culture's norms, values and attendant institutions, all of the things one would associate with a common cultural way of life.' Cultures may be porous and the values contested, and still, it is meaningful to talk of different cultures and differentiate them, in part, by their contested and porous values and institutions.

'there being a context of choice' (162-166). Later, however, the primary good is presented as a 'secure' or 'stabile' context of choice, that is, membership in a stabile cultural community.⁵¹ As I see it, Kymlicka's being unclear about the nature of the good that is in the centerpiece of his argumentation (namely, cultural membership) is the symptom of his uncertainty about the basic value to which he wants to build up his theory.

At the early stage of his argumentation Kymlicka builds up a distinction between the existence of the cultural structure (a media through which individuals become aware of the options available) and the cultural character (that is, the substantial features of the culture: norms, values, institutions). He asserts that that the cultural character may change, but since not even radical changes in character necessarily threaten the existence of the structure, there is nothing to oppose here from a liberal point of view. People are not bound to a particular set of options, what they need is some range of choices and media that transmit the existing options. What is to be opposed is the loss of the structure (the media) only.

However, the problem here for Kymlicka is that the 'existential interpretation' of the cultural membership there is nothing that would prohibit a radical change in the structure also. If autonomy is the central value, assimilation is not a problem: people cannot lose their access to a 'language, history and culture', but this 'language, history and culture' changes in this process. Therefore, with respect to 'autonomy' the distinction between character and structure is pointless. Cultural membership, taken existentially, is uninteresting: whatever happens, each individual has that good and has it equally. Therefore, it generates no special rights.

Since autonomy would not require more than some existing set of choices and media to transmit them, as I noted in subsection 2 Kymlicka had to introduce another basic value, that

⁵¹ What is more, in one's 'own' culture.

is, he had to put a very strong emphasis on self-respect. The question is now is that whether if self-respect is the basic value, the distinction (in a somewhat changed form) could hold and whether cultural membership under the 'stability interpretation' could generate group rights.

As it was pointed out above, in the later part of his argumentation Kymlicka contends that what we need is a the 'stability of the culture we belong to, with respect to its structure (only)'. But what does it mean in more concrete terms? We may assume that in unstable periods new options suddenly appear and important old life-choice options disappear. Simultaneously, the traditional rankings of the various options become unsettled. If they are pervasive enough to reach the very foundations of the cultural community then they do not threaten only the values and practices and institutions (that is, the character) but the history, language and culture of the group. On the 'stability interpretation' the primary good in question is a situation where cultural instability of this sort is avoided. As Tomasi (1995: 590) asserts, 'Kymlicka's position is that special group rights are justified when people find themselves in disadvantaged circumstances with respect to this good, so described.'

As Tomasi points out, if we are to interpret the stability of the cultural structure as a context of choice, then the distinction that is to be examined is that between the 'stability of the cultural community as a context of choice' and its 'character.' In order to maintain this distinction, Kymlicka must show that the changes in the former do not affect *eo ipso* the latter. But this is implausible. To maintain his distinction between the primary good of structure (stability sense) and the mere character of the community, Kymlicka must say that changes in a group's 'beliefs, values and institutions' need not be changes – with respect to people's beliefs about value – in the groups's history, language and culture. But it is only the language that may stay intact in cultural revolutions (in which Kymlicka does not see any problems), and the change in language is the only feature that distinguishes cultural revolutions and assimilation. It is

highly doubtful now that language could serve that the only media that could secure our self respect⁵², moreover that it could secure any. I agree with Charney, that Kymlicka is surely correct to argue that person's identities are constituted in some very important way by their native languages. Language is the very medium through which persons form a conception of themselves and represent who and what they take themselves and the world around them, to be. Nevertheless this does not mean that people thereby consciously identify with, or embrace their languages as a source of pride or consciously value them as a central part of their identity (Charney 2003: 300-303). Self-respect, if connected to culture in any sense, it is rather sure that not to the language only.⁵³ Thus, Kymlicka's distinction collapses. Language is the only feature of the cultural structure that does not necessarily changes when the character changes radically.⁵⁴

The distinction was important for Kymlicka for two reasons. Firstly, as I noted at the beginning of this section, Kymlicka needs it in order to distance himself from the communitarian philosophers. Secondly, as Tomasi (1995: 593) points out, the distinction was crucial 'because the role of the primary good associated with cultural membership was to show that people who find themselves unequally situated with respect to that good merit special rights. But the distinction between changes in character and changes in structure (stability sense) cannot help us identify which changes impermissibly damage people's self-

⁵² If the changes in all the other features cannot affect self-respect, Kymlicka, if he wants to maintain the distinction, has to hold that language does.

⁵³ In other places, Kymlicka gives a more plausible, though I think contestable, argument on why our mother tongue is so important in our lives. In *Citizenship in the Era of Globalization* (1999) he argues that democracy requires participation, and participation in public deliberations for most people is not possible on any other languages. Those are the elites who can express their thoughts appropriately and easily on foreign languages, ordinary people just cannot do so.

⁵⁴ The question the importance of a persons national identity in contrast to their religious identity or familial identity. Some source of identity, some end or attachment or motivation should be given, in order to preserve a sense of identity but no particular end, ground projects, constitutive concerns.

respect and which do not.^{55 56}

In fact, Kymlicka has only one proposition with which we can determine what counts as impermissible in his theory and what not. This is the egalitarian argument: Kymlicka asserts that liberal states should avoid differential degrees of instability in the range of life options and the beliefs about the relative values of those options that arise in different communities. To avoid differential instabilities of that kind, states would need to permit cultural groups⁵⁷ to invoke 'whatever measures are required to prevent transition periods in those communities, including transitions in what Kymlicka calls the "character" of the community. On the stability interpretation, Kymlicka's argument has the unwanted, conservative result that valid claims to group rights spring up whenever the character of a community is threatened with change (Tomasi 1995: 593).'

