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Can Liberalism Justify Multiculturalism?

Robert Justin Lipkin

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ROBERT JUSTIN LIPKIN††

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This article's focus, the critical distinction between deliberative and dedicated cultures, derives from my participation in the Fourth Biennial Georgetown Discussion Group in Constitutional Law held in December 1993 at the Georgetown Law Center. Mark Tushnet, the Group's organizer, created a highly congenial environment for discussing contemporary issues in comparative constitutionalism. Robert Hayman, Jr., Rodney Smith, and Edward Sankowski also deserve my gratitude for commenting on an earlier draft of this article.

†† Professor of Law, Widener University School of Law; B.A., 1965, Brooklyn College, C.U.N.Y.; M.A., 1971, Ph.D., 1974 (Philosophy), Princeton University; J.D., 1984, U.C.L.A.

INTRODUCTION

We live in troubled times. The United States faces geopolitical and demographic problems at home and abroad. These problems promise to remain with us until well into the twenty-first century. With the end of the Cold War's broad ideological struggles, we confront the primary problem of social organization: how can we get along with difference? Cultural conflict, international and domestic, casts doubt on our capacity for doing so. Internationally, the end of the Cold War promised peace, prosperity and harmony throughout the world.[1] Ethnic and cultural atrocities in Europe, Africa and elsewhere have dampened this optimism, forcing us to realize that what might have appeared like the beginning of utopia is just another historical era fraught with possibilities for both good and evil. The United States has not escaped multicultural conflicts. However in Anglo-American cultures these conflicts express themselves differently, usually involving educational issues, hate speech, and affirmative action among others.[2] Internationally, this new era is dangerous and complex and might be aptly described as the age of cultural conflict.[3]

Domestically cultural conflict threatens the breakdown of our republican form of government. Domestic culture wars reveal different conceptions of how liberal democracy should function. If our society is truly liberal, it should be prepared to respect and tolerate minority cultures. One political and analytic device for dealing with cultural conflict is the idea of a minority cultural right. However, this idea immediately conflicts with a cardinal tenet of liberalism: rights are a function of individuals,

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1. Peaceful solutions to cultural conflicts are imperative as the genocidal war in Bosnia-Herzegovina demonstrates.

2. *See* Robert Justin Lipkin, *Pragmatism, Cultural Criticism, and the Idea of the Postmodern University, in* ETHICS AND THE MULTICULTURAL UNIVERSITY (M.N.S. Sellers ed., 1994) (addressing some of these conflicts).

3. With the demise of the Soviet empire, newly emerging nations from around the world look to the West for liberal solutions to conflicts over the rights of minority cultures. However, reliance on Anglo-American constitutionalism as a guide for constitutional solutions to multicultural conflicts is misplaced if it assumes that the West has its multicultural house in order. A more searching examination of Western liberalism's solution to these conflicts must be undertaken for the sake of peace at home and abroad.

not groups. If liberalism cannot sanction collective rights, is there a way to understand the notion of an "individual right" that will countenance minority cultural rights?

This problem has both practical and theoretical dimensions. Practically, the problem challenges us to examine concrete cases of cultural conflict throughout the law in order to determine whether minority cultural rights are possible in a liberal democracy. The practical problem concerning a liberal explanation and justification of minority cultural rights involves the following controversial doctrinal questions regarding the proper development of Anglo-American law, especially constitutional law: Is the failure of Anglo-American criminal law to recognize a "culture defense" a violation of due process or otherwise unjust?[4] Do general proscriptions against drug use or animal sacrifice unconstitutionally conflict with minority religious freedom?[5] Should we permit languages other than English in public education or in courts and legislatures? How far can the dominant culture defer to parents when minority cultural issues are at stake?[6] Do minority cultures, such as Native Americans or the Quebecois in Canada have the right to secede if their cultural aspirations cannot be met by the dominant culture? Should expressions of minority cultural values be permitted in public schools? Can liberal constitutionalism, even in special circumstances, tolerate public school districts run exclusively according to the dictates of a particular religion?[7] How should American constitutionalism respond to the sanctified role land plays in Native American culture? Can liberal toleration constitutionally honor the Native American conviction that land has a spiritual meaning and therefore should not be regarded in fungible, economic terms? Should a minority culture that prevailed for years in a country be permitted to retain segregated schools in order to retain its cultural identity when the majority culture finally achieves power?[8] Should medical practices such as female cir-

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4. *See* Note, *The Cultural Defense in the Criminal Law*, 99 HARV. L. REV. 1293, 1293 (1986); Nilda Rimonte, *A Question of Culture: Cultural Approval of Violence Against Women in the Pacific-Asian Community and the Cultural Defense*, 43 STAN. L. REV. 1311, 1311 (1991).

5. *See* Employment Div. v. Smith, 494 U.S. 872 (1990); Church of the Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520 (1993) (invalidating a law designed to prohibit animal sacrifice).

6. *See* Wisconsin v. Yoder, 406 U.S. 205 (1972) (invalidating compulsory high school education for Amish children as violative of their free exercise rights).

7. *See* Board of Educ. v. Grumet, 512 U.S. 687 (1994).

8. In South Africa, the Court said no. *See* Trudy Rubin, *S. African Court Bars School Bias on Basis of Language, Creed*, THE PHIL. INQUIRER, Apr. 5, 1996, at A24.

cumcision be permitted in the United States in order to recognize the cultural interests of those involved?[9] How much and what kind of toleration is permissible? For example, some cultures emphasize the importance of saving face and permitting others to save face. Should such cultural attitudes be acknowledged as a criminal defense?[10] Theoretically, the problem asks whether the foundation of our reigning legal theory, liberalism, has the conceptual resources to explain and justify minority cultural rights.[11] The theoretical problem implicates both the ideal of liberal citizenship and the intractable multicultural conflicts that this ideal seeks to resolve.[12] If liberal political theory is incompatible with minority cultural rights, we must either abandon liberalism or reject the alleged moral importance of these rights.[13]

The goal of this article is to answer the theoretical question of whether liberal political theory can explain and justify minority cultural rights.[14] A growing number of philosophers, political scientists, and lawyers have addressed this theoretical question, including the conceptual, political, and constitutional problems underlying the possibility of minority cultural rights.[15] Generally, this group of theorists seeks to understand the notion of minority cultural rights. Specifically, these theorists want to

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9. *See* Karen Davies, *Female Circumcision Triggers Debate on Rites Versus Tradition*, L.A. TIMES, July 14, 1996, at A1.

10. Sue Lindsay, *Severe "loss of face" Prompted Slaying of Asian Restaurateur*, ROCKY MTN. NEWS, May 24, 1995, at 16A.

11. Essentially, liberalism is the view that individuals are the basic unit of moral value. The purpose of government is to protect the private sphere of life in order for individuals to express their own conception of the good life autonomously and rationally. A wide range of different liberalisms exist, spanning the political spectrum from left to right. Consider Alasdair MacIntyre's assertion: "[T]he contemporary debates within modern political systems are almost exclusively between conservative liberals, liberal liberals, and radical liberals." ALASDAIR MACINTYRE, WHOSE JUSTICE? WHICH RATIONALITY? 392 (1988); *see* Larry Alexander & Maimon Schwarzschild, *Liberalism, Neutrality, and Equality of Welfare vs. Equality of Resources*, 16 PHIL. & PUB. AFF. 85, 86 (1987) (distinguishing between right-liberals and left-liberals).

12. For a discussion of different theories of citizenship, see THEORIZING CITIZENSHIP (Ronald Beiner ed., 1995); RONALD BEINER, WHAT'S THE MATTER WITH LIBERALISM? (1994).

13. The question of liberalism's compatibility with minority cultural rights also implicates the question of its compatibility with *cultural* rights generally, whether these rights are majority or minority cultural rights.

14. The terms explanation and justification are used throughout this article to mean providing reasons, both motivational and normative, why liberals can and should endorse minority cultural rights.

15. This group of theorists includes among others Michael Walzer, Thomas Pogge, John Rawls, Chandran Kukathas, Charles Taylor, Alasdair MacIntyre, Leslie Green, Denise G. Reaume, Joseph Carens, Michael Ignatieff, and Iris Marion Young.

know whether liberalism, the reigning legal theory in the West, can explain and justify these rights.

No one has contributed more to creating a new arena for the study of minority cultural rights in political and constitutional theory than Will Kymlicka,[16] the world's premier liberal defender of these rights.[17] Kymlicka powerfully argues for a liberal, constitutional foundation for multiculturalism.[18] The centerpiece of Kymlicka's theory is what may be helpfully called "the freedom-culture connection," which asserts that liberalism is intimately interwoven with minority cultural rights.[19] According to this doctrine, freedom requires a context of choice for devising one's plans for living a meaningful life.[20] Kymlicka contends that cultures provide these contexts of choice.[21] Therefore, since liberalism champions freedom and individual autonomy, and since these virtues require culture, liberalism requires culture. If Kymlicka is right, liberal ideals are all that is needed to provide the conceptual and political resources for minority cultural rights. Therefore, taking stock of his theory is imperative in order to determine whether liberalism adequately supports the freedom-culture connection.

This article rejects Kymlicka's argument for the freedom-culture connection and argues that Kymlicka fails to provide a distinctively liberal theory of minority cultural rights.[22] For

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16. Will Kymlicka is Research Director of the Canadian Centre for Philosophy and Public Policy in the Department of Philosophy at the University of Ottawa and a part-time employee of the Canadian government.

17. *See* WILL KYMLICKA, MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY (1995) [hereinafter KYMLICKA, MULTICULTURAL CITIZENSHIP]; WILL KYMLICKA, LIBERALISM, COMMUNITY, AND CULTURE (1989) [hereinafter KYMLICKA, LIBERALISM, COMMUNITY, AND CULTURE]. In *Liberalism, Community, and Culture*, Kymlicka advances other arguments for cultural rights, for example, the role of culture as a primary good, and its connection to self-respect. *See* KYMLICKA, LIBERALISM, COMMUNITY, AND CULTURE, *supra*, at 162-78. For a good discussion of the relationship between culture and self-respect, see John Tomasi, *Kymlicka, Liberalism, and Respect for Cultural Minorities*, 105 ETHICS 580 (1995).

18. Multiculturalism is a tricky term. Kymlicka explores some of its meanings in *Multicultural Citizenship* and related issues in *The Rights of Minority Cultures*. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 10-33; WILL KYMLICKA, *Introduction* to THE RIGHTS OF MINORITY CULTURES 1-21 (Will Kymlicka ed., 1995).

19. Kymlicka's theory in support of the freedom-culture connection can be found chiefly in *Multicultural Citizenship* and *Liberalism, Community and Culture*. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17; KYMLICKA, LIBERALISM, COMMUNITY AND CULTURE, *supra* note 17.

20. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17; KYMLICKA, LIBERALISM, COMMUNITY AND CULTURE, *supra* note 17.

21. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17; KYMLICKA, LIBERALISM, COMMUNITY AND CULTURE, *supra* note 17.

22. Further, this article is more than just a refutation of Kymlicka's theory; in addi-

Kymlicka's version of liberalism to be viable, the reach of minority cultural rights must be restricted to cultures that can accommodate liberalism's concern with freedom and autonomy.[23] If, on the contrary, a more expansive scope for minority cultural rights is desirable, liberalism must be revised or abandoned, and in its place, we must seek an alternative conception of politics.[24]

I. THE FRAMEWORK OF THE FREEDOM-CULTURE CONNECTION

The problem of minority cultural rights is an instance of a broader problem in liberal political theory, namely, the problem of liberal toleration. According to this problem, an apparent incompatibility exists between the liberal ideals of autonomy and toleration. Liberalism endorses cultures committed to fostering the ideal of autonomy and diversity,[25] cultures which encourage their members to think for themselves.[26] However, liberalism

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tion, it places questions about liberalism and minority cultural rights in a unique framework for discussing multicultural constitutionalism.

23. Generally, liberal and "proto-liberal" cultures are cultures of this type. Proto-liberal cultures value freedom and equality but not for liberal reasons. For example, conceivably a theocracy might embrace freedom and equality because it is the word of God. A proto-liberal culture might also be something like the well-ordered hierarchical society envisioned by John Rawls. *See* John Rawls, *The Law of Peoples*, *in* ON HUMAN RIGHTS 41, 46 (Stephen Shute & Susan Hurley eds., 1993). Proto-liberal societies may either remain so permanently or evolve toward becoming fully liberal cultures. For a critical evaluation of Rawls' theory, see Robert Justin Lipkin, *In Defense of Outlaws: Liberalism and the Role of Reasonableness, Public Reason, and Tolerance in Multicultural Constitutionalism*, 45 DEPAUL L. REV. 263 (1996).

If Kymlicka's argument reaches only liberal and proto-liberal societies, it risks circularity. At best, such an argument has little political value in justifying multiculturalism generally. *See* Brian Barry, *Will Kymlicka, Multicultural Citizenship: A Liberal Theory of Minority Rights*, 107 ETHICS 153, 155 (1996) (book review). ("[T]he principled argument for permitting special measures to enable national minorities to maintain their own culture is valid only when the culture . . . is itself liberal.").

24. Recently, a call has been heard to champion a new, communitarian conception of politics. *See* NEW COMMUNITARIAN THINKING: PERSONS, VIRTUES, INSTITUTIONS, AND COMMUNITIES (Amitai Etzioni ed.,1995); *see also* COMMUNITARIANISM AND INDIVIDUALISM (Shlomo Avineri & Avner de-Shalit eds., 1992). *But see* Amy Gutmann, *Communitarian Critics of Liberalism*, 14 PHIL. & PUB. AFF. 308 (1985). Pragmatist political theory might be another alternative that can eclectically integrate liberal and communitarian values. For a discussion of this possibility, see Lipkin, *supra* note 23, at 268.