Thus, it seems that ultimately Kymlicka cannot show that his theory would be relevantly different from the one Taylor drew up. The distinction that could distinguish him from the communitarians does not hold, and if it is the stability of our cultural membership that is important for our well-being, it seems that Kymlicka should really allow off too much for communities, and defends too insufficiently the individuals. As I see it, if he wants to maintain that his theory is distinctively liberal, he has to admit that Taylor is liberal also. As it is rather common-sensical, it would be a really far-fetched claim.⁵⁸

⁵⁵ Besides Tomasi, recently Steven Wall gives another interesting critique on Kymlicka's distinction being improper, see Wall (2007: 241-244).

⁵⁶ Though it is true that there are identity groups who differentiate themselves by a different language by not having other really different feature. But it is a dubious argumentation that our mother tongue would be a feature without which we cannot imagine ourselves without.

⁵⁷ Or more to the dominant subgroups within. (On inner group power relations see eg Young 2002, or Okin 1998)

⁵⁸ Though Taylor is the least communitarian among the most important communitarian thinkers, and though *The Politics of Recognition* is one of his least communitarian works, I do not think that one could really underpin the position that he is more liberal than communitarian.

2.3 Rights for Immigrants

Since my main concerns in this paper are the rights of not any kind of cultural minority but the immigrants, let me elaborate on this point before turning to the next. According to Kymlicka membership within a culture ideally enables individuals to take autonomous choices about how to lead their life and gives them self-respect. As Galenkam (1998) puts it, the reason for ascribing special rights to minorities is their need for protection of their relatively vulnerable and threatened identity amidst a dominant culture. That is to say, special rights are always externally oriented. Their main value lies in protection of minority groups against the dominant society and hereby in the promotion of equality between groups. This is Kymlicka's main reason for calling for minority rights.

While Kymlicka in *LCC* does not really determine what sorts of minority groups should be entitled to 'cultural rights' in *MC* he distinguishes between the sorts of groups and between the rights they are entitled to. He argues that those are only the national minorities that possess 'societal culture' (something that provides its members with 'meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres' (76))⁵⁹ are entitled to self-government rights, ethnic minorities (that is, immigrants and their descendants) are not entitled to such rights, only to polyethnic rights. Though I tend to sympathize with the latter solution, I think that the way Kymlicka argues is flawed.⁶⁰

Let us first see in detail the differentiation Kymlicka makes. He uses the concept of 'societal

⁵⁹ In this section all the share numbers in parenthesis refer to pages from Kymlicka's *Multicultural Citizenship*.

⁶⁰ In other words, I do not think that Kymlicka's provisions with respect to national minorities are acceptable, but those with respect to ethnic minorities are.

culture' to distinguish the status of two types of minorities, namely, the national and the ethnic minorities. While ethnic communities may bring their language and culture with them to their new homeland, they usually lack territorial concentration and institutional embodiment. According to Kymlicka those are only the national minorities that exhibit the cultural requisites that could support demands for self-government rights based on the good of cultural membership.⁶¹

This is problematic now for two reasons. First, as Levey (1997) notes, the suggestion that ethno-religious groups lack institutional embodiment is hard to sustain. Many provide their members with extensive institutional support and services, ranging across social, educational, religious, recreational and economic life. They have their own schools, welfare institutions and media, institutions of governance and so on. Moreover, it is not clear just how crucial 'institutional embodiment' is to award of self-government rights. Although Kymlicka is aware of that some national minorities may lack the 'institutional cement' needed to fit into the definition of having a distinct societal culture, he asserts that this weakness should not disqualify them from securing those rights. As Levey (1997: 218) points out, 'national minorities lacking a societal culture, or key features of one, retain the self-government rights it is said to bestow; ethno-religious groups that dramatically evince high social integration, geographic concentration, and institutional embodiment (...) do not warrant comparable rights, at least on account of having these features.' This obviously means that the legitimacy of the differentiation between ethnic and national minority groups with respect to rights is not underpinned sufficiently.

Second, there is a problem with the way Kymlicka attempts to justify this apparent injustice.

⁶¹ There is a third kind of group rights that Kymlicka considers in connection with minority groups (extra political representation) but here I will not elaborate on this issue.

Why should the autonomy or the self-respect of Quebecois in Canada matter more than Muslim immigrants' in England? He claims that the reason why national minorities are entitled to self-government rights and ethnic groups, such as immigrant communities (even if the characteristics of 'societal cultures' apply to them) are not, is that immigrants have *chosen* to leave their own societal culture in order to join another. At first sight, this might seem convincing. However, while there are some people who surely emigrate voluntarily, without any serious reason that would force them to do so (to cite Kymlicka's example eg. Americans who settle in Sweden), this is clearly not the case in connection with the overwhelming majority of them. Obviously, political refugees constitute a group in connection with the 'voluntariness assumption' does not hold. However, and even Kymlicka acknowledges it, the voluntariness of leaving their home country by most immigrants is questionable also. Dire local conditions, in terms of resources or social and political conditions, may effectively force people to emigrate. Kymlicka notes also that the descendants of immigrants, that is the second or third generation, constitute a third group that does not choose to relinquish their own culture. Nonetheless, as Levey (1997) notes, in all these cases, he stops short of where his theory would seem to lead him endorsing self-government rights to these people also.⁶²

This is interesting, since Kymlicka also accepts that those dire conditions that make people to emigrate might partly be the affluent nations' responsibility or fault. However, he thinks that if a government is violating its members rights, there is no mechanism for 'deciding which other country should redress that injustice' (98). Kymlicka believes that if the international distribution of resources were just, then immigrants would have no plausible claim of justice for re-creating their societal culture in their new country (and for getting support for this

⁶² However, one can plausibly argue against self-government rights from liberal-egalitarian ground even acknowledging that the involuntariness assumption fails. See eg. Baubock 1996. (The reason why Kymlicka, if he acknowledges the failure should call for stronger rights is the centrality of self-respect in his theory.)

process by the government). As he says however, the only long term solution is to remedy the the unjust international distribution of resources. 'It is not clear that treating economic refugees to a new country as a national minority provides an appropriate way to redress injustices that must ultimately be solved in the original homeland' (100).

I think that this argumentation is flawed. As I pointed out above Kymlicka holds that self-respect is a primary good that is so important that no good life is imaginable without possessing it, and membership in one's own culture is a necessary precondition of it. On the ground that (national) minority people by their birth and not by their fault are disadvantaged with respect to this good, he calls for autonomy-rights (for them). Thus, he thinks that the moral equality of persons obliges states to redress the injustice at hand. As I see it, there is no significant difference here between citizens by birth and citizens by not birth (that is, immigrants), thus Kymlicka should extend his provision to them also. If it is not the immigrants' fault that they got into a situation where they are disadvantaged with respect to their access to their culture, the state should ensure the flourishing their culture too. It might be true that no particular state has a perfect duty to redress the injustices happened with immigrants, but affluent states together have an imperfect duty to redress them. This is not to say, however, that I think that immigrant communities should get self-government rights. On the opposite, as I attempted to point out above, consociational inclusion is not justifiable from an (autonomy-based) liberal egalitarian point of view. The only thing I wanted to claim here is that if Kymlicka takes his own presuppositions seriously, he should support demands of immigrant groups for self-government right also.⁶³

⁶³ He has another, a less principled argument for not giving self-government rights to immigrant groups which holds that if governments tried to do so, citizens of affluent nations would vote for political forces that oppose immigration. Thus, giving self-government right on long -run would worsen the situation of the worst-offs. I think this is a valid argument, but the problem is that Kymlicka grounds his argumentation on polyethnic rights to justice, and not to this 'sad reality'.

What, according to Kymlicka, would be desirable to provide for immigrant communities are – as I mentioned above – polyethnic rights. Polyethnic rights are measures designed to accomodate the cultural differences of new members, and include such things as public assistance as funding ethnic magazines and festivals, exemptions from some laws (such as wearing helmet for Sikhs), and some form of 'symbolic recognition' that is redesigning holidays and state symbols in order not to clash with the values these new groups hold. In sum, Kymlicka thinks that while the voluntariness of immigration is so weighty a factor as to disqualify them immigrant communities from self-government rights, it supports the right to have one's particular cultural attachments politically recognized by a the societal culture she is to integrate into.

Given that most of the immigrant communities are 'illiberal' the next question that should be discussed here is Kymlicka's opinion on illiberal communities. As I pointed out above, to Kymlicka thinks that in most cases it is illegitimate to interfere into an intolerant culture. As he contends, 'in cases where the national minority is illiberal, this means that the majority will be unable to prevent the violation of individual rights within the minority community. Liberals in the majority groups have to learn to live with this' (168). He does not think that even in cases of systematic violations of human rights the intervention would be always justifiable. Kymlicka argues that when considering interference, one should keep in mind a number of factors: 'the severity of rights violations within the minority community, the degree of consensus within the community on the legitimacy of restricting individual rights, the ability of dissenting group members to leave the community if they so desire and the existence of historical agreements with the national minority' (169-170). Unfortunately, these factors are not elaborated in any more detail, but it is easy to comprehend: while according to Kymlicka states are not to interfere with national minorities' illiberal practices, they have a

right to do so in connection with immigrant groups. Personally, I am not as scrupulous with respect to interference as Kymlicka is, but here again I think that his discrimination is not underpinned enough. To conclude, Kymlicka is known as a defender of the minority rights. However, in case of ethnic minorities, he turns out to be a defender of a policy of forced assimilation with very little room for the preservation of one's original cultural identity.

The last question I would like to touch upon here is the question of religion. In Kymlicka's theory apart from the distinction between national and ethnic minorities, there is the distinction between ethnic and religious minorities. Whereas according to him ethnic minorities should qualify for special treatment, the religious minorities should not. The reason for this is related to Kymlicka's view of liberal states. For Kymlicka although liberal states can be religiously neutral, they can never be culturally neutral (111). That is, they can choose to give secular education in public schools instead of, for instance, Catholic , but they cannot choose that the education will be on no language instead of (for example) English. Therefore, ethnic (and national) minorities are necessarily more disadvantaged than religious minorities. Consequently, they alone are qualified for special treatment.

Now, two points should be noted here. First, as Galenkam (1997) argues the differences between ethnic and religious communities seem to be exaggerated, and in actual practice this difference is difficult to uphold. In the case of the ethnic minorities in Western Europe the two category overlap to a very high extent. Second, the paralel between religious and secular education on one hand, and English (Dutch, French, etc.) and no-language education on the other simply does not hold. Secularity is not neutral in a way no-language would be. As it is impossible to give an education without a language, and educators have to choose a language some of their students may not possess as a mother tongue (and thereby disadvantage them), they have to choose a value system also. Secularism is not a ground on which people of all

culture can meet and coexist. In Charles Taylor's words, it is also a fighting creed.⁶⁴

I think that this is an important flaw of Kymlicka's theory, and comes from his prioritizing the mother tongue as the most important and unrevisable constituent of one's identity and self-respect. But this is, again, false. As Galenkam (1997) notes, most of the problems that have been arisen in the last few years with regard to immigrant groupings have to do with their religious (especially Islamic) convictions; and most of the discussions focus on the conflict between liberal-secular values (such as the equality of men and women) and Islamic values. It seems that people may bind their self-respect not only to their language but to their religion also, and if self-respect works in a way Kymlicka thinks, then he should expand his original provisions to religious communities also. Though I cannot argue here why this would be objectionable from a liberal point of view, I am strongly convinced that it is indeed.