25. William A. Galston, *Two Concepts of Liberalism*, 105 ETHICS 516, 523 (1995) ("[P]roperly understood, liberalism is about the protection of diversity, not the valorization of choice."). I disagree with Galston's characterization of liberalism as primarily concerned with diversity. However, this article cannot provide the full argument against Galston's position. Suffice it to say, without autonomy, the commitment to diversity lacks a normative appeal. Diversity, like tolerance, is a derivative value justified in terms of autonomy.

26. However much we take it for granted, the capacity for thinking for oneself re-

also seeks consistency with the widest range of existing cultures. Thus, it is unlikely that liberalism can explain and justify minority cultural rights if the cultures in question suppress the freedom of their own members, or of outsiders, or when they denigrate autonomy as a significant cultural value. Liberalism should be wary of cultures hostile to autonomy. The problem of liberal toleration stresses this tension between autonomy and toleration. If liberalism can nevertheless explain and justify a wide range of cultures, then maybe it can resolve this problem. If liberalism cannot, it fails to adequately account for toleration.

According to the argument in this article, human beings are norm constructing (and deconstructing) animals. We create instrumental norms for achieving our goals as well as norms for determining what our goals should be.[27] This dual process of constructing norms can occur either critically or uncritically or through some combination of the two.[28] Typically, cultures predominantly reflect one of these processes for constructing norms. Some cultures emphasize critical reflection, while others do not. A culture's stance toward critical reflection will determine the kind of norms its members will construct as well as the kind of lives they will lead. Liberalism may or may not be capable of explaining and justifying both kinds of cultural attitudes. If not, it is unlikely that liberalism can explain and justify minority cultural rights generally.

A. *Deliberative and Dedicated Cultures*

This article describes two ideal paradigmatic cultural types: deliberative cultural types and dedicated cultural types.[29] Delib-

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quires a cultural effort and can develop and flourish only in a certain type of society. *See* 2 Charles Taylor, *Atomism*, *in* PHILOSOPHICAL PAPERS: PHILOSOPHY AND THE HUMAN SCIENCES 187 (1985).

27. In describing human beings as "project pursuers," Loren E. Lomasky makes a similar point. *See* LOREN E. LOMASKY, PERSONS, RIGHTS, AND THE MORAL COMMUNITY 25-26 (1987).

28. *Id.* at 45.

29. Robert Justin Lipkin, *Liberalism and the Possibility of Multi-Cultural Constitutionalism: The Distinction Between Deliberative and Dedicated Cultures*, 29 U. RICH. L. REV. 1263 (1995). These cultural "types" are paradigms or models for living according to the relevant culture as well as for framing and resolving cultural conflicts. A cultural paradigm or model consists of a set of instructions for doing what the culture sanctions. For example, in some parts of the United States, lining up at a bus stop represents an ordinary cultural paradigm, while in other places, no actual line is required. Merit is also a paradigm or model for distributing goods and services. In this case, it is contestable whether the paradigm of merit is exclusive. Some people believe that need is also part of the paradigm for such distributions. Cultural paradigms are often variable and

erative cultures reflect two attitudes towards cultural life: deliberative rationality and deliberative autonomy.[30] A deliberative paradigm exists when individuals (as well as the community) develop the habit of evaluating and revising their (its) cultural values with the purpose of rendering them both rationally defensible and a proper vehicle for expressing their capacity for autonomy.[31] By contrast, dedicated paradigms insist that individuals follow their given cultural strategies without such deliberation; such cultures are concerned with retaining the specific character of their cultural paradigms.[32] Deliberative paradigms value the processes of change and revision, while dedicated paradigms value stability and closure. For the deliberativist, the most important feature of a culture is the deliberative attempt to create viable systems of rational judgment within which autonomy may flourish. Dedicated cultures seek stable social roles and practices according to some fixed conception of the meaning and purpose of human existence. Deliberative cultures value the continuing possibility of social change, while dedicated cultures deny the importance of change and revision. Instead, they see cultural evolution as independent of, and sometimes antithetical to, individual, autonomous decisions. Rather, cultural evolution, if desirable at all, should occur through the canonical and entrenched conduct of some sanctified cultural authority.

The argument that follows maintains that liberalism cannot resolve the problem of toleration because it can only explain and justify tolerating deliberative cultures.[33] Since dedicated cultures

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contestable.

30. *Id.* Hence, "deliberativism" can be understood to assert the importance of the deliberative attitude as a general constraint on cultural development.

31. *Id.*

32. Dedicated cultures do not typically encourage general and open critical reflection. This does not mean a dedicated culture must also eschew reflection and debate over what its dedicated values sanction. Consequently, the distinction between deliberative and dedicated cultures does not reflect the distinction between reason and authority or reason and tradition. *Id.* at 1285-86. Nor does the distinction between deliberative and dedicated cultures track the distinction between societies whose cultures are consistently open to challenge and change and static societies. There might be good (deliberative) reasons for curtailing debate temporarily or even permanently with regard to some features of the culture in a deliberative society, on the one hand, and in contrast, in principle a culture can be dedicated to change. What distinguishes deliberative and dedicated cultures are the *kinds* of reasons permitted to justify change, not change itself. Additionally, deliberative and dedicated cultures both share a common feature, namely, they both embrace cultural givens. But the *role* of cultural givens differs in deliberative and dedicated cultures. For further discussion of the distinction between deliberative and dedicated cultures, see generally *id.*

33. The assertion that liberalism is committed to a deliberative cultural paradigm is essentially a normative claim; it contends that cultures *should* value deliberative ration-

represent one paradigmatic cultural type, and since liberalism cannot explain and justify this cultural type, liberalism must restrict its explanation and justification of tolerance to deliberative cultures only. This framework, which depicts deliberative and dedicated cultural paradigms, illuminates the central problems associated with toleration and cultural rights. Using this framework to examine Kymlicka's theory of minority cultural rights, this article's first task is to describe Kymlicka's argument.[34]

Prior to doing so, however, some further elaboration on the distinction between the two paradigmatic cultural types is necessary. First, these cultural types are ideal and do not purport to describe, without elaborate qualification, existing cultural conditions. For example, deliberative cultural types do not automatically stand for the dominant liberal culture in the West, nor does the dedicated ideal stand for traditional minority cultures. The distinction between deliberative and dedicated does not track the distinction between dominant and minority cultures. In the United States, some features of the dominant culture aspire to be deliberative, but others are decidedly dedicated. Secular humanism aspires to be deliberative, while Christian fundamentalism is decidedly dedicated. Some minority cultures are clearly deliberative. The description "dominant" or "minority" goes to cultural membership and to the pervasiveness and familiarity of a particular cultural paradigm. The terms deliberative and dedicated, on the other hand, go to describing the culture's attitude towards change. Talking about *the* dominant culture should itself give us pause. A dominant culture sometimes consists of a disorderly amalgam of different cultural fragments. Still, the use of "dominant" and "minority" have pragmatic value in addressing certain problems of cultural criticism, and this article will use the distinction with the appropriate caution.

Second, dedicated cultures are not necessarily static if static means never permitting change. No culture can be static in that sense. Rather, it's the degree of change and the *kind* of change permitted that distinguishes deliberative from dedicated cultures. Deliberative cultures seek change, always looking for bet-

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ality and autonomy. Some might argue that the cultures in the United States and Western Europe *are,* in fact, deliberative cultures. Although some elements of these cultures are deliberative, further examination would be necessary to conclude that these cultures are truly deliberative. Thus, the idea of a deliberative culture is a normative construct for critically evaluating existing cultures.

34. *See infra* Part I.B.

ter ways of organizing society.[35] Moreover, deliberative cultures seek out disconfirming evidence concerning their own cultural paradigms. Dedicated cultures seek neither change nor disconfirming evidence of their cultural paradigms. In principle, deliberative cultures seek out the best reasons for social organization, not the best reasons according to their current cultural paradigms. Deliberative cultures are more cosmopolitan than dedicated ones. This is not to denigrate dedicated cultures. One can imagine an argument purporting to show that certain kinds of dedicated cultures are more conducive to human flourishing than certain kinds of deliberative cultures. One should not assume that the distinction between deliberative and dedicated cultures means that deliberative cultures are superior to dedicated cultures.[36]

B. *Kymlicka's Argument for the Connection*

The central tenet of Kymlicka's liberalism is a commitment to freedom and autonomy.[37] Although Kymlicka fails to state definitively what he means by freedom and autonomy, we can surmise that, for Kymlicka, freedom and autonomy represent the capacity to "form and revise [a person's] conception of the good."[38] The individual should be free to formulate, scrutinize, and revise her own plan of life because no other procedure is morally superior.[39] Moreover, for Kymlicka, autonomy is not radically individualistic, and therefore it is not unacceptably subjective. Rather, "individual judgments about the good depend on the collective evaluation of shared practices. They become a

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35. When a deliberative culture insists on retaining its cultural paradigms in the face of good deliberative reasons for abandoning them, to that extent, it has become a dedicated culture.

36. *See generally* Lipkin, *supra* note 29 (comprehensively discussing the distinction between deliberative and dedicated cultures).

37. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 152-63.

38. Will Kymlicka, *The Rights of Minority Cultures*, 20 POL. THEORY 140, 140 (1992). Kymlicka overlooks the fact that dedicated cultures are not uniformly committed to the idea of forming and revising our conception of the good. Thus, dedicated cultures will not, on this ground, embrace minority cultural rights. Moreover, liberalism should be wary about embracing minority cultural rights that reject the individual's capacity and right to form and revise her conception of the good.

Further, Kymlicka never explores the relationship between a person's conception of the good and her culture. Are these the same? Can a person's conception of the good be expressed through different cultures? In mutually incompatible cultures? These are some of the questions concerning the relationship between a conception of the good and one's culture that must be resolved before Kymlicka's theory can be evaluated.

39. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 80-82.

matter of subjective and arbitrary whim if they are cut off from collective deliberations."[40] Individual choice operates within a social context in which the *sine qua non* is deliberation, argument, and providing reasons. Kymlicka's liberalism then is clearly committed to a deliberativist paradigm. Because individual choice, criticism, and correction are part of the deliberativist paradigm, the materials of choice, such as values, interests, and cultural orientation, are necessary for the deliberativist paradigm to function adequately.

Kymlicka concludes that "minority rights are not only consistent with individual freedom, but can actually promote it."[41] According to Kymlicka, "respecting minority rights can engage the freedom of individuals, because freedom is intimately linked with and dependent upon culture."[42] Kymlicka observes:

> Our capacity to form and revise a conception of the good is intimately tied to our membership in a culture, since the context of individual choice is the range of options passed down to us by our language and culture. Deciding how to lead our lives is, in the first instance, a matter of exploring the possibilities made available to us by our culture.[43]

Thus, the intimate relationship between freedom and culture appears to be conceptual, and not dependent upon contingent features of particular cultures. Kymlicka believes that cultures provide beliefs about values which "give meaning and purpose to our lives."[44] Cultures provide a context and a range of choice which, in Kymlicka's view, cannot be chosen.[45] In other words, for there to be choice at all, some unchosen conditions must exist which create the context and range of choice through which an individual can exercise her autonomy.

> Liberals say that we should be free to accept or reject particular options presented to us, so that, ultimately, the beliefs we continue to hold are

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40. WILL KYMLICKA, CONTEMPORARY POLITICAL PHILOSOPHY 220 (1990).

41. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 75.

42. *Id.* Kymlicka's conception of freedom apparently encompasses both negative and positive freedom, that is, freedom from interference as well as affirmative assistance to reach certain goals. Consequently, in his view, it is insufficient for a liberal state to merely refrain from prohibiting minority cultures. Rather, a liberal state must, in the appropriate circumstances, grant cultural groups or their members positive rights not granted to others. For example, Kymlicka believes that it is justifiable in the appropriate circumstances for the Canadian government to restrict the sale of native lands to other Native Canadians only. KYMLICKA, LIBERALISM, COMMUNITY, AND CULTURE, *supra* note 17, at 182-200.

43. Kymlicka, *supra* note 38, at 140.

44. KYMLICKA, LIBERALISM, COMMUNITY, AND CULTURE, *supra* note 17, at 164.

45. *Id.*

> the ones that we've chosen to accept. But the range of options can't be chosen. In deciding how to lead our lives, we do not start *de novo*, but rather . . . . this decision is always a matter of selecting what we believe to be the most valuable from the various options available, selecting from a context of choice which provides us with different ways of life.[46]

For Kymlicka, "the context of choice" is one's culture. According to Kymlicka, " 'a culture' is synonymous with 'a nation' or 'a people'—that is, as an intergenerational community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and history."[47] Kymlicka is concerned with a particular kind of culture, one that he labels a " 'societal culture.' "[48] A societal culture is one "whose practices and institutions cover the full range of human activities, encompassing both public and private life."[49] Additionally, Kymlicka believes that a "societal culture" is "a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres."[50] A shared vocabulary is central to a societal culture because it represents "the everyday vocabulary of social life, em-

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46. *Id.* Kymlicka is certainly correct that in deciding how to live our lives we do not start from scratch. In order to make such decisions thoughtfully we must learn a language and how to reason. We must also have sufficient knowledge of our options. Most importantly, we must learn how to discover and evaluate these options. In short, we must have the tools of choice. However, if this is what Kymlicka means by a context of choice, then human beings will almost always have one whatever their particular cultural circumstances. Moreover, Kymlicka overstates the point. Sometimes we do choose the range of options by altering the political and economic structure of society. Reform and revolution, for instance, are designed to change the range of choices available in a given society.

But why does Kymlicka describe the context of choice (what this article calls the tools of choice) as "cultural," as opposed to moral, political, or social? The tools of choice can be supplied in a unicultural environment, a multicultural environment, and even in an environment devoid of culture, or containing, at most, disparate cultural fragments. The tools of choice require political, social, cognitive, and educational practices. But why call these "cultural"? What does Kymlicka mean by "culture" anyway?

47. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 18. Thus, Kymlicka distinguishes the cultures of immigrants from the cultures of national groups. *Id.* at 77-80. Only the latter are societal cultures. Immigrants require cultural protection in order to integrate in an efficient and fair manner into the dominant society. In contrast, national groups require permanent cultural rights to protect their societal cultures. *Id.*

48. *Id.* at 76.

49. *Id.* at 75.

50. *Id.* at 76; *cf.* Amy Gutmann, *The Challenge of Multiculturalism in Political Ethics*, 22 PHIL. & PUB. AFF. 171, 171 (1993) (stating that "[a] culture is a human community . . . that is associated with ongoing ways of seeing, doing, and thinking about things").

bodied in practices covering most areas of human activity."[51] According to Kymlicka, "for a culture to be embodied in social life means that it must be institutionally embodied—in schools, media, economy, government, etc."[52] In modern societies, "a common culture, including a standardized language, [is] embodied in common economic, political, and educational institutions."[53] However, Kymlicka fails to elucidate what it is for a culture to "cover the full range of human activities."[54] Equally vague is what it means to describe a culture as "embodied in social life" or "institutionally embodied."[55] In general, Kymlicka's definitions of "culture" and "societal culture" are under- and over-inclusive. Greater precision is required in order to resolve the problem of definition.[56]

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51. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 76.

52. *Id.*

53. *Id.*

54. *Id.* at 75. Kymlicka never considers the skeptical route of challenging the use of the term culture as unintelligible or incoherent unless it is defined in a way that unifies its disparate elements. Indeed, the question of what it means to say that there is a common culture throughout society or how we would ever come to know the existence of such a culture if there is one is one Kymlicka avoids. *See* STANLEY FISH, THERE'S NO SUCH THING AS FREE SPEECH AND IT'S A GOOD THING, TOO 102-19 (1993). This is not just a generalized philosophical skepticism. If political theory is going to take seriously the addition of a new category of interests that might yield additional obligations and rights, it must first provide a sufficiently clear and useful analysis of the term and its cognates. Without that we will never be sure that culture is anything more than an off-hand way to refer to such other aspects of human life as religion, education, and language.

55. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 76. Kymlicka appears to regard a culture as a way of experiencing, thinking, and acting on the world, usually associated with a language system. So presumably, a French person will react in different ways to the same stimulus as a German, or at least, act differently in some circumstances. One culture will enable an individual to do things that another culture will not. For example, there is no word for "Goodbye" in Sioux. This means no closure or final farewell, but it also means perpetual connection. The problem here is that as soon as we depict the important differences between two cultures, we alert each culture to new possibilities for cultural organization. This phenomenon suggests that cultural differences are not as stark as the minority rights thesis suggests. Of course, when more significant differences exist, the differences suggest that two different cultures are depictions of different ways of experiencing the world. The minority rights thesis then can be understood as seeking the protection of minority ways of experiencing the world.

56. *Id.* Kymlicka's use of "culture" is so variable and illusive that it prompts two questions: (1) Does everybody need a culture? and (2) Isn't everything contained in one's background the conditions of one's culture? If so, it is then impossible to distinguish cultural interests from such other important interests as language, history, religion, and so forth. This effectively trivializes the notion of culture as referring to anything at all.

C. *The Problem of Defining "Culture"*

What does Kymlicka mean by "culture"? Two possibilities suggest themselves.[57] First, according to Kymlicka, "culture" might refer to *whatever background conditions* enable people to engage in practical reasoning. Second, Kymlicka's conception of "culture" might refer to a certain subset of these conditions, ones that have a special character and which have a deep hold on different people. The first interpretation is uncontroversial. At least in language-using societies, background conditions always exist that make decisions intelligible and meaningful. The meaning of the second interpretation is less obvious. Which aspects of one's cultural context are required for freedom and autonomy?[58] Kymlicka pays too little attention to specifying clearly

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57. Kymlicka never explores the problems, even anthropologists face, in using "culture" as an analytic device. Clifford Geertz succinctly describes some of these problems:

> Questions about the coherence of life-ways, the degree to which they form connected wholes, Questions about their homogeneity, the degree to which everyone in a tribe, a community, or even a family (to say nothing of a nation or a civilization) shares similar beliefs, practices, habits, feelings. Questions about discreteness, the possibility of specifying where one culture, say the Hispanic, leaves off and the next, say the Amerindian, begins. Questions about continuity and change, objectivity and proof, determinism and relativism, uniqueness and generalization, description and explanation, consensus and conflict, otherness and commensurability—and about the sheer possibility of anyone, insider or outsider, grasping so vast a thing as an entire way of life and finding the words to describe it. Anthropology, or anyway the sort that studies cultures, proceeds amid charges of irrelevance, bias, illusion, and impracticability.

CLIFFORD GEERTZ, AFTER THE FACT 42-43 (1995).

58. Kymlicka, as well as others, typically construe culture to refer to language, religion, tradition, and so forth. *See, e.g.*, KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 76-77. But rarely do they attempt to tell us which element is more involved in a *culture*. For some people, it would seem obvious that their religions are much more important and have a greater hold over them, than their culture. Indeed, some religions are cross-cultural. How does an American Catholic's view of the Trinity differ from a French person's? How does a French person's view differ from an African's or Asian's? Individuals connect with different aspects of their social environment. Some of these are cultural aspects, some are not. Of course, Kymlicka might respond that no general definition of "culture" exists. Nevertheless, he might insist we can still speak of minority cultural rights by referring to such contemporary issues as the problem of minority rights for French-Canadians and Canada's indigenous peoples. But without analytically useful definitions of "culture" and "cultural right," this response promises only more confusion.

Kymlicka appears to be unaware of just how problematic the term "culture" is. The term itself seems clearly to refer to language, religion, and perhaps to general attitudes about social interaction. But whether it includes anything else or how these factors are integrated is at best controversial. Without a more definite explication of this term, we are justified in being skeptical of the powerful role "culture" plays in Kymlicka's argument.

just what "culture" means.[59]

Kymlicka alternates between characterizing his theory as a theory of *minority* rights generally and as a theory of minority *cultural* rights. This vacillation obscures the fact that minority rights are already constitutionally protected in the United States Constitution through the Fifth Amendment's Due Process Clause[60] and the Fourteenth Amendment's Equal Protection Clause as well as other provisions of the Constitution.[61] Kymlicka never seriously explores the possibility that cultural minority rights can be expressed through one of these constitutional provisions.[62] The problem of defining culture suggests that the problem of minority cultural rights is really an amalgam of problems concerning political rights generally. Whether the problem of definition is genuine depends upon whether we can isolate some set of interests that defy characterization except in cultural terms.[63] Besides this problem of definition, the basic

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59. This problem of devising a workable definition of "culture," as well as one of "minority rights," detracts from Kymlicka's argument. One is inclined to grant Kymlicka's point, but simply to deny its significance. The problem of definition challenges the notion that there exists a *general* problem of minority cultural rights. Members of minority cultures certainly deserve rights, but these rights pertain to individuals, not groups. If the standard constitutional rights do not protect minorities, new rights should be statutorily or constitutionally created.

As a heuristic device, let us understand the phrase "a person's culture" to refer to a "text" integrating in a relatively coherent fashion one's language, one's religion, one's history, and those personal factors which give a person a special sense of who she is and how she experiences and expresses her most basic attitudes and perspectives on the world. Her culture then in part influences her perceptions, expectations, and entitlements. Thus, losing part or all of one's culture can then be understood as losing part or all of a particular text. Without that text, the individual cannot be who she is, or alternatively stated, without the text, the individual has cultural amnesia until the text is replaced, or a different text is developed.

60. U.S. CONST. amend. V, cl. 3.

61. U.S. CONST. amend XIV, § 1.

62. The problem that arises with individual rights is whether fairness dictates treating all groups the same. Kymlicka argues, for instance, that certain rights concerning the sale of land be granted to indigenous peoples on the ground that without such protection their land will be gobbled up by non-indigenous developers, thus threatening native culture. *See* KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 43. Such constitutional protection would enable indigenous people to buy native land, but would prevent members of the dominant culture(s) from doing so. However, this need not be a problem. Equal protection requires similar treatment of individuals in relevantly similar circumstances. The radically different histories of Canada's indigenous peoples and members of the dominant culture(s) arguably provides the justification for different treatment. In fact, this argument is similar to arguments for affirmative action and can be expressed without inventing either group or collective rights. In this view, race, on the one hand, and culture, on the other, are proxies for individual rights. No new concept is needed.

63. If we exclude political, linguistic, historical, and religious interests, what is left

problem with Kymlicka's notion of a societal culture is that it fails to capture what it means to describe a culture as a minority culture. Typically, minority cultures are not as comprehensive as societal cultures. It is true that some minority cultures could be comprehensive were they to become dominant or if they withdrew to some unoccupied region. But that cannot be the goal of *minority* cultural rights. Minority cultures ordinarily exist within the context of a larger, dominant culture. Why then doesn't this larger culture suffice *with regard to freedom and autonomy*? Kymlicka must resolve these problems before we can conclude that liberalism explains and justifies the freedom-culture connection.

Provisionally, a culture can be described as a relatively unique set of linguistic, historical, religious, etc., interests that define a group and define their conception of moral and personal virtue. Kymlicka's argument can then be reformulated as saying that it is unfair to prevent the expression of conscientiously held cultural beliefs. All that Kymlicka needs for his argument to work is the liberal presupposition that to be free, people should get what they want unless harmful to others. Denying people what they want may be generally unjust, but is it necessarily a loss of autonomy? In fact, this is an unacceptably minimal conception of freedom and autonomy because freedom and the capacity for autonomy requires deliberation and critical scrutiny, not just getting what one wants no matter how unreflective one's desires are.

A more robust liberal conception of autonomy and culture must involve two elements. First, it must involve permitting people to live according to their cultural commitments. Second, it must involve a liberal criticism of these cultural commitments. When people choose the first element only, they are not autonomous. Autonomy involves self-rule according to those values that encourage autonomy or at least values which are *not* incompatible with it.

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that is describable only in cultural terms? In other words, the cultural, as an irreducible ontological category, may be illusory.

Kymlicka might reply that language (and perhaps history) represent such a set of interests. We become who we are in terms of our language community. Denying the use of our language simultaneously denies our culturally constructed selves and casts us into a foreign linguistic world. However, even those opposing the minority cultural rights thesis can endorse political rights concerning language on the ground that language can be part of an individual's liberty interests. This position contends that language, environmental concerns, wealth and so forth are all factors to be balanced in forming social policy.

In what sense does the loss of cultural opportunities mean a loss in a person's freedom or in her capacity for autonomous decisions? Only if everyone needs a particular culture would its loss mean a loss of freedom. The point to remember is that understanding "culture" abstractly, everyone needs a culture. Understood concretely, only certain people *need* a culture.[64] Losing one's culture does not necessarily involve a loss of autonomy. Further, Kymlicka never considers the possibility that the loss of a dedicated culture, whatever its values, increases individual and social autonomy.[65] Better understanding of the freedom-culture connection might help to illuminate these issues.

D. *The Problem of Understanding the Freedom-Culture Connection*

The problem of definition is related to the problem of understanding the meaning of the freedom-culture connection. The freedom-culture connection might mean that freedom requires culture in one or more of the following senses: (1) culture is a necessary condition of individual choice *simpliciter*;[66] (2) freedom requires certain intrinsically valuable cultures; and finally, (3) one's own culture is required for meaningful choice. The question then arises in which of these senses, if any, should we understand the freedom-culture connection.[67]

If we understand the idea of a societal culture in the first sense, all that follows is that people have a right to some culture or other. It does not follow that they have a right to an intrinsically valuable culture or even to their own culture. In this view, we cannot ascribe freedom or autonomy to people in the state of nature when no linguistic system is present. Because language, religion, and history are required for cultures to exist, no culture can exist in the state of nature. However, it is not clear why people cannot be free or autonomous unless we sup-

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64. Kymlicka contends that even liberal cultures have a hold on their members. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 88. But the reasons for being attached to a deliberative culture and the reasons for preferring a dedicated culture are vastly different.

65. This applies to deliberative cultures also because actual deliberative cultures might be faulty even from a deliberative perspective.

66. This sense asserts that freedom requires culture in *some sense* of the term "culture." Even if true, this assertion is unilluminating because nothing is ruled out.

67. It also requires that Kymlicka specify what *kind* of freedom and autonomy is involved and to what degree. Freedom generally means a negative right to noninterference from official (and other) actors and sometimes a positive right to assistance. Autonomy refers to a critical, rational process through which one fashions defensible reasons for action.

pose that in natural circumstances human beings have no greater capacity for choice than non-human animals have. Yet, this is not obvious. We need only refer to the myth of the noble savage or other imaginative depictions of uncontaminated human nature to make intelligible the idea of choice in the state of nature.[68] Nevertheless, since these depictions might include language, history, and other factors associated with culture, perhaps, even here a culture of some sort may exist.

Fortunately, there is no reason to pursue this first interpretation of the freedom-culture connection here. Since the problem of minority cultural rights arises only in cultural contexts, we can stipulate that this first interpretation of the connection between freedom and culture is correct. However, because this first interpretation only shows that some culture or other is required for individual choice, even if it is correct, it is too weak to form the basis for minority cultural rights. Denying minority cultural rights does not prevent the minority's members from acting freely, it just means they must use a majority culture to do so.[69] This first interpretation of the freedom-culture connection merely affirms the very general propositions that people require materials of choice to be free, that we do not act freely in a vacuum, and that cultures may provide such materials. What must be remembered is that affirming the freedom-culture connection in this sense is no guarantee, or even support, for the minority cultural rights thesis.