Ultimately, I think that Kymlicka's central flaw is that he grounds his theory to self-respect, however, it would require too much: self-government rights for national, ethnic and even for religious groups. Though Kymlicka does not want to provide the latter two with such rights, since he presupposed that self-respect is the most important primary good, he cannot give a principled reason for his denial. I think that liberal states self-respect for anyone, moreover, it would be impossible to do so, but they are to ensure the capacity for autonomy for all. But before turning to such questions, let me conclude this chapter now.

2.4 Preliminary Assessment

In this chapter I have argued that there is less difference between the communitarian and

⁶⁴ I would risk to argue that introducing an artificial language to the public education could do more with neutrality than making it secular.

between Kymlicka's 'liberal' justification of consociational incorporation that he is willing to accept. As I pointed out, autonomy plays a less important role in his justification for minority rights than it is usually supposed. As I see it, if we stick to the original idea that it is the existence of a context of choice what we need in order to live and autonomous life, and autonomy is crucial to our well-being, then the desirability of giving group rights (especially to illiberal groups) does not follow. If we interpret however Kymlicka that he argues that self-respect is the key to our well-being and in order to have self-respect we need a stable cultural community, his interpretation falls back to a communitarian one, and can be criticized from a liberal point of view in the same manner. Though I cannot plainly object the conclusions he draws in connection with immigrants, I think that the way he argues is flawed. If self-respect is connected to one's original cultural community and if it is self respect that is central to any kind of well-being, given that immigrants generally come for serious reasons (that arisen not as a consequence of their fault), they are not to be detained and should be given the same rights as minorities. On the other hand, if it is autonomy that is the central value, it seems that cultural rights are not needed, nor to national minorities nor to ethnic minorities, that is to immigrants. Giving polyethnic rights I think might be acceptable, but it is less a matter of justice than the matter of societal peace.

CHAPTER THREE - SUSAN MOLLER OKIN ON CULTURAL RIGHTS

Having shown that Kymlicka's account on cultural rights is more controversial than he takes it to be, I now turn to a discussion of Susan Moller Okin's theory with the same objective in mind. Okin significantly contributed to the debate on multiculturalism by considering a new dimension, that of gender. She did this by putting the question: 'What should be done when the claims of minority cultures or religions clash with the norm of gender equality that is at least formally endorsed by liberal states?' (Okin 1997).⁶⁵ In this chapter I shall first identify the primary point Okin makes in her *Is Multiculturalism Bad for Women?* (Okin 1997) and then I shall present the argumentation she elaborates to underpin it. In the second part of this chapter I shall point out why I find some features of her reasoning entirely mistaken and why I regard the theoretical position she occupies practically untenable.

3.1 Women and Minority Cultures

Having entitled her essay *Is Multiculturalism Bad for Women?* Okin immediately poses the central question she is concerned with throughout the whole article and to which she gives a more or less affirmative answer in her concluding remarks.⁶⁶ Her primary statement, the

⁶⁵ As you will see in the reference list, I use the Internet version of Okin's article, this is why you cannot find page numbers after the quotations.

⁶⁶ The article was originally published in the October/November 1997 issue of *Boston Review of Books*, followed by several responses and Okin's concluding reply to her interlocutors. In 1999 Princeton University Press republished the debate (supplemented with some new contributions) in an anthology under the title of Okin's original essay. Naturally, it is not the only text Okin wrote on the issue. For example, in 1998 a longer version of the same argument was released in *Ethics* (Okin 1998). Additionally, there is an unfinished draft on the webpage of New York University, in which the author tries to clarify her position (Okin 2003). In my paper I use the original version of the essay, for this is the one that has influenced or in certain cases has provoked acknowledged philosophers to pay attention to the relation of multiculturalism and feminism. It should be noted here that the central argument with which Okin criticizes liberal multiculturalists in *Is Multiculturalism Bad for Women?*, the one emphasizing the role of the family in the justness of society, is not new in Okin's thought. On the contrary, it is the basis of the well-known criticism she made on Rawls's *A Theory of Justice* in the eighties (eg. Okin 1987, Okin 1989; see also Smith 2004 for an insightful outline of the debate between Rawls and Okin).

message she wants to deliver, is that multiculturalist claims might be troublesome for women, because respecting minority cultures' customs, acknowledging their right to certain practices, in the vast majority of cases means refusing to protect women in those cultures. Feminists in Western countries should, therefore, struggle for assimilationist governmental policies.

Okin's argumentation is organized around three fundamental points. According to the first, while in practice the great majority of the advocates of gender equality sides with the proponents of multiculturalism, on closer inspection feminism as a theoretical position resists easy reconciliation with multiculturalist convictions. Her second point is that the prominent defenders of group rights, as a result of the limited scope of their investigations, have failed to address adequately – or in many cases failed even to notice – this potential conflict. According to Okin's third (and most important) point, formal provisions of equal freedom and opportunity are not enough for protecting women's rights, since their oppression generally involves subtle forms of coercion and takes place within the more or less hidden sphere of domestic life, within the family.