Interpreting the freedom-culture connection in the second sense provides a stronger basis for proponents of minority cultural rights. According to this second interpretation, people require and have a right to intrinsically valuable cultures, though not necessarily their own cultures. However, for liberals, intrinsically valuable cultures should be explicated in terms of autonomy. Because such cultures must encourage autonomy to be intrinsically valuable, the fact that a culture is one's own culture has no normative appeal unless it withstands deliberativist scrutiny.

This second interpretation, in turn, can be understood in two senses. First, it might mean that freedom requires an intrinsically valuable culture where the notion of "intrinsic value" refers to moral factors other than freedom and autonomy. It is

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68. Consider the story of Greystoke, a Scottish lord, raised by apes in west Africa. GREYSTOKE: THE LEGEND OF TARZAN, LORD OF THE APES (Warner Bros. 1983).

69. This assertion is not intended to be flip or arrogant. An autonomous person should recognize that she cannot always get what she wants. Autonomy expresses a certain capacity for choice even in a context of variable and reduced alternatives.

unlikely that Kymlicka's thesis should be understood in this sense because he never alludes to anything like it and because it is dubious that a liberal perspective requires a culture containing moral factors that exclude freedom and autonomy, or worse, that are anathema to these values.

Alternatively, the second interpretation might define an intrinsically valuable culture as one constituted by freedom and autonomy. In other words, the moral values of freedom and autonomy must be embedded in the culture for it to be intrinsically valuable. It is not obvious that Kymlicka has this sense in mind, or, if he does, that this interpretation of the connection will support the minority cultural rights thesis for those cultures that do not value freedom in this way.[70] The first sense of "intrinsically valuable culture" precludes justifying multiculturalism in liberal terms because it does not guarantee freedom and autonomy as the dominant moral factors characterizing an intrinsically valuable culture. The second sense might justify deliberative minority cultures, but it will not justify dedicated minority cultures.

The third interpretation of the connection, if correct, does support minority cultural rights in a strong and practical sense. If each one of us has cultural rights to his or her own culture,[71] public policy in liberal states must be constrained by the general admonition to protect anyone's culture. However, it is not obvious that such a general right exists.[72] Understood in the

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70. Proponents of the minority cultural rights thesis insist upon the need for protecting minority cultural rights for moral and political reasons.

71. It can be argued that in many societies no *one* culture exists. Instead, every seemingly homogeneous culture is in fact created through the confrontation and integration of independent cultural fragments.

72. Before turning to this question, it should be pointed out that this interpretation of the freedom-culture connection supports minority cultural rights, but it equally supports majority cultural rights. This might be a general problem for Kymlicka because asserting minority cultural rights concerning, language, religion, education, and so forth, limits the cultural rights or interests of the majority. Further, many cultures seek homogeneity, but cultural pluralism often dilutes some cultural ideals. On the other hand, few cultures, if any, can remain unchanged, especially in the modern world of technology and international trade. Cultures interact with one another in myriad ways and are changed to a greater or lesser extent through these interactions. Nevertheless, it is not obviously wrong or unreasonable to want one's culture to remain relatively intact so that social meaning and value can remain constant. Thus, dominant cultures cannot be faulted for desiring constancy. After all, the quest for intra-cultural homogeneity is precisely the goal of those minority cultures who feel threatened by the ubiquity of the dominant culture.

Kymlicka seems to assume that anyone wanting cultural homogeneity or constancy must be racist or xenophobic. *See, e.g.*, KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 97. In this, he is mistaken. Nevertheless, insisting on enforcing cultural constancy

third sense as an individual's own culture, it is difficult to understand how liberalism could endorse the connection since many of these minority cultures are dedicated and illiberal.[73] Dedicated cultures typically denigrate freedom and autonomy as illegitimate cultural values. If so, liberalism cannot explain and justify this type of culture on liberal (deliberative) grounds. The distinction between deliberative and dedicated cultures helps us appreciate why liberalism's explanation and justification of minority cultural rights is restricted to deliberative cultures. The distinction also shows why liberal justification cannot be extended to dedicated cultures.

II. THE ARGUMENT FOR THE LIBERAL BASIS OF SOCIETAL CULTURES

How does liberalism explain and justify minority cultural rights? Before addressing this question directly, let's consider just what a liberal explanation and justification might achieve. First, a minimal liberal explanation and justification might demonstrate that liberalism *permits* minority cultural rights, or alternatively stated, that liberalism is consistent with such rights. Second, such an explanation and justification might show that liberalism *warrants* or *calls for* minority cultural rights in certain circumstances. Third, a liberal explanation and justification of the rights in question might be that liberalism *requires* these rights. The minority cultural rights thesis asserts that liberalism either permits, warrants or requires minority cultural rights. In contrast, a liberal explanation and justification of mi-

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because you are a member of the dominant culture may be insensitive or unjust or both. Here, it must be emphasized that a conflict exists between majority and minority cultures. The majority culture wants to retain the character of its culture. The minority, on the other hand, seeks to express its cultural ideals, yet granting this expression potentially affects the character of the majority culture. We might consider denying minority culture rights unjust yet still recognize that acknowledging these rights exacts a price from the dominant culture, although maybe a price worth paying.

73. Why is everyone better off retaining one's own culture? Put another way, why is there a special value associated with one's own culture? What is lost by detaching oneself, as far as possible, from one's own culture? Why is a New York Jew less free if her identity with Jewish culture or with New York Jewish culture is lost? Notice this question leaves open whether the loss of Jewish culture is her choice or the choice of those hostile to the culture. Of course, if the loss is brought about against the wishes of the individual, liberalism can explain the loss, namely, the loss of the possibility of choosing a particular conception of the good expressed by a certain set of values and practices. But this is a perfectly general kind of loss. Cultural rights are not needed to guarantee that people be free to live according to their conception of the good. All that is required here is the negative (and positive?) rights of freedom, association, and nondiscrimination.

nority cultural rights fails if such rights are incompatible with liberalism.[74]

A. *The Minority Cultural Rights Thesis*

The minority cultural rights thesis asserts that freedom and autonomy are intimately connected with an individual's culture. Four reasons might be given for this thesis: (1) since a person experiences herself and the world through cultural filters, the very identity of the person must be understood culturally;[75] (2) cultural identity and cultural expression requires a complex social setting which permits cultural interaction with other members of the same culture; (3) it is difficult to discard one's culture and become acculturated to another; and (4) people generally need and want to satisfy their cultural aspirations. In so far as these aspirations remain unfilled, people are not free.

The first reason suffers from the following ambiguity: construing it abstractly renders it trivially true, while construing it concretely renders it significant but implausible. Once a person matures, she can direct her own development, and she need not restrict herself to any given culture. Regarding the second reason, cultural interactions are often possible even with a relatively small number of individuals who share the same culture.[76] As for the third reason, both cultures and people change. With the amount of emigration in the world today, people adopt and discard cultures fairly readily, and cultures can change with blinding speed. With respect to the fourth reason, under one natural interpretation of liberalism, cultures come and go in the cultural "marketplace." Sometimes such a loss is bad because the culture in question contained an important moral or political perspective; other times the loss of a pernicious culture is good. In general, not all cultural losses should be regretted, especially with regard to freedom. If there is a special kind of loss in-

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74. Put another way, these rights are incompatible with liberalism's deep structure, that is, the deliberative attitude. Other features of liberalism, beyond its deep structure, for example, merit or need, might not be incompatible with minority cultural rights.

The problem with Kymlicka's argument is that it fails to provide a univocal conception of the freedom-culture connection. Sometimes Kymlicka seems to be concerned only with compatibility between liberalism and minority cultural rights; at other times, he argues that liberalism warrants such rights; and still, at other times, he advocates that liberalism appears to require these rights. Kymlicka needs to spell out the nature of this connection in much greater detail.

75. *See* Charles Taylor, *The Politics of Recognition*, *in* MULTICULTURALISM AND "THE POLITICS OF RECOGNITION": AN ESSAY 33-37 (Amy Gutmann ed., 1992).

76. In the United States, the Amish and Hasidic communities illustrate this possibility.

volved, it must be described more clearly.[77]

B. *Liberal Preconditions of Moral Virtue*

Kymlicka believes that a person's culture often provides answers to the question of how one should lead the good life. Kymlicka sketches what he takes to be the distinctively liberal answer embodied in "two preconditions for leading a good life."[78]

> The first is that we lead our life from the inside, in accordance with our beliefs about what gives value to life. Individuals must therefore have the resources and liberties needed to lead their lives in accordance with their beliefs about value . . . . The second precondition is that we be free to question those beliefs, to examine them in light of whatever information, examples, and arguments our culture can provide. Individuals must therefore have the conditions necessary to acquire an awareness of different views about the good life, and an ability to examine these views intelligently.[79]

The first precondition, call it "the value precondition," reflects our propensity for adopting norms that define the kind of lives we lead.[80] The second precondition, call it "the criticism precondition," reflects our propensity for criticizing and examining the norms we adopt.

The value precondition presumably means that people lead their lives by endorsing a certain set of values or commitments. It refers to those attitudes, beliefs, and values which define one's culture and through which one matures and develops a sense of the self and a sense of moral virtue. These values determine our allegiances and loyalties. Leading one's life from the inside appears to mean leading it from the first-person perspective, being committed to certain strategies for living or to certain kinds of personal values. These values give a person a sense of what is sanctioned by her culture. The value precondition also refers to the familiarity and comfort associated with a

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77. Should society decide that physicians are no longer needed or desired, a person wishing to become a physician suffers a loss; she can no longer choose to become a physician. But the loss of cultural identity presumably is a loss of a different magnitude. And just what this type of loss is needs to be clarified. It is insufficient to say that cultural and linguistic identity makes meaningful choice possible. In the appropriate circumstances, one can choose to be a murderer, thief, doctor or lawyer in most any culture or with most any language containing the appropriate social practices or so it seems a liberal should argue.

78. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 81.

79. *Id.*

80. *Id.* Kymlicka's description of these two preconditions is far from clear. Just what does it mean to lead one's life "from the inside"? How else could one lead one's life?

cultural perspective. A person naturally and enthusiastically experiences the world through her cultural precepts. These precepts represent the unexperienced basis of experience; they represent a matrix through which one perceives and acts, and most importantly, they provide an environment within which one feels and judges.

Any culture, whether deliberative or dedicated, will have a value precondition. Any culture will define an internal point of view through which a member of the culture identifies with central cultural values. Although both deliberative and dedicated cultures will endorse the value precondition, they will not endorse it in the same sense or for the same reasons. Two interpretations of this precondition are available. One interpretation requires people to select their own values from an array of possible values. A second interpretation requires an individual to embrace the beliefs about values that her culture endorses, that she learns in school, in her house of worship, or from certain sanctified leaders. Whether this value precondition applies to both deliberative and dedicated cultures depends, therefore, on whether the first or second interpretation adequately explicates its meaning. Understood in the first sense, the value precondition applies only to deliberative cultures. Understood in the second sense, it applies only to dedicated cultures.

However one acquires one's values, the second precondition, "the criticism precondition," is the *sine qua non* of the idea of a deliberative culture. Irrespective of how one acquires one's values, one's values are deliberatively justified only when they meet the second precondition. Thus, only deliberative cultures will completely embrace this condition. Typically, dedicated cultures reject the notion that questioning and comparing one's set of values is necessary for leading a good life. Moreover, the criticism precondition is potentially at odds with the value precondition in dedicated cultures. Thus, in framing these preconditions, as Kymlicka does, he already skews the issue of cultural rights in favor of a "distinctly liberal" deliberative culture. It is not at all clear, therefore, why nonliberal adherents of dedicated cultures should embrace a view which, from their perspective, is at best internally inconsistent. Given a dedicated culture, the second precondition threatens the first.

The distinction between deliberative and dedicated cultures provides a framework Kymlicka could have used in formulating the two preconditions. Had Kymlicka done so, he might have avoided the appearance that these preconditions restrict the good life to deliberative cultures only. Such a reformulation of the preconditions involves defining the value precondition to in-

clude norms that are not voluntarily adopted through deliberation, norms that one imbibes through a process of acculturation and identification. In this way, the value precondition can clearly pertain to dedicated cultures. Similarly, Kymlicka could reformulate the criticism precondition as involving narrowly tailored critical reflection based on the sanctified processes and values of the dedicated culture.

C. *Societal Cultures and The Significance of One's Own Culture*

What are Kymlicka's reasons for believing that a societal culture is necessary for freedom and autonomy? A liberal society is concerned with the freedom *from* external constraints in living according to one's beliefs about values; it is also concerned with the developmental freedom or autonomy *to* criticize and correct these beliefs.[81] Kymlicka contends that "freedom involves making choices amongst various options, and our societal culture not only provides these options, but also makes them meaningful."[82] To choose between options, a person must apprehend the meaning and salience of alternative social practices.[83] How is she able to do this?

According to Kymlicka, our societal culture supplies the meaning and importance to our social practices.[84] Without a value precondition supplied by our culture, social practices pre-

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81. Freedom is developmental because an individual must be taught and encouraged to develop this capacity in order for it to become a part of her self-conception. Without education and encouragement, the capacity to criticize and correct one's beliefs about values will surely remain incomplete. Therefore, surprising though it may seem, the capacity for freely criticizing and correcting one's beliefs about values must be inculcated. In other words, this inculcation may function as an unchosen condition of freedom.

82. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 83.

83. The plausibility of Kymlicka's conception of societal cultures trades on the idea of society. To be free, people need to reflect on the social practices which constitute the materials of their autonomy. Because everyone needs society in this sense, it seems much less controversial than the idea of a culture. Liberals and nonliberals alike need a society, not necessarily a societal culture.

84. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 83. Quoting Ronald Dworkin, Kymlicka tells us that our culture "'provides spectacles through which we identify experiences as valuable.'" *Id.* (citation omitted). This metaphor is unfortunate. We can and do adjust or change our spectacles depending on circumstances, our state of health, lighting conditions, age, and so forth. No one is wedded to a particular optical prescription. Why aren't cultures considered in the same way? When our culture is fairly homogeneous, healthy, and not vulnerable to alteration by the dominant culture, we stick to our home culture. When our situation is different, we change cultures to adapt to the new circumstances.

sumably would have equal value.[85]

> This argument about the connection between individual choice and culture provides the first step towards a distinctively liberal defence of certain group-differentiated rights. For meaningful individual choice to be possible, individuals need not only access to information, the capacity to reflectively evaluate it, and freedom of expression and association. They also need access to a societal culture. Group-differentiated measures that secure and promote this access may, therefore, have a legitimate role to play in a liberal theory of justice.[86]

Yet, this passage suffers from the ambiguity that pervades Kymlicka's theory. Access to cultures or cultural fragments may have such a role in a liberal theory of justice, but why must these cultures be societal cultures? And if a societal culture is required, why must it be one's own?

Kymlicka insists unequivocally that freedom requires not merely a societal culture, but one's own culture.[87] His reasons for this are unclear. Sometimes he argues that it is too difficult to change cultures. Other times he speaks of one's own culture as something to which one is entitled. He also suggests that "the causes of this attachment lie deep in the human condition."[88] However, Kymlicka doesn't explain the distinctively liberal dimension of these causes (reasons). One might agree with Kymlicka that people are generally attached to their own culture without agreeing that liberalism explains and justifies the desirability of this attachment.[89] Rather, Kymlicka's liberalism seems

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85. Now we can appreciate why the meaning and salience of a social practice requires a first-person understanding of the practice. We must understand the practice from the inside, not from the external vantage point of the observer or detached social scientist. This internal perspective requires that we understand the language, history, traditions and conventions of a culture.

86. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 83-84 (footnote omitted).

87. This insistence pervades *Multicultural Citizenship*. *See, e.g., id.* at 84-93.

88. *Id.* at 90.

89. Waldron warns against this type of approach for liberals.

> Kymlicka's strategy (arguing from liberal premises) is simply a dangerous one for the proponents of cultural preservation to adopt. The liberal conception of autonomous choice evokes a spirit of discernment, restlessness, and comparison. It is, I think, antithetical to the idea that certain structures of community are to be *preserved* in their integral character. As long as cultures depend for their existence on people's allegiance and support, their use as frameworks of choice for individual lives is always liable to cut across the interest we have in preserving them.

Jeremy Waldron, *Minority Cultures and the Cosmopolitan Alternative*, 25 MICH. J. L. REFORM 751, 787 n.87 (1992). In other words, deliberative cultures do not cohere with dedicated cultures. Thus, if liberalism is committed to a deliberative paradigm, it cannot ex-

to take one's societal culture as given without the benefit of self-criticism, and therefore, as the baseline for further cultural change.[90] But, if liberalism is committed to deliberativism, Kymlicka must explain the liberal grounds for taking a person's societal culture as given. Without such an explanation, it is mysterious how liberalism can endorse such a view.

In other words, the problem with Kymlicka's argument is that it cannot explain and justify the desirability of cultural attachment generally on liberal grounds. Again the distinction between deliberative and dedicated cultures helps frame this issue. If one's culture is dedicated, an explanation of its normative attractiveness cannot be given in liberal terms. Only if one's culture is deliberative, will liberalism illuminate why people regard their own culture as something special.[91] And then this explanation will not be unique to that culture or to any given culture. Instead, it will be the deliberative validity of the culture that explains its attractiveness. The distinction between deliberative and dedicated cultures challenges Kymlicka to present *liberal* reasons why dedicated cultures should be supported on the grounds of freedom and autonomy. Put another way, it asks whether there can be deliberative reasons for dedicated cultural rights. In turn, this involves two further questions. First, can there be deliberative grounds for dedicated cultural rights when the dedicated cultures are not antithetical to deliberation? Second, can there be such grounds for dedicated cultural rights when the cultures in question are opposed to deliberation? The first question involves determining whether deliberative reasons exist for embracing dedicated cultural rights when the culture in question is neither opposed to the deliberative cultures of members of other cultures nor opposed to the deliberative strat-

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plain the special value of embracing dedicated cultures.

Charles Taylor characterizes Kymlicka's argument as connecting autonomy with thinking about how to achieve a good life. Charles Taylor, *Political Theory: Multicultural Citizenship*, 90 AMER. POL. SCI. REV. 408, 408 (1996) (reviewing WILL KYMLICKA, MULTICULTURAL CITIZENSHIP (1995)). To think about the good life, one must have a particular vocabulary: one's own. Therefore, one's own language and culture are necessary for autonomy. *Id.* But liberalism should seek the vocabulary and culture which is most conducive to autonomy, and this dedicated cultures fail to do. Therefore, liberalism cannot explain and justify retaining one's own *dedicated* culture.

90. This casts his liberalism as unduly conservative. Why should such a baseline be appropriate given that many societal cultures oppose the deliberative ideal, and some are unjust or irrational? But then whose justice? Which rationality? *See* ALASDAIR MACINTYRE, WHOSE JUSTICE? WHICH RATIONALITY? (1988).

91. Liberalism might, of course, be able to explain the hold a culture has over individuals in purely psychological terms. What it cannot do is provide a normative explanation and justification of this hold.

egies of its own members. It is difficult to see how such a dedicated culture can accept deliberative strategies on the part of its own members and remain a dedicated culture. Further, some dedicated cultures reject such strategies even for the members of other cultures. How can liberalism accept such dedicated cultures?

It is insufficient to reply that this misconstrues liberalism as purely deliberative when in fact it consists of both deliberative and dedicated sub-cultures. Descriptively, this point might be right. But normatively and conceptually it begs the question of whether liberalism can accept dedicated cultures. Moreover, if it can, it is difficult to see how this acceptance can be explained and justified in terms of autonomy. When a dedicated culture rejects autonomy for its own members or members of other cultures, how can liberalism, incorporating an autonomy-based deliberative strategy, accept strategies that are hostile to deliberativism? It is this question that Kymlicka's fails to adequately answer. Because dedicated cultures often reject freedom and autonomy as deep cultural values, it would appear that liberals have no ground for endorsing such cultures or for justifying their proliferation.[92]

It might be that liberalism's deliberative attitude precludes recognizing a special attachment or sentiment in justifying dedicated, cultural rights. Jeremy Waldron suggests a cosmopolitan alternative to this attachment:

> Suppose first, that freewheeling cosmopolitan life, lived in a kaleidoscope of cultures, is both possible and fulfilling. Suppose such a life turns out to be rich and creative, and with no more unhappiness than one expects to find anywhere in human existence. Immediately, one argument for the protection of cultures is undercut. It can no longer be said that all people need their rootedness in the particular culture in which they and their ancestors were reared in the way that they need food, clothing, and shelter . . . . Such immersion may be something that particular people like and enjoy. But they no longer can claim that it is something they need . . . .
>
> Of course, it does not follow from this that we are entitled to crush and destroy minority cultures. But the collapse of the Herderian argument based on distinctively human *need* seriously undercuts any claim that minority cultures might have to special support or assistance or to

92. Why can't liberalism explain and justify freely choosing a dedicated culture? The reason can be found in the second precondition, the criticism precondition. See *supra* Part II.B. for a discussion of the criticism precondition. A liberal must criticize her cultural values in general terms, and dedicated cultures reject this condition. Thus, Kymlicka's liberalism is straightforwardly committed to the deliberative paradigm.

> extraordinary provision or forbearance. At best, it leaves the right to culture roughly on the same footing as the right to religious freedom.[93]

In response, Kymlicka points out that the example of cultural diversity that Waldron has in mind really is only the product of an especially diverse American societal culture.[94] Consequently, in Kymlicka's view, Waldron's cosmopolitanism is merely cultural provincialism. If true, this indirectly confirms Kymlicka's contention that freedom requires a societal culture. Waldron's cosmopolitanism, as a steady diet, is merely a societal culture with many dishes to eat. However, it is not obvious that Kymlicka's reply works. Whether Waldron's example is of a single, diverse culture or rather several different cultures, his point is that freedom may require a myriad of social practices. What is important for Waldron's cosmopolitanism is the diversity of cultural fragments or the diversity of social practices. Talk of single cultures or several different cultures is irrelevant.

The reason for this is because a fully deliberative attitude prompts a liberal to go beyond one's language and culture to consider all relevant languages and cultures so that the individual can make the best choice among deliberativist alternatives. The conclusion which must be drawn is that liberals can only attach significance to cultures that exhibit deliberativist features or that can be explained and justified deliberatively. Nonliberal cultures exhibit dedicated features, and therefore, their value cannot be explained by liberalism. The point here is that dedicated cultures accept cultural practices as given, and therefore as the baseline from which to evaluate all other social practices. Since liberalism's deliberative paradigm cannot accept cultural practices as given without the possibility of self-criticism, it must seek an alternative baseline from which to evaluate such practices. The baseline for liberalism is deliberative rationality and deliberative autonomy. Of course, deliberativism accepts cultural givens, but not because they are given, but rather only when they can stand the test of deliberativist scrutiny. In-

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93. Waldron, *supra* note 89, at 762.

94. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 85. Kymlicka's response points to the problem of individuating cultures as well as to the problem of fragmentary cultures. What makes a particular culture a unified, single, diverse culture rather than an amalgam of cultural fragments? And shouldn't liberalism's commitment to deliberativism prefer cultural fragments to a single, monolithic culture on the ground that an abundance of cultural fragments are likely to increase the range of options? If cultural fragments are what is left over after one sheds one's Aboriginal or French culture, why isn't the move to these cultural fragments better from a liberal point of view than restricting oneself to one's own culture?

deed, deliberativist scrutiny regards accepting a totally dedicated culture as irrational.[95]

Kymlicka might reply that attachment to one's own culture is perfectly rational and reasonable even on deliberativist grounds. People need to operate within some culture or other. Nothing precludes one's own culture from being the culture that one needs. Kymlicka is right concerning the rationality of identifying with one's own culture, embracing it at least initially. It's more than rational, it is presumptively irrational (or impossible) not to embrace it. Any criticism and ultimate rejection of one's culture can occur only in the context of one's culture.

But granting this opens Kymlicka to a broader charge. One must begin by identifying with one's own culture because, through it, one has matured and developed the capacity for deliberation.[96] Even beginning to renounce one's culture first requires formulating objections in terms of the given culture. Shedding one's language and culture is extremely difficult. When nothing else is at stake, there is no reason not to identify with one's own culture.[97]

However, the categories Kymlicka discusses, for example, national groups, ethnic groups, and immigrants, are examples of people in exceptional circumstances due either to conquest, colonization, or emigration. In these circumstances (and others), there are pressing factors militating against one's attachment to one's own culture.[98] When the price for the individual as well as

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95. Deliberativism is the deep structure of liberal political theory. One can, of course, maintain that a particular dedicated culture results from reflection, but then we must explain the deliberative basis of this reflection. Deliberativism is the *sine qua non* of cultural life for the liberal in two ways. First, the justification of a culture must follow deliberative rationality and deliberative autonomy, and second, the chosen culture must not have anti-deliberative elements as central values. One could then accuse deliberativism of consisting of fixed values and challenge the distinction between deliberative and dedicated cultures. However, the challenge would be misplaced. Even if deliberative values are "fixed," they are nonetheless self-critical and self-correcting in ways that dedicated cultures are not. This penchant for self-criticism and self-correction in deliberative cultures is sufficient to demonstrate the validity of the distinction.

96. Identifying with one's own culture in this sense does not entail that one judges one's culture to be legitimate without qualification, or not susceptible to radical improvement. It just affirms the truism that one can only begin the process of revision from one's present position.

97. Even in these circumstances, however, an additional factor is always relevant: the liberal commitment to deliberativism. Even in ideal circumstances, a liberal should test his commitment to his own culture by subjecting it to the deliberative attitude. But normally one's attachment to one's home culture will survive relatively intact.

98. Under communitarianism, one would have no trouble deciding in favor of one's own culture because, under communitarianism, one need not adopt the deliberative attitude. Additionally, communitarianism defines the self in terms of fundamental commu-

the adopted society militates in favor of the individual's adopting the new culture, deliberativism may counsel doing so. The deliberative attitude requires one to replace one's initial attachment to one's own culture with a commitment to rationality and autonomy. Minimally, a relaxed cost-benefit analysis is involved in this process.[99] Which culture, new or old, will maximize opportunities for rational autonomy?[100]

Kymlicka is not insensitive to the cost-benefit dimension of the deliberative attitude. In fact, he argues that the costs of abandoning one's own culture are severe,[101] "and that there is a legitimate question whether people should be required to pay those costs unless they voluntarily choose to do so."[102] One can agree with this contention yet reject a liberal basis for minority cultural rights. Because the costs of abandoning one's culture must be compared with the costs of creating special protection for cultural rights, a liberal justification of cultural protections cannot be established independently of the costs to society in particular political and cultural circumstances. Once we move beyond protection for cultural rights deriving from treaties and other legal commitments, the claim to cultural rights for minorities can only be answered on a case by case basis as other liberty and political interests are established. Nothing general concerning minority cultural *rights* is appropriate on liberal grounds.

Kymlicka needs a stronger argument for the proposition that the loss of one's own culture reduces autonomy.[103] Consider

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nal attachments. Because liberalism is committed to the deliberative attitude, it cannot take this route.

99. If deliberativism involves consequentialism, cultural *rights* must trump deliberativist considerations. By contrast, if deliberativism is deontological, dedicated cultural "rights" are not *rights* at all because they cannot be explicated in terms of deliberativism.

100. Keep in mind that this article does not endorse the position that dedicated cultures should be abandoned. Rather, it emphasizes that *liberalism* cannot endorse retaining one's own culture when deliberative reasons exist for abandoning it. (Liberalism provides a better explanation of what actually happens in these circumstances in that one makes the liberal choice to abandon one's culture as the hold of one's culture diminishes). Because liberalism is committed to a deliberativist cultural paradigm, it cannot support minority cultural rights when deliberativism entails abandoning one's own culture. But a strong cultural rights thesis should trump deliberativist considerations of this sort.

101. *See* KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 85. Such a loss might be a loss of possibilities, though not, properly speaking, a loss of freedom or autonomy. A receding hairline also represents a loss; but it is a loss of hair, not autonomy.

102. *Id.*

103. It may be true that one's own culture has an especially deep hold on an individual, even that one's own culture represents something like a biological given in the

the case of the bilingual. Is someone who naturally speaks two languages entitled to special protection for her linguistic autonomy? Why is this individual less free if the state does not protect or encourage one of her languages? Certainly, a bilingual person can make the same choices concerning vocation, family, religion, education and so forth in either language. Something might be lost in being unable to speak both languages, but this does not necessarily represent a loss in autonomy. It does not follow that a society should not protect a person's interest or right to speak her own language.[104] The point is rather that the wrong in rejecting this interest, if it is one, cannot be expressed adequately by explaining it as a loss of autonomy.

Similarly, consider an individual who is bicultural. What autonomy-interest is lost by the loss of one of a person's birth or home cultures? Deliberative cultures require autonomy and rationality in both choosing or affirming a culture as well as in defining the content of the culture. Therefore, pointing out that an individual's has lost cultural possibilities is relevant to a liberal justification of minority cultural rights only if the lost culture itself fosters autonomy in the appropriate manner, that is, only if the definition and content of the culture is deliberative. It is not that nothing of value is lost. The point is that if something is lost, it is not, properly speaking, a loss of autonomy, and consequently, liberalism does not necessarily require protecting both cultures.[105] For those who think something of supreme value is lost, liberalism must be jettisoned.[106] For those believing that

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way that food, shelter and clothing represent biological givens. But this view is not obvious. If the hold a culture has is less than a biological given, then whether it should be considered important on liberal grounds depends on the circumstances and on the individual's other values. A person's conception of the good has a deep hold, yet liberals like Kymlicka insist that a person's conception of the good is revisable and should be revised by the individual according to her circumstances. If liberalism should make few allowances other than non-interference regarding a person's conception of the good, it is unclear why it should not regard a person's culture in the same way.

104. One method of intimidation and cultural genocide used against Native Americans was to prohibit children educated at government schools from speaking their own languages.

105. When a person cannot satisfy her desires because her culture dies, it could be argued that this amounts to a loss of autonomy. However, losses of this sort are not conspicuous to cultural loss; they also pertain to losses of social, political, religious, and personal options. If a person values her culture, then its death will probably result in a loss of autonomy. If she does not value her culture, it will not. The loss is only "probable" because, despite one's initial feelings concerning the loss of cultural options, one might be indirectly benefited by the loss. In some cases the new culture or lack of "culture" might be inherently superior to the initial culture because it provides a framework of more meaningful choice.

106. Although I think the only way to understand liberalism as a vital, normative

autonomy is the supreme value and what is lost is not a loss of autonomy, the conviction that minority cultures should receive special protection must be reconceived.

It is simply implausible to insist that a person can be free only in the context of her own culture. One can genuinely inquire whether a person is truly autonomous, from a liberal perspective, when she cannot find meaningful choices in any culture but her own, or when finding such choices, she still yearns for her former culture. Surely, the liberal conception of freedom seeks to establish the freedom associated with deliberative paradigms, that is, with a system of criticism and choice that should be possible in any cultural system if it is a deliberative one. If some cultures fail to provide this possibility, then liberals cannot endorse special protections for those cultures.

Kymlicka's boldest claim is that "in developing a theory of justice, we should treat access to one's culture as something that people can be expected to want, whatever their more particular conception of the good."[107] It is unclear that this must be a feature of a liberal theory of justice if we understand liberalism as a theory committed to a deliberativist paradigm. People generally, or liberals in particular, do not necessarily need or desire a cultural identity in the way that they need or desire a primary good such as self-respect.[108] Liberalism requires people to have the tools of choice. But one cannot (non-circularly) insist that these tools only derive from access to one's own culture. Liberals can make a case for minority cultural rights when those rights have a deliberative basis, not when the rights concern identity to a dedicated culture.

D. *Two Kinds of Cultural Identity*

In order to detect the ambiguity that pervades Kymlicka's argument, consider the following distinction between two possible kinds of cultural identity. The first type of cultural identity contends that choice and social meaning occur only in the context of certain kinds of linguistic (cultural) systems. In this sense, the relationship between culture and choice is clear. No one can engage in meaningful choice without the appropriate kind of cultural or linguistic system. Consequently, if this is

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conception of politics is through autonomy, conceptions of liberalism emphasizing tolerance, not autonomy, if legitimately characterizable as liberal at all, might be able to justify minority cultural rights.

107. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 86.

108. *See* JOHN RAWLS, A THEORY OF JUSTICE 62 (1971).

what liberalism requires, liberalism requires cultural identity.[109] However, it is a truism to assert that cultures are required for meaningful choice as well as for the development of personality and personal identity. In this sense, any linguistic system or culture will serve as a person's cultural identity. Because this sense of cultural identity is silent on whether a particular culture is inherently conducive to freedom, it is too weak to support the minority cultural rights thesis on liberal grounds.[110]

The second sense of cultural identity expresses the proposition that identification with one's *own* culture is required for meaningful choice. However, this claim is tendentious for two reasons. First, the loss of one's own culture at most proves that only *certain* kinds of choices are precluded. The host of choices that human beings engage in are still possible. Only highly ritualized or tradition-bound choices are precluded, that is, only highly ritualized or tradition-bound choices may find no expression in other cultures. Second, the loss of these options is not necessarily a loss in autonomy.

The point here is not that human beings have some prelinguistic or pre-cultural essence that is merely expressed, though not created, by one's language or culture. Rather, the ideal of liberal personality entails that a person should be ready to engage in choice no matter what culture she finds herself in, with whatever choices are available in that culture and language.[111] Of course, cultures and languages are not like hats or coats that can easily be changed. Learning a language and becoming acculturated are difficult, time consuming activities which themselves are typically not the result of choices. However, a person's capacity for choice is not impaired if her choice occurs in the context of a white, Anglo-Saxon culture as opposed to the New York Jewish culture in which she has matured. In either culture, she can still make many of the same choices, for example, the choice to become a physician or a circus acrobat and so forth. Where she cannot make the same choices, she can

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109. According to this interpretation, we should distinguish between human beings who use known languages and so-called feral children (children "raised" by wild animals) or perhaps between normal children and autistic children. Once attending to this contrast, it is obvious that certain cultural or linguistic systems are necessary for choice.

110. *See* Tomasi, *supra* note 17, at 594.

111. This is the cosmopolitan *ideal* of liberalism. In concrete circumstances, this ideal should not be taken literally or cavalierly. Still, it is an ideal that should inform liberal theory about cultural change. Liberalism is committed to some form of cosmopolitanism because only in a cosmopolitan culture is the range of choices sufficient to accommodate different types of people. Of course, cosmopolitanism might also restrict certain kinds of choices.

make different ones. The deliberative ideal of liberal personality is committed to the importance of people creatively choosing and embracing possibilities from within alternative cultures, that is, in choosing between whatever options her circumstances permit.[112]

Unless we maintain that some cultures are superior to others, we cannot say that one suffers a loss of autonomy by not being encouraged to practice one's own culture.[113] Liberalism cannot embrace the view that fixed cultures or fixed cultural fragments have intrinsic value beyond their function in a deliberative scheme.[114] Thus, the deliberative ideal seeks a structure of choice that is not dependent upon specific substantive values, or if it is so dependent, these values should be constituted by freedom and autonomy.

Establishing cultures as generally superior to others could not support the minority cultural rights thesis unless the minority culture is one of the intrinsically superior cultures. Moreover, if liberalism does sanction some cultures as intrinsically superior, then those cultures should be endorsed by liberalism whether or not the culture is a lived culture and whether or not a person prefers her intrinsically inferior culture to a superior one.[115] Certainly, no one should be forced to give up one's own

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112. In dedicated cultures this imperative is improbable because such cultures denigrate the salience of systemic deliberation.

113. This is true even if some cultures are incommensurable. The incommensurability doctrine maintains that different cultures or parts of different cultures may be incommensurable, that is, no translation between the two are possible. The liberal ideal cannot take even the loss of an incommensurable culture as a loss of autonomy. The instantiation of autonomy into concrete political circumstances requires the capacity to make decisions whatever the alternatives or whatever the context. Certainly a deep or rich context is better than a shallow or poor one, but the depth or richness of the context cannot be determined by special attachments to only some cultures and not others. There is a healthy self-reliance built into the liberal conception of context of choice that defies special attachments.

114. Liberalism can, of course, explain the loss of alternatives. For example, if one wants to become a Rabbi, one suffers a loss if Judaism no longer exists. One also suffers a loss if one fails to secure an especially attractive position that goes to someone else, or when one fails to get a position in a new law firm because the firm doesn't make it. These are the sorts of losses that occur daily. The loss of positions and objects are certainly losses. In some sense, these losses affect one's autonomy, especially if the context of choices are too narrowly restricted. But a loss in autonomy primarily refers to a loss of capacity to embrace the deliberative attitude. This does not come about merely due to increased or decreased options, or to changes in one's context of choice. Options come and go, and one's context of choice is continually changing, expanding and restricting. Only certain kinds of changes affecting one's deliberative capacity can be understood as a change in one's capacity for autonomy.

115. If Kymlicka's argument is sound, special constitutional protections should also

culture; no one should be forced to adopt a foreign culture. But this claim is very different than the contention that *liberalism supports retaining one's own culture because doing so maximizes freedom*. Liberalism supports one's own culture only if the culture supports, and is supported by, the liberal conception of the self, and the deliberative interpretation of this conception of the self that is at the heart of liberalism.

E. *The Role of Culture in Liberalism and the Problem of Cultural Relativism*

Kymlicka takes too seriously the alleged hold that cultures have over their members and fails to take seriously enough the reasons why liberals embrace deliberative paradigms. John R. Danley makes a similar mistake when he chastises Kymlicka for failing to recognize that liberal theorists give culture an important role in their theories.[116] Danley goes on to invoke Mill's views about the importance of culture in his (Danley's) defense of the proposition that liberals care about culture too. But Danley overlooks just what Kymlicka overlooks, namely, that liberals should care about culture only because of the role it plays in supplying the materials for deliberative choice.[117] Liberals are not tied necessarily to their own culture or any culture that extols its unique importance. Although culture is important in liberal theory, its importance lies in its role as the starting point

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be accorded new cultures or groups that develop in contemporary society. Group identity of this sort can be just as relevant to a member's autonomy as cultural identity. Yet, such a prospect creates problems, such as determining which groups qualify.

116. John R. Danley, *Liberalism, Aboriginal Rights, and Cultural Minorities*, 20 PHIL. & PUB. AFF. 168, 169 (1991).

117. Consider Mill's remarks:

> Nobody denies that people should be so taught and trained in youth as to know and benefit by the ascertained results of human experience. But it is the privilege and proper condition of a human being, arrived at the maturity of his faculties, to use and interpret experience in his own way. It is for him to find out what part of recorded experience is properly applicable to his own circumstances and character. The traditions and customs of other people are, to a certain extent, evidence of what their experience has taught *them*; presumptive evidence, and as such, have a claim to his deference . . . . [Yet] [h]e who lets the world, or his own portion of it, choose his plan of life for him, has no need of any other faculty than the ape-like one of imitation . . . . Human nature is not a machine to be built after a model, and set to do exactly the work prescribed for it, but a tree, which requires to grow and develop itself on all sides, according to the tendency of the inward forces [judgment and feelings] which make it a living thing.

JOHN STUART MILL, *On Liberty, in* UTILITARIANISM, ON LIBERTY, CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT 125-27 (1993).

or the building block for liberal deliberation. Mill, and other liberals, would not only permit the incorporation of substantive cultural values, they will insist upon such an incorporation but only after these values have passed deliberativist scrutiny. Dedicated cultures, in contrast, do not need, and even eschew, a critical examination of their cultural givens.

The goal of liberal theory, understood in this manner, is to become a kind of super-culture or philosophy of culture, criticizing and correcting one's cultural values in terms of deliberative rationality and deliberative autonomy.[118] Certainly, Mill believed that culture contains valuable lessons. For Mill, the collective knowledge of our natural and cultural history should be taken into account in practical reasoning. But more importantly, "it is the privilege and proper condition of a human being, arrived at the maturity of his faculties, to use and interpret experience in his own way. It is for him to find out what part of recorded experience is properly applicable to his own circumstances."[119] Similarly, we must scrutinize Kymlicka's observation that:

> [t]he freedom which liberals demand for individuals is not primarily the freedom to go beyond one's language and history, but rather the freedom to move around in one's societal culture, to distance oneself from particular cultural roles, to choose which features are most worth developing, and which are without value.[120]

Kymlicka acknowledges that such a view sounds like a communitarian view of the self and human freedom.[121] It surely isn't the view of Millian liberalism, nor does it resemble deliberativism. On these views, deliberative rationality and deliberative autonomy are the *sine qua non* of liberalism, and deliberativism requires that we take the most comprehensive critical stance possible. Where taking such a critical stance requires freedom to

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118. *See* Lipkin, *supra* note 29, at 1325 (discussing liberalism's desire to become the culture of cultures).