In order to avoid the obscurity that can be avoided, it is important to see what Okin means by the label of 'multiculturalism' and that of 'feminism' here. As she understands it, 'feminism is a belief that women should not be disadvantaged by their sex, that they should be recognized as having human dignity equally with men and the opportunity to live as fulfilling and as *freely chosen* lives as men can' (Okin 1997). 'Multiculturalism' in her essay refers to certain opinions according to which minority cultures or ways of life are sufficiently protected only if they enjoy special group rights or privileges.⁶⁷ According to the multiculturalist reasoning since minority groups have their own societal cultures, and since societal cultures play so pervasive

⁶⁷ To make it clearer, what she has in mind are not self-government rights, but – in Kymlicka's terminology – polyethnic rights. As she puts it in *Feminism and Multiculturalism* (1998: 662), 'some examples of group rights so claimed are rights to guaranteed political representation, rights to public subsidies for cultural activities or education and rights to be exempt from certain generally applicable laws.'

and fundamental a role in the lives of individuals, and because otherwise such cultures may be threatened with extinction, minority cultures should be protected by special (group) rights. In other words, for leading a good and meaningful life people need membership in a flourishing community, and a flourishing minority community cannot exist without giving minorities group rights and privileges besides giving their members the individual rights to which each citizen is entitled.

To Okin's mind, however, protecting minority cultures' right to certain practices generally means (or leads to) protecting practices which seriously endanger women's equality, dignity, health, or even their life. Such practices include veiling, clitoridectomy, child and/or coerced marriage, polygamy, raping (or punishing women for being raped), and murdering those females who are believed to have committed adultery.⁶⁸

The most 'intolerant-toward-intolerance' (and therefore in Okin's view the most acceptable) multiculturalists, like for example Kymlicka (see eg. 1989, 1992, 1995), reply – in Okin's interpretation - to these phenomena by proposing that only those cultures should be gained by minority group rights and privileges which are internally liberal to a certain extent. As she sees it, according to Kymlicka and other liberal multiculturalists the promotion or support of oppressive cultures - cultures denying the basic liberties of or discriminating overtly and formally against women - is highly undesirable, since the very reason for protecting cultural membership is that it allows for meaningful individual choice, and helps in developing self-

⁶⁸ It is worth to mention here a methodological failiure Okin makes. As Norton (2001) argues, when Okin counter poses Western liberalism and other cultures, she does it in a highly unjust way. She presents liberalism in its idealistic form (regardless of what is happening in practice in liberal states), when other cultures are presented through "general" practices, not through principles and ideas. In more concrete terms, when male members of the Judeo-Christian-Enlightenment culture beat their family, it is only a sorrowful, but contingent phenomenon. When male members of other cultures does the same, it is treated by Okin as a representative act, whatever for example the Koran may say on the issue. it is very telling, for example, that while Okin presents liberalism through the works of Kymlicka and other liberal scholars, the minority practices she finds crucial are presented through popular press articles. This asymmetry is not a result of the lack of materials, for, to mention only one issue, there is a huge literature on polygamy in the work of Muslim philosophers and jurists.

respect and self-esteem. Oppressive cultures or discriminatory cultures cannot provide their members the context needed for a freely chosen, good life, so they do not deserve special rights. Liberal multiculturalism therefore, in Okin's point at least according to its own representatives, serves the interest of women as well: it gives special rights to minority groups when they enrich the life of their female members (and certainly that of the male's too), but denies granting these rights when these would make women worst-off.

However, as Okin sees it, the liberal multiculturalist position is far from being sufficient from a feminist point of view. As she notes, 'in many cultures in which women's basic rights and liberties are formally assured, discrimination practices against women and girls within the household not only constrains their choices severely, but seriously threatens their well-being and even their lives' (Okin 1997). The subordination of women is often informal; therefore addressing only the formal features of a given culture is clearly not enough. In Okin's words, 'those who defend group rights on liberal grounds need to address the very private, culturally reinforced discrimination' also (Okin 1997). As Okin argues, a simple membership in a viable culture is surely not enough, 'at least as important to the development of self-respect and self-esteem is our place within our culture. And at least as important to our capacity to question our social rules is whether our culture instills in and enforces particular social roles on us. To the extent that their culture is patriarchal, in both these respects the healthy development of girls is endangered' (Okin 1997).

It is important to emphasize, Okin argues, that liberal proponents of minority rights tend to treat cultural groups as 'monoliths', ignoring their internal differences in terms of power or that of interest. Moreover, the proposition the supporters of minority rights make is inadequate because it pays little or no attention to the private sphere. As she puts it, multiculturalists 'typically neglect both the different roles that cultural groups require of their

members and the context in which persons' senses of themselves and their capacities are first formed and in which culture is first transmitted – the realm of domestic or family life' (Okin 1997).

As it may have become obvious by now, Okin makes two central observations regarding the nature of cultures. First, 'the sphere of personal, sexual and reproductive life provides a central focus of most cultures, is a dominant theme in cultural practices and rules. (...) As a rule, the defense of cultural practices generally have a much greater impact on the lives of women and girls than those of men and boys, since far more of women's time and energy goes into preserving and maintaining the personal, familial and reproductive side of life.' (Okin 1997). Second, the majority of cultures have as one of their principal aims the control of women by men. Cultural practices aimed to control women's sexual and reproductive capabilities in many cases make it virtually impossible for women to 'choose to live independently of men, to be celibate or lesbian, or not to have children' (Okin 1997).⁶⁹

For these reasons, Okin implies, it is by no means clear from a feminist point of view that minority group rights could serve the interest of women. Establishing special rights in order to enable some minority groups to preserve themselves may not be in the best interests of their female members. In many cases girls and women may be much better off if their culture were to become extinct, assimilated. To Okin, when liberal arguments are made for the rights of groups, then, special attention must be paid to examine within-group inequalities, the strength of gender hierarchy. There is no other way to take women seriously.