119. MILL, *supra* note 117, at 125.

120. *See* KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 90-91.

121. *Id.* at 91 (acknowledging that this is not an entirely apt description). Communitarianism contends that the self is constituted by its communal attachments. Kymlicka's conception of freedom as "the freedom to move around within one's societal culture," therefore, sounds like a communitarian position if culture is translated as community. Although this translation represents an exciting prospect, it is not certain that it can be carried out. More importantly, it is not obvious that Kymlicka's conception of liberalism, especially including the second value precondition of criticizing one's inherited values, can be characterized as non-deliberativism. Consequently, insofar as communitarianism is characterized as a dedicated concept, Kymlicka's liberalism cannot be characterized as communitarian.

move around in one's culture, so be it. But where that requires going beyond one's language and culture (though not, of course, beyond every language and culture), the deliberativist requires renouncing (portions of) her own culture or language for something that withstands better critical scrutiny. Kymlicka's characterization of Millian liberalism must be incorrect if he believes that Mill's conception of freedom limits freedom to one's own culture or language. Just as an individual can move around within her culture to achieve a critical distance from cultural givens, the same person can (must?) move around other cultures, where feasible and desirable. Mill never endorsed *limiting* oneself to one's own culture. (Although, he might have (arrogantly?) insisted that British culture was superior to other cultures.) Moving around cultures does not mean achieving an Archimedean perspective outside of all cultures. Rather, it means learning about other cultures and trying to determine if their solutions to personal and social problems are better than those of one's own culture.

In Kymlicka's view, cultural relativism *seems* unavoidable. One's culture is correct for oneself because the only reasons one can give for a particular cultural solution to a problem are culture-bound. The only relevant reasons must be your reasons, and your reasons can derive only from your culture. The cosmopolitan alternative to this relativism is not cultural absolutism; nor does it entail that we stand outside of all cultures on some neutral, meta-cultural plane from which we can evaluate and rank cultures accordingly. Rather, the alternative is pragmatic, namely, we must evaluate cultural solutions to problems by comparing them with other solutions, and by developing an eclectic sense for determining when a given solution is plausible or when it is beyond the pale.[122] This eclectic sense does not serve as a foundation of cultural inquiry. Rather, it emphasizes our actual practice of presuming a proposition to be true when it survives the best objections from any and all quarters, including in this case from other cultures.[123]

Kymlicka's entire approach in seeking a liberal foundation for cultural rights appears incompatible with the minority cul-

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122. Certainly, many solutions will resist universal assent even of this pragmatist kind. But there will be many others, such as the norms against murder and theft, that will be endorsed by this cosmopolitan eclecticism. Only if this eclecticism is barren, yielding no universal assent, would cultural-relativism be plausible.

123. *But see* MICHAEL WALZER, THICK AND THIN: MORAL ARGUMENT AT HOME AND ABROAD 49 (1994) (arguing that "most of the disputes . . . that arise within in a particular society and culture have to be settled—there is no choice—from within").

tural rights thesis. Arguing that cultures are justifiably important because they are necessary to freedom and autonomy appears to fly in the face of a prevailing view that cultural rights are justified because they preserve something important to humans generally, whether or not one thinks autonomy is important. In this view, the reason for cultural rights cannot be explained and justified exclusively in liberal terms. Instead, we must seek more general categories, which may or may not include autonomy, that explain why cultures have primary importance to their members, even when the culture is completely opposed to liberal choice.[124] Kymlicka never adequately confronts the charge that his conception of cultural rights is too weak to support the minority cultural rights' thesis. Thus, the liberal's concern for protecting culture because it furthers or encourages liberal choice seems to be the wrong sort of *moral* reason for advocating such protections.

Instead, genuine concern for different cultures should reveal a capacity for permitting such cultures to thrive despite one's inability to understand that culture in one's own terms. All one needs to know for granting minority cultural rights is that the culture in question is embraced by its members as giving their lives meaning. In this spirit, a liberal should permit (and encourage?) cultures that are incompatible with liberalism's commitment to deliberative rationality and autonomy. However, as Kymlicka concedes, "some ethnic and national groups are deeply illiberal, and seek to suppress rather than support the liberty of their members."[125] Granting rights to such groups can result in great injustice. The problem of liberal toleration arises here. How can liberals tolerate dedicated cultures that suppress the autonomy of their members as well as other individuals? Can Kymlicka's theory resolve this problem?

III. LIBERALISM AND TOLERATING MINORITY CULTURES

A. *Autonomy and Tolerance*

Liberalism posits two values central to the liberal enterprise: autonomy and toleration.[126] Any version of liberalism

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124. See Lomasky's conception of a person as a project pursuer. LOMASKY, *supra* note 27, at 62. Consequently, this conception applies universally to any culture.

125. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 75.

126. I do not discuss some important differences between "tolerance" and "toleration" or how these differences are related to liberal political theory.

Liberalism is also concerned with equality. Toleration is as important a value in egalitarian-liberalism as it is in autonomy-liberalism because equality often requires tol-

must characterize the nature of the relationship between these values. Different liberal theories will characterize this relationship in different ways. The basis of Kymlicka's defense of cultural rights is autonomy, not tolerance.[127] Understood in this manner, tolerance is a derivative value based on autonomy. In this view, it would seem that only certain kinds of cultures should be tolerated, those committed to the liberal ideal "that individuals should have the freedom and capacity to question and possibly revise the traditional practices of their community, should they come to see them as no longer worthy of their allegiance."[128] Thus, it appears that Kymlicka's liberalism is committed to a deliberative cultural paradigm because it "requires *freedom within* the minority group."[129] Cultures respecting this requirement are, according to Kymlicka, "impeccably liberal, since [they are] grounded firmly in the value of individual freedom."[130] However, Kymlicka is aware that some might "view [his] theory as illiberal, precisely because its unrelenting commitment to individual autonomy is intolerant of non-liberal groups."[131] How can a liberal theory of politics tolerate non-liberal cultures?

The distinction between deliberative and dedicated cultures permits us to frame the question of liberal toleration in a much clearer manner. If deliberative cultures cannot tolerate dedicated ones, and if this distinction exhausts the different kinds of cultures existing in the contemporary world,[132] a political theory that explains tolerating only one type of culture fails to do justice to toleration.

The minority cultural rights thesis aspires to explain and justify tolerating the widest number of cultures, and should seek to explain tolerating the paradigmatic examples of cultures in

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erating other people whether or not they are autonomous.

127. If one takes tolerance as the basic liberal value, then it is possible to tolerate dedicated cultures. But then it is unlikely that we will be able to explain the role of autonomy in liberal theory. If liberals should tolerate dedicated cultures because liberalism's primary value is tolerance, not autonomy, then liberalism must tolerate dedicated cultures that eschew autonomy. This form of liberalism is very different from the liberalism associated with Mill, Kant, Rawls, Dworkin, or Kymlicka.

128. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 152.

129. *Id.* For Kymlicka the "*equality between* the minority and majority groups" is also important. *Id.*

130. *Id.* at 154.

131. *Id.*

132. This does not mean that every culture is either entirely deliberative or entirely dedicated. Still, some cultures are predominantly deliberative or predominantly dedicated.

the world.[133] Kymlicka's position fails because it is arbitrarily restricted only to those cultures committed to the deliberativist paradigm. In short, Kymlicka's "liberal" imperative, like other versions of liberalism, is antithetical to one of the chief paradigmatic cases of a culture, namely, dedicated cultures. Some dedicated cultures reject the legitimacy of internal protections, intragroup freedoms, and civil liberties for their members, and other dedicated cultures do not even permit inter-group equality between and among different cultures.[134] Kymlicka's liberalism cannot tolerate these forms of internal and external restrictions for all types of cultures.[135] Thus, Kymlicka's version of liberalism can explain and justify tolerating only those cultures that are sufficiently like liberal cultures because they embrace the deliberativist ideal.

Therefore, Kymlicka's theory is profoundly weak concerning the question of toleration. Here the danger exists that because Kymlicka's liberalism cannot explain or justify dedicated cultures, liberal values will be imposed upon them. Ironically, liberalism, which promised to be the great tolerator, might turn out to be illiberal regarding many of the worlds' oldest and most populous cultures. Chandran Kukathas accurately describes the case against Kymlicka.[136]

> The argument against Kymlicka is that his account of the place of cultural minorities seeks to entrench cultural rights on a basis which itself undermines many forms of cultural community, specifically those that fail in their practices to conform to liberal norms of tolerance and to honor the liberal ideal of autonomy. Cultural minorities are given protec-

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133. If the deliberative and dedicated cultural types exhaust the possible paradigms of cultural types, then they jointly define the range of cultures. Thus, a theory explaining the toleration of only one of these cultures fails to explain tolerating cultures generally and in particular will fail to explain tolerating many minority cultures.

134. Kymlicka distinguishes between "internal [cultural] restrictions" and "external [cultural] protections." Internal restrictions protect members of a cultural group from group decisions to limit its members' liberties in the name of cultural solidarity. External protections protect cultures from interference by other cultures or from the state. Kymlicka embraces external cultural protections while being skeptical of internal restrictions. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 7.

135. The problem here is that "giving minority groups greater power and resources so that they can protect themselves against external pressures will often give them greater de facto power to impose internal restrictions on their members." James Nickel, *Will Kymlicka, Multicultural Citizenship: A Liberal Theory of Minority Rights*, 93 J. PHIL. 480, 482 (1996) (book review).

136. Chandran Kukathas, *Are There Any Cultural Rights?*, 20 POL. THEORY 105, 123 (1992) (arguing for an individualistic conception of liberalism which protects minority cultures without creating "cultural rights").

tion—provided they mend their ways.[137]

Kukathas's challenge is on the mark. Liberals tend to endorse tolerating nonliberal cultures but only by denigrating their dedicated values. Toleration should be made of sterner stuff. It should enable us to respect, and even to appreciate, dedicated cultures as giving meaning to their members' lives as well as providing legitimate responses to the problems of living.[138] Instead, liberalism appears insensitive to the interests of dedicated cultures. Could liberals then contemplate coercing dedicated cultures, forcing them to become more deliberative?

B. *Should Liberalism be Imposed on Dedicated Cultures?*

Kymlicka's response to this charge of illiberality is that it conflates two questions: "(1) [W]hat sorts of minority claims are consistent with liberal principles? and (2) [S]hould liberals impose their views on minorities which do not accept some or all of these liberal principles?"[139] Thus, liberals can condemn some

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137. *Id.* Unfortunately, Kukathas's theory gets us no further than Kymlicka's. Throughout his article he seems to temper some of the illiberal consequences of his view with the exhortation that cultures or communities which act in an illiberal manner are not likely to persist, survive, or thrive. So, in his view, illiberalism will prove empirically improbable. However, what kind of liberal toleration is this? Instead of normatively condemning such cultures, he takes refuge in their empirical improbability. However, if empirical conditions exist which militate against their survival, wouldn't a resolute cultural rights position entail shoring up these communities by removing or reducing the empirical obstacles to their survival? In some cases the price might be too great from anyone's perspective. But taking refuge in empirical improbability does not seem compatible with Kukathas's claim of liberal toleration. Both Kukathas and Kymlicka are vulnerable to the charge that they seem "to grant cultural minorities too much recognition and to give them too little." *Id.*

138. This does not mean that all cultures are equally legitimate. Moreover, some cultures may be illegitimate.

139. KYMLICKA, MULTICULTURAL CITIZENSHIP *supra* note 17, at 164. Kymlicka is certainly correct that there are two questions here, but it is not obvious that these are independent conceptual inquiries as Kymlicka insists. *Id.* Living according to a political theory means acting on that theory or the imperatives the theory implies. Systematically acting contrary to the theory's implications casts doubt on whether you genuinely accept the theory. Our grounds for attributing a political theory to someone must include her willingness to act on that theory, and in the appropriate circumstances, her actually doing so. But more importantly, even if Kymlicka is correct in maintaining that the questions of *identifying* the implications of a theory and *imposing* that theory are conceptually distinct, it should matter a great deal what we count as identifying a defensible liberal theory. Knowing that it is difficult in practice to avoid the slide from a theory's implications to at least indirectly imposing these implications, the problem of liberal interference is a greater problem than Kymlicka admits. Appreciating the danger of this slide should motivate liberals to take another look, past Kymlicka's version of liberalism, to the possibility of a liberal theory that has none of these implications.

dedicated cultures for not being committed to the deliberativist ideal, yet nevertheless refrain from interfering in the lives of its members.

The problem with Kymlicka's distinction between recognizing anti-deliberativist principles and imposing deliberativist ideas is that it leaves the explanation and justification of this non-interference totally inexplicable on liberal grounds.[140] Kymlicka's goal is to provide a distinctly liberal theory of protecting minority cultural rights, and more generally, to explain and justify tolerating nonliberal cultures, even, presumably, ones imposing internal and external protections. Now, however, Kymlicka concedes that liberalism doesn't entail imposing liberal values on others.[141] However, what *liberal* reason is there for not doing so?[142] Kymlicka argues that liberal theory may entail the rejection of a particular nonliberal culture, yet liberals need not impose this conclusion through force or coercion.[143] But Kymlicka does not appear to realize that in this case the forbearance regarding nonliberal cultures appears to have no *liberal* explanation whatsoever.[144] Two reasons suggest why it is insufficient to argue that the liberal value of autonomy is obviously in conflict with coercion. First, if a culture is dedicated its members cannot be autonomous, though they might acquiesce to their cultural constraints. Permitting them to continue living nonautonomous lives does not further autonomy but only some other value. Second, if a culture is dedicated and its members or some significant number of its members do not acquiesce but

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140. No doubt what a political theory says does not always entail what actions should be taken in support of it. Still, liberals defining their theory in terms of tolerance should seek a version of liberal theory ranking tolerance higher than autonomy, and therefore a version that can explain and justify tolerance of minority cultural rights, *as a matter of theory*.

141. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 153-55.

142. Kymlicka does argue in favor of minority cultural rights in terms of equality, *id.* at 164-67, but this argument does not appeal to the freedom-culture connection. Moreover, the equality argument is mostly remedial because we have mistreated indigenous peoples, African-Americans, and women, among others. Providing special cultural and constitutional protections to these groups attempts to right earlier wrongs. Whether cultural rights based on equality should be permanent or ameliorative is a controversial question not discussed in this article.

143. *Id.* at 171.

144. Presumably, Kymlicka envisions something of the following. Liberal theory (T) rejects culture (C) as not satisfying the principles of liberalism. Therefore, liberals may not regard C as legitimate according to T. But T may also include theoretical resources stating that in these circumstances T counsels forbearance against C. Thus, T rejects the legitimacy of C, but T also implies tolerating C. If this is Kymlicka's argument, he needs to identify the theoretical resources in T warranting the liberal toleration of C.

are too weak to overcome their oppressors, how can autonomy explain non-coercion in such a case? It should be added that if liberalism includes such other basic values as tolerance, diversity, and equality, non-coercion cannot be justified by these values either. It is problematic to think that diversity justifies tolerating non-diversity, or that equality justifies tolerating inequality. And, of course, it is equally problematic to insist that tolerance justifies tolerating intolerance.

Kymlicka believes that *identifying* what a liberal theory entails, for instance, that some culture is violative of liberal principles, is different from *imposing* liberalism on the deviant culture.[145] But nothing in Kymlicka's liberalism explains this forbearance. The distinction that Kymlicka devises to defend against the charge that his theory endorses illiberally imposing one's liberal values on other cultures returns to haunt Kymlicka in the final evaluation of his theory. Alternatively stated, Kymlicka's use of this distinction to defend against the charge of illiberality backfires. He must now conclude that refraining from imposing liberal values on certain nonliberal cultures does not derive from (cannot be explained by) liberalism at all. If such a forbearance is justified, it must be justified in nonliberal terms.

Kymlicka may respond that this problem arises because liberalism includes two competing paradigms: autonomy and tolerance.[146] This response articulates the conflict between autonomy and tolerance since tolerating the intolerant, those who seek toleration from suppressing the autonomy of others, appears to be the price one pays for a liberalism containing autonomy and toleration as two irreducible values.

However, this response distorts the nature of liberalism. Autonomy is conceptually related to tolerance, since liberals value tolerance because it respects other people's autonomy. Even when liberals insist on tolerating illiberal behavior it is out of a concern with autonomy. The liberal hope is that tolerating illiberal cultures, while attempting to liberalize them, will bring about their metamorphosis into deliberative cultures. Yet, this shows that an important feature of liberalism is that toleration is a derivative value. There is no independent reason to tolerate an illiberal culture except the possibility of its becoming liberal. No other value can explain and justify a culture's worth except the possibility of it becoming a deliberative culture. Thus,

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145. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 171.

146. William Galston seems to think the tolerance or diversity element in liberalism is supreme. For my initial reaction to this view, see the present text and *supra* note 25.

liberals can tolerate illiberal cultures only if there is reason to believe that doing so will hasten to liberalize the culture.

Kymlicka contends that liberalism should not attempt to "prevent illiberal nations from maintaining their societal culture, but should promote the liberalization of these cultures."[147] This implies that there is an important distinction between rejecting the desirability or legitimacy of a culture and actively trying to subvert it. But what in liberal theory explains this distinction? If a culture is illiberal because it fails the deliberativist test, what other factor *prohibits* not subverting it? If an answer appeals to a non-deliberative factor, no alternative liberal basis of this prohibition is available. If it appeals to a deliberative factor, this factor must be identified.

Kymlicka believes that circumstances, not general theory, will dictate when liberal cultures should try to liberalize nonliberal cultures by force or persuasion.[148] For the most part, Kymlicka believes that, where possible, liberalism should seek the liberalization of a nonliberal culture through non-coercive persuasion.[149] But liberals cannot tolerate illiberal cultures for the purpose of toleration itself. A theory that grants toleration this basic, irreducible status is not a liberal theory at all.[150]

Liberalism's attempts, however, to explain and justify tolerating illiberal cultures is simultaneously too weak and too strong depending upon whether one emphasizes autonomy or tolerance as its central value. First, its attempt to justify is too weak because it fails to show why toleration follows from liberal theory itself. Why should liberal regimes refrain from force or coercion concerning illiberal cultures? Instead, why shouldn't liberalism condemn illiberal cultures in the most forceful manner available. What in liberal *theory* explains this non-

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147. KYMLICKA, MULTICULTURAL CITIZENSHIP, *supra* note 17, at 94-95.

148. *Id.* at 168.

149. *Id.*

150. The connection between liberalism and tolerance or autonomy and tolerance is more complex than is ordinarily thought. In fact, "it is not enough to say that liberals believe in toleration. The question is, what sort of toleration?" *Id.* at 158. Liberal toleration is a breed apart. It is a special sort of toleration "which involves freedom of individual conscience, not just collective worship." *Id.* Liberal toleration then respects the individual through and through. It is not a blind toleration. Rather, it is the toleration of individualistic dissent. In other words, "liberals have historically seen autonomy and tolerance as two sides of the same coin. What distinguishes *liberal* tolerance is precisely its commitment to autonomy—that is, the idea that individuals should be free to assess and potentially revise their existing ends . . . ." *Id.* (citation omitted). Liberal tolerance affirms cultural values based on the deliberativist attitude. Cultural values not based on the deliberativist attitude do not survive liberal examination. Liberal toleration is not toleration for toleration's sake. Rather, it is inextricably connected to deliberativism.

intervention? It is insufficient to respond that liberalism should oppose coercive intervention because coercion is incompatible with autonomy. Why should that matter when the society to be coerced denigrates autonomy? Why shouldn't autonomy be incompatible with coercion only when the society to be coerced is autonomy-based? A detailed analysis of autonomy, consent, and coercion is essential if Kymlicka is to answer these questions.

Second, liberalism's attempt to justify toleration is too strong because it fails to explain how toleration is compatible with non-coercive attempts to persuade the illiberal culture to liberalize. How does non-coercively inundating a culture with liberal propaganda (persuasion?) show respect and toleration of the culture? In both cases, liberalism seems unable to explain and justify its conduct toward dedicated cultures.

C. *Alternatives to Liberalism*

What are the alternatives?[151] Imagine an alternative position that appreciates and respects meaningful ways of life *per se*.[152] In this view, any viable way of life practiced successfully by a group of people should be tolerated. But what counts as "a viable way of life" or one that is "practiced successfully"? Without convincing answers to these questions, such a view is counter-intuitive. Perhaps, we can qualify this position with the proviso that individuals must consent to the meaningful way of life. We can then accept the view that any meaningful way of life is acceptable *per se*, despite its illiberality.[153] As long as the members of the culture consent to the dedicated structures, the culture should be tolerated.

But what of those members not consenting? Kukathas contends that his version of individualistic liberalism does not insist on autonomy, nor does it restrict what counts as human flourishing.[154] Instead "what matters most when assessing whether a way of life is legitimate is whether the individuals

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151. In Anglo-American culture, the alternatives are scarce since liberalism is broad enough to include both Rawlsian and Nozickian political theories. Fascism and Communism are possible, though undesirable, alternatives to liberalism, and of course a general political skepticism cannot be ruled out in advance. *See* Robert Justin Lipkin, *Beyond Skepticism, Foundationalism and the New Fuzziness*, 75 CORNELL L. REV. 811 (1990).

152. Lomasky's conception of project pursuer can possibly be a vehicle for articulating such a view. *See* LOMASKY, *supra* note 27.

153. We still need to explicate the notion of "meaningful" or any similar qualification.

154. Kukathas, *supra* note 136, at 124.

taking part in it are prepared to acquiesce."[155] But what counts as acquiescence?[156] Can a woman acquiesce to gender inequality? What about slavery? Torture? Moreover, who decides whether someone acquiesces? Members of the culture? Liberals?[157] Acquiescence does not appear to be a strong enough notion to distinguish between justifiable and unjustifiable acceptance of a cultural regime. Without such a distinction, barbarous cultures may be justified along with non-barbarous ones.

Liberalism appears to be unable to explain tolerating dedicated cultures. Nevertheless, there remains the intuition that no reason exists *not* to tolerate benign dedicated cultures even when such cultures, as John Tomasi argues, "are importantly outside of liberalism."[158] According to this argument, special protections for such dedicated paradigms, as contained in aboriginal cultures, are more than just protections from liberal intrusions. More importantly, "the very demand for them also helps *define* these groups in terms of their relation to liberal society."[159] Tomasi argues that "[t]here are nonliberal forms of respect for individuals that even liberals might use as justification for their actions and policies."[160] One example is "respect for individuals in virtue of the importance to each of the attachments he has to his own cultural community," even when the community is outside liberalism.[161] In this view, we can admire such individuals, but more importantly, "we can recognize that the traditions of those groups define them as being outside of liberalism."[162] Paradoxically, Tomasi insists that "[w]e best respect the group members by not insisting on respecting them as individual holders of the full set of liberal rights."[163] Tomasi goes on to conclude that even if the idea of cultural rights cannot be based on a distinctively liberal conception of respect, as Kym-

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155. *Id.* Kukathas's theory endorses the individual's right to leave a society when she disapproves of its culture.

156. Kukathas never explains why "acquiescence" should render a particular way of life legitimate. Presumably, for Kukathas, "acquiescing" still includes an element of choice. However, this term itself is too weak to generate liberal choice. One often *acquiesces* to a proposal when one is not fully free to reject it.

157. Resting a theory of minority cultural rights on a consent-based notion appears hopeless given the known problems associated with consent theory in political philosophy. In this regard, Kukathas's position seems no more tenable than Kymlicka's, though for different reasons.

158. Tomasi, *supra* note 17, at 600.

159. *Id.*

160. *Id.* at 602-03.

161. *Id.* at 603.

162. *Id.*

163. *Id.*

licka desires, it can nevertheless be based "on a notion of respect that might properly be recognized by persons, and political orders, that are liberal."[164]

Tomasi's argument is both intriguing and bewildering. He never explains, either in liberal or nonliberal terms, what it means to characterize some cultures as being "outside of liberalism." Perhaps he means simply that some cultures are dedicated, and therefore, deliberative paradigms and concepts should not be applied to them. However, he never explains in liberal terms why such cultures should be respected. Tomasi wants simultaneously to characterize this respect as " 'liberal respect' " while conceding that it cannot be "founded on a peculiarly liberal respect for persons."[165] Tomasi must then explicate this notion of nonliberal respect for persons. Why should attachments to one's community in themselves be regarded as admirable, without specifying the salient moral qualities of the communities? History reveals how such loyalty can be pernicious. Liberals cannot explain why respecting such cultures is desirable. Finally, even if Tomasi's position is that helping such cultures costs us little and benefits them greatly, this cannot explain why liberals should *respect* the members of these cultures because they exhibit cultural loyalty.[166] It just explains, at best, why liberals have little or no reason to interfere with these cultures.

Liberals must face the possibility that no plausible version of liberalism can explain and justify the minority cultural rights thesis. Instead, if minority cultural rights are desirable, we must look elsewhere for their explanation. An eclectic, pragmatist theory that ranks important moral and political values in addition to autonomy may be a more promising road to explore. Such a theory might combine key features of liberal *and* communitarian political theory. In such a theory, we might discover why respecting and tolerating dedicated cultures is an important moral imperative despite not following from a deliberativist paradigm.

At this point such a theory is unavailable. However, the distinction between deliberative and dedicated cultures assists us in the following ways. First, it helps define the problem of minority cultural rights. Second, it helps us to criticize liberal theories in terms of an inchoate political standard that only future

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164. *Id.*

165. *Id.* at 603.

166. *Id.* at 590-91. As Tomasi notes, tolerating dedicated cultures imposes a cost not only on members of the dominant culture but also on members of the minority culture.

research can hope to formulate. Third, it points out the problem liberal theorists face of never confronting the really difficult task of explaining and justifying cultures which denigrate autonomy and rationality and valorize dedicated traditions instead.[167]

However, the distinction between deliberative and dedicated cultures must face the following challenge. Do these different cultural types have the resources to embrace even a tentative and piecemeal rapprochement without subverting the distinction altogether? Perhaps, we can begin to meet this challenge by focusing the question away from particular conflicts regarding deliberative and dedicated cultures and toward the following question that each culture must address. What is the appropriate response of a deliberative (dedicated) culture when it recognizes that the world contains conscientious dedicated (deliberative) cultures that will not go away peacefully? Can these cultural types accommodate each other in significant ways without subverting their own cultural perspectives? Peace and accommodation are noble goals. The next generation must seek these goals through a more sympathetic appreciation of the other's differences. Perhaps, there are resources deep within the best of both deliberative and dedicated ideals which will enable the next generation to meet this challenge.

CONCLUSION

This article argues against a distinctively liberal theory of minority cultural rights that satisfies both the tenets of liberal political theory and the claims of deliberative cultures and dedicated cultures. It maintains that if we stick to the most plausible forms of liberalism, we should protect only deliberative minority cultures on liberal grounds. If we insist on explaining and justifying the toleration of dedicated cultures, we go beyond the scope of liberalism. We are faced with this choice: either we sustain liberalism at the cost of the minority cultural rights thesis, or we satisfy the call for minority rights for dedicated minority cultures by abandoning or radically rethinking our present conceptions of liberalism.

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167. This criticism can be lodged against John Rawls in both *Political Liberalism* and *Law of Peoples*. *See* JOHN RAWLS, POLITICAL LIBERALISM (1993); Rawls, *supra* note 23.