⁶⁹ It is important to note, Okin acknowledges that even Western liberal cultures still practice many forms of sex discrimination. However, as she sees it, while all of the world's cultures have distinctly patriarchal pasts, some - mostly though by no means exclusively, Western liberal cultures have departed far further from them than others. It is true, that there are many kind of oppression practiced upon women, but at the same time, she emphasizes, they are legally guaranteed many rights men are granted as well. Moreover, in her possibly too optimistic opinion, families in Western countries nowadays do not communicate to their daughters that they are less valuable than boys, that their life has no more purpose than to marry, serve sexually their husbands, give birth to children, and take care of the family.

3.2 A Critique on Okin's Theory

Before criticizing Okin's theory two preliminary notes should be taken here too see what the *target of her attack is precisely*. First, Okin charges Kymlicka that by granting minority rights to the least illiberal, yet, still not liberal minorities he practically protects discrimination. This charge may be regarded as being imprecise for two reasons. On one hand, in granting minority rights, Kymlicka does not really discriminate groups by their 'level of inner liberalism.' National minorities, no matter how illiberal they are, are to be provided by self-government rights. They may oppress women, it will not affect their claim-rights for the protection of their culture. Thus, if those are not only the immigrant communities that Okin has in mind, the charge is too forbearing. On the other hand, however, if those are only immigrant communities Okin speaks about, then it is difficult to see how polyethnic rights that Kymlicka provides them - such as for example allowing Sikh men not to wear helmet when riding motorcycle - could serve as means to oppress women. Therefore, in this case, the charge seems to be too severe.

Setting aside now the question whether Okin succeeded in properly criticizing Kymlicka on the 'surface' of his theory, I think that Okin's main point is rather clear and right. Kymlicka holds that the reason for providing minority groups by special rights is that people need an access to their own culture to acquire self-respect, which is the most important primary good. Since minority people are disadvantaged with respect to this access, the state should defend or support their interests by legal (and financial) measures. While Kymlicka holds that even illiberal groups should be granted by special rights on the basis that one's own culture plays in acquiring self-respect, Okin, on the contrary, argues that for the development of self-respect and self-esteem our place in a cultural community is at least as important than our being a

member of a flourishing cultural community. She thinks that if a cultural community oppresses some of their members, it denies them from self-respect and autonomy, that is, to choose freely a plan of life or reconsider the traditionally held values. Liberal states should not allow this oppression, because they are obliged to show equal respect and concern for all. Since minority rights do strengthen the position of the leaders of the group that is provided by them, minority rights make oppression easier to carry out. Therefore, liberal states should not provide special rights to illiberal minority groupings.

Okin's point, as I see it, is most certainly right with respect to granting self-government rights to illiberal minority groups. But is it right with respect to granting them with polyethnic rights? Many say that it is not. In my opinion, however, the idea that all kind of polyethnic rights are entirely harmless is dubious; however, most of them surely is. As I suggested above, it is difficult to see how subsidizing cultural festivals, allowing people to wear traditional dresses (that are not demeaning)⁷⁰ or exempting Sikh men from wearing helmet could help minority elites to suppress women or other worse-off members of the(ir) group. Allowing minority children being (significantly or entirely) exempt of public education would be more alarming. Liberal states should ensure the right to leave one's original cultural community, but if women receive limited education, their right to leave will be formal only - since they will not have the capacities required to live successfully in the outer world. This is not to say that Kymlicka argues for exempting minority children from public education. It is not true.⁷¹ What I intended to assert only is that Okin's fear that certain cultural rights may help in oppression

⁷⁰ What I have in mind here is that for example allowing Muslim girls in public spaces to wear a scarf that covers their hair is not objectionable, but idea of allowing them to wear burqa that covers their whole face and body might be contested.

⁷¹ More precisely, he would not support such a demand if put by immigrant communities (since, as I pointed out above, with respect to them, he is deeply assimilationist). One might argue now that since in Kymlicka's theory polyethnic rights are means to social integration, exempting children from public education fall beyond the scope of these rights. However, I am not sure that it would be so easy to decide what could qualify according to Kymlicka as polyethnic right and what not.

might be grounded not only with respect to self-government rights.

The second point that should be noted here is the following. Okin states that even if Kymlicka does not want to grant rights to those groups that formally discriminate women, he does allow inequality to be taught and practiced within the family. As Spinner-Halev (2001: 89) argues, while 'Okin frames [here the] private discrimination [that is, oppression in the private sphere] as a problem for cultural right theorists, [...] this is not a problem particular to multiculturalism. Rather, with a standard liberal view of the private sphere, Kymlicka and other allow *all* families, immigrant and nonimmigrant alike, to do the same.' Thus, it seems that Okin's critique only on the surface is directed toward multiculturalists, her main problem is with the liberal theory itself.⁷² Immigrants come into the picture only because they are more 'visible,' the oppression they practice inside their family is more unfamiliar to us than those practices to which we got used to for decades or centuries.⁷³

Now, let me turn to the points I find most problematic. First, Okin, while accusing the multiculturalists that they (falsely) regard cultural groups 'as monoliths' and they treat them as homogenous entities, she does the same in case of 'women.' To her, women, regardless to what culture have they born into, have the same interests, the interests shared by every rational person, just like being treated equally and enjoying equal dignity. But what does it mean 'to treat women as equals'? Sometimes traditional cultures can plausibly argue that they provide equal dignity to both men and women, although it does not mean that they provide them the same roles. This is not to say that gender discrimination does not exist. This is not to say either, that traditionally enforced gender roles are desirable. However, in my view, the 'separate but equal' doctrine is not a genuine absurdum. Naturally, in many cases it is just a

⁷² On Okin's critique on Rawls see Okin (1989). On a possible counter-argumentation see e.g. Cohen (1997).

⁷³ This is not to say that the oppression immigrant communities practice is not demeaning, humiliating or cruel.

slogan intended to mask that one group thinks that the other is inferior. But the separate-being-inherently-unequal thesis just does not hold. As Carens (2000: 103) points out using the example of the public toilets as an illustration: 'no one (...) supposes that the separation of public facilities is in itself stigmatizing, or degrading, or disadvantaging one sex to another'

Second, it seems that Okin is really insensible to what a cultural practice means. Some practice, snatched from its context, interpreted from the 'neutral' viewpoint of the Liberal-Enlightenment culture, may seem us strange, humiliating or crucial. But the meaning obviously always depends on the interpretators. When evaluating cultural practices it is surely inadequate to rely solely on our own intuitions, as Okin does. This is not to say that everything is relative and every practice is acceptable. There are univocal cases in which the harm caused is contrary to any kind of human flourishing. But one should be really cautious not to be biased by one's own culture when judging other cultural practices as being crucial, demeaning or humiliating. And in fact, Okin seems to be more biased than it is desirable.

In Sander Gilman (1997) rough phrasing, 'Okin's language and images take us back 150 years, when the focus would not have been on female circumcision/ritual mutilation but on infant male ritual circumcision/ritual mutilation. (Yes, that term was used!) Those terrible Jews and their repulsive practice of marking the bodies of their male children was, as Enlightenment "thinkers" such as Voltaire stated, clear proof of their inherent inhumanity.' Now, one may argue that while male circumcision is 'healthy', female circumcision damages the sexual organ and makes women incapable of enjoying sex. But the former point is highly challenged in scientific debates. Many claim that the small sheath of foreskin tissue removed during circumcision is filled with extremely sensitive nerve endings and mucus membrane cells and its removal permanently blunts erotic stimulation. However, it is not customary today to call for prohibitions on this practice.

Infibulation (removing the clitoris, the labia minora and part of the labia maiora and sewing together the two sides of the vulva leaving only a small opening) is most certainly morally objectionable, but, the procedure of the ritual cutting of the genitalia might have forms that are not. As Joseph Carens (2000: 145-153) argues, 'the respect due to particular cultural and religious commitments must be assessed in the context of their implications for other fundamental moral interests.' Most forms of female circumcision are painful, debilitating and devoid of health benefits. 'One crucial responsibility of any liberal democratic state is to protect the physical safety and bodily integrity of its inhabitants.' It is true, even if those are consenting adults who wish to undergo such a process.⁷⁴ However, as one goes to less radical forms of circumcision, the picture becomes less and less clear. Minor pain and small risk associated with cultural practices might be 'outweighed by the meaning attached to it by the child's and the cultural and religious to which they belong and which the child therefore join,' and in fact, there are some possible forms of female circumcision (e.g. performing a small incision on the foreskin of the clitoris) which are not more harmful than male circumcision that is already accommodated into our culture. As I see it now, if there is no significant difference between the two practices regarding the moral interests attached to them and the harm caused by them, then one can plausibly argue that it is unfair if liberal states allow one, but not the other. Foredooming cultural practices that are alien to her (our) culture is, from my perspective, a serious flaw that makes Okin incapable of providing an adequate account on what is just and desirable and what is not.⁷⁵

Lastly, there is two well-spread interpretation on what Okin proposes exactly. On one hand,

⁷⁴ This claim might be disturbing at first glance, but if one thinks that it is legitimate to prohibit adults to sell their organs, it easy to comprehend that infibulation falls into the same category.

⁷⁵ Naturally, it is not only Okin who commits this fault. In the particular issues of clitoridectomy it is worth while to see Tamir's articles (1996a, 1996b) that have provoked a debate about how and why this issue serves as a trump card in discussions about multiculturalism.

she seems to suggest that almost no existing minority community should be granted by special rights, since it helps them to oppress some of their members, who would be better-off if the group assimilated to the majority society. On the other hand, she seems to suggest that representatives of young women should take part in negotiations over minority rights. The latter is obviously idealistic, though, compelling idea. The earlier suggests that she clearly does not see what multiculturalism is all about. In one respect, naturally, she is right: liberal theorists emphasize the role of the community in developing a meaningful life. They really hold that a just society should ensure every citizens right to choose a way life. If it did not ensure it equally, they say, it would not be just. But the reason why liberal democracies negotiate with their minority groups about special rights or privileges is not (only) this. In real life, multicultural states are facing demands for recognition (and for special rights or privileges) on behalf of minority groups. If the state wants to ensure stability, peaceful co-existence, effective cooperation, then it has to answer to these claims. It is especially true if minority communities can plausibly argue that the practices they wish to follow, and follow legally, are not more harmful than other practices allowed by the liberal state – as I attempted to point out by elaborating on the issue of male and female circumcision.

To my mind, every sufficient political theory should meet with two criteria, that of desirability and that of feasibility. Theories that meet only one are not to be applied to the real world for obvious reasons: feasibility studies are only interesting in relation to specific desirability proposals, desirability analysis if not accompanied by feasibility considerations lead very surely down the road to hell. Jacobinism and Marxism should be regarded as object-lessons.⁷⁶ To sum up, the main problem with Okin's argumentation is that it is doctrinairly Western-liberal and it does not calculate up its own consequences with due foresight. .

⁷⁶ On the desirability and feasibility requirements see more in Kukathas and Pettit (1990).

CHAPTER FOUR – LIBERAL STATES AND MINORITY RIGHTS: FOUR LESSONS

What are the lessons to be drawn now on the basis of the two foregoing approaches I have analyzed? As I see it, there are four important (interconnected) points one should bear in mind when considering the issue of giving minority rights to immigrant communities.

First, the value of autonomy cannot serve as a means in justifying minority rights. If it is autonomy that liberals should value the most, there is nothing what could suggest that measures alleviating the assimilation process or policies that simply do not support actively the subsistence or flourishing of minorities are morally objectionable.⁷⁷ For being autonomous actors we clearly need some kind of 'context of choice,' but we do not need a particular one. Thus, assimilation does not endanger our autonomy. It might be said that those are not only choices but a structure of values that are needed, choices on their own do not have meaning. In the assimilation process those choices and their meaning become instabile, thus, they do not serve appropriately. But this argument suggests more than it is intended by those who support it. If the stability of the system of values is needed, they should call for not only impeding assimilation, but any kind of cultural change.

Second, it seems that self-respect as a central value neither can serve in justifying minority rights. Some people surely root their self-respect in their culture being recognized and if the majority sees cultural practices of minority people as inferior it may diminish their self-respect. But self government rights are surely not appropriate remedies. As Okin rightly raises the question: what happens if a culture demeans women (or other subgroups)? It seems that at least as important to the development of self-respect and self-esteem of one's culture is one's

⁷⁷ Though I think that the attempt to ground minority rights to the value of autonomy is doomed to failure, I have to admit that I did not investigate thoroughly other autonomy-based liberal justifications for minority rights (e.g. that of Raz's). Therefore, it might be possible that eventually (after scrutinizing them also) I will have to restrict the scope of my conclusion to Kymlicka's theory.

place within that culture. Besides, it is hard to see how the liberal state can take upon itself the role of guardian for self-respect, since there are so many, and sometimes contradictory ways to try to ensure self-respect for the citizenry. As Spinner-Halev (2001) rightly suggests, the flaws of self-respect argument show that self-respect should be at best secondary value in liberalism and not a primary one, as Kymlicka argues, and that political theories based primarily on self-respect are suspect.

Third, when wobbling whether to grant rights or not, policy-makers should be aware that it is not always the direct way that leads to the best consequences. One might be disappointed with the fact that minority communities are often illiberal, hold weird norms and lead strange practices, however, denying them any recognition might pave the road to hell. Though I think that group rights cannot be justified on liberal-egalitarian reasons that concerns autonomy or self-respect, I do not think that the entire rejection of recognition by the liberal state would be the best solution one can imagine. After all, it seems that Kymlicka's propositions with regard to immigrant groups are rather sufficient. (Whether he provides an adequate defense of them is another matter.) Granting polyethnic rights (while not funding any program that would really support the division of members of illiberal minority groups from the majority society and not allowing practices that clearly hurt fundamental human rights) might be necessary for societal peace and might be required by fairness. In some respect, this is hypocrisy. As Fish (1998) argues, the the strong multiculturalists are those who think that 'difference' should be recognized, but in fact they deny recognition of those differences that really matters while acknowledging differences that are not so important. To illustrate: they allow exemption from helmet law but they do not allow to kill those who commit adultery. In fact, I think that this is the right position. Rights should be granted, not always because those who enjoy them have the moral right to be granted, but because by giving minor rights the societal peace is more

likely to uphold. However, I think, if it is possible, liberal states should preserve as much as it is feasible of the citizens' equal standing in front of the law. What I mean here is that granting special rights should be exemption, rather than rule. As a rule, liberal states should accomodate cultural practices not in a way that distinguishes between citizen and citizen, but in a way that makes the cultural practice legal for all (e.g. if female circumcision is allowed for Somali minorities, it should be allowed for everybody).

Fourth, when considering to intervene to cultural practices, one should be aware of that those practices get their meaning in the culture they belong to, and, though may look at first sight as cruel or humiliating, it might not be always the case. If it – after due consideration - turns out that the practices minority groups wish to lead are not more harmful, or are similarly harmful than those already legally exercised by the majority, it is not fair to reject minorities' demands.

SUMMARY

My concern in this paper was to argue that the moral equality of every person does not require liberal states by justice to admit all immigrants regardless of cultural or economic circumstances, and it does not require them to give strong collective rights to those who are already admitted.

In the first chapter I have claimed that the arbitrariness of the place of birth – which given the current level of inequality very much resembles to feudal privileges (cf. Carens 1995b) - requires affluent liberal countries to follow rather open, but not entirely open immigration policies. The reason why I have asserted that certain restrictive measures are not morally objectionable, but rather desirable, is that if abundant nation were not to issue such measures, the consequent level of immigration would be higher than any country cope with. Millions of immigrants settling in a country in a short period would ruin the economy, the institutions and the public order. Besides, I have argued, it is not the sheer number of immigrants a liberal country is allowed to be concerned with, but by their cultural background also. Liberal states may deny illiberal immigrants the right to settle, if it can be reasonably expected that their presence would ruin the liberal character of the society (even if it would not ruin the economy).

In the second, third and fourth chapter I have examined how (and what kind of) minority rights can be accommodated to the liberal doctrine. In presenting Kymlicka's 'distinctively liberal' justification of collective rights, I have investigated the connection, if any, between collective rights and individual autonomy. Establishing whether such connection exists is crucial since it is widely held that the strongest reason for rejecting collective rights is that they endanger the proper respect and concern for the autonomy of the individuals.

I found that nor the value of autonomy, neither the value of self-respect (that Kymlicka regards to be connected to autonomy) can justify cultural rights. I have argued then that if it necessary in order to preserve societal peace, liberal states may grant 'minor' rights to culturally different communities. Additionally, I have argued that sometimes fairness requires liberal states to allow practices that were previously prohibited, no matter how disgusting the seem to be at first glance. However, I have rejected the idea that a state should never intervene in minority group affairs and forbid some of their practices. What I have suggested is that both in intervening or forbidding practices both in granting rights a contextually sensitive approach should be taken.

No serious effort has been made in this thesis to determine the precise practical implications of the theoretical position I have occupied. My purpose was not that. My purpose has been only to clarify some theoretical problems that may have serious implications to the desirable solution to the – possibly - most pertinent problems European countries currently facing, that is, to the problems arise in connection with immigration.

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