

INDIVIDUAL AUTONOMY IN
THE MULTICULTURAL DEBATE

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ABSTRACT

In this thesis, I claim that the Liberal Multiculturalist arguments for group rights, which would enable group autonomy, are problematic. Such claims are instrumentally justified by the value that groups have for their individual members. I claim that group autonomy and individual autonomy are incompatible. Concern for the freedom of individuals requires that there is a common Liberal legal framework covering all of the cultural groups that may exist within a state. I will argue for such a system, claiming that it must be substantive in scope, while also outlining how decisions on the common rules should be fairly deliberated before being resolved. Furthermore, I will defend my position from both Liberal Multiculturalist and Strong Multiculturalist objections.

Introduction:

This thesis will argue that there is a conflict between claims for group rights to cultural autonomy, and guaranteeing individual equality and substantively ensuring the conditions of individual autonomy. The right of exit is a necessary, but insufficient, component of autonomy. As an aspect of Liberal tolerance, individual autonomy requires that persons endorse the options that they find themselves undertaking. It also requires that they have the ability to rationally revise, dissent from, or exit, and all are related to each other. Rational revision involves the possibility, for an individual, to revise their commitment to the choices that they have made from the range of options available to them. Dissent involves the questioning of limitations on those options available, or the creation of new possibilities for options. Exit involves the rejection of the association with the group and its structure of options that it makes available and meaningful to those who are members. Furthermore, I will argue that the particular group that an individual is a member of *does not* define the range of options that are available to them. There are multiple sources of meaningful cultural materials. I will claim that multiculturalist arguments for group autonomy are detrimental to individual autonomy and, therefore, should not be accepted out of equal concern for individuals.

The structure of the thesis is as follows. In the first chapter, I will introduce two Multiculturalist approaches that have been offered in response to the traditional Procedural Liberal response to pluralism. I will only outline the Communitarian account, intending to return to it in the next chapter. The majority of the chapter will offer a detailed account of Kymlicka's Liberal Multiculturalism. I will then refer back to this throughout the remainder of the thesis. In the second chapter, I introduce two forms of justification for group-rights, the first is the 'collective' conception, and the second is the 'corporate' conception. I conclude that the former is the only one that can also possibly allow for coexistence with common Liberal rights, including the two necessary conditions for autonomy required by Kymlicka. In the third chapter, I advance what I have called the Feminist objection to multiculturalism. These are concerns about the inequality of, and restrictions on, women that may be compounded by group rights. Concern for the first requires the freedom to lead lives from the inside according to the values that they *endorse*, without fear of punishment or discrimination. This justifies the rights to privacy and security of the person. Concern for the second requires the freedom to rationally assess our conceptions of the good in the light of new information or experiences and to *revise* them if they are not worthy of our continued allegiance. This justifies the rights to expression and freedom of association. I will then offer Kymlicka's response to such claims and outline problems with the distinction that he relies on. In the fourth chapter, I claim that the aspect of Kymlicka's theory that is commitment to individual equality and autonomy implies a

support for a common legal framework. This supports the legitimacy of state intervention into the group to substantively ensure access to the conditions required for individual revision of their commitments, including exit into the wider society. In the fifth chapter, I will offer an account of what is entailed in the development of a common framework. This will involve a process of deliberation across groups. I will then defend a substantive role for the state in ensuring the conditions required for individual autonomy. In the final Chapter, I offer an argument that rejects Kymlicka's account of societal culture. Rather than being defined by a single cultural structure, I claim that an individual's context of meaning and choice is the product of cultural fragments from multiple sources.

Chapter 1:

Two Theories of Multiculturalism

In this chapter I will introduce two Multiculturalist approaches that have been offered in response to the traditional Procedural Liberal response to pluralism. I will only outline the Communitarian account, intending to return to it in the next chapter. The majority of the chapter will offer a detailed account of Kymlicka's Liberal Multiculturalism. I will then refer back to this throughout the remainder of the thesis.

Part 1) Outline: Communitarian/Strong Multicultural Position

In order to give an idea of the justification for the Communitarian position, and its opposition to Liberalism, I will begin by giving a basic outline of what Habermas refers to as the 'metaphysical assumptions' of Communitarian thinking. This is primarily concerned with the belief in the priority of the 'good' over the 'right' and the source of the good is derived from community. It is believed that a philosophy that prioritises the 'right' and is concerned with ensuring justice, places too much emphasis on the rights claims of individuals and leaves little room for, or neglects, the role and importance of community. The basic outline of the argument is that 1) Community provides meaningful goods to individuals, both in terms of collective goods that cannot be achieved individually and providing individuals with a common ordering of values and the content for substantive goals in life; it may even dictate to individuals their roles in the community. Community is prior to the individual as it gives them their personal content 2) Individual well-being depends on the content of these goods; this means that they should be 'embedded' in a community to receive and contribute to the goods that it provides. 3) A Procedural Liberal account claims to be neutral between conceptions of the good. Such a response fails to recognise the necessary roles played by community, in terms of providing collective goods and individual well-being. The community must have the ability to promote its goods and pursue collective interests. The common individual rights provided under a neutral account can undermine these communal goods. The community must have the ability to define individual members' entitlements.

Theories that allow for an individual's rights to 'trump' all other claims harm the interests of the groups in a society. They do not provide a system for prioritising the values that an individual may have, only a system for adjudicating between members claims and providing those individuals with equal rights, resources and entitlements. This is seen as being 'atomistic' because of its primary

concern for ensuring members' right to goods, which, in turn, means that it is biased against those goods that are irreducibly collective in nature. Communitarians believe this to be a flawed account of how people actually are; the 'atomistic' or Millian view does not accurately explain the situation of individuals who are 'situated' or 'embedded' within a social context that is prior to them. They claim that an individual is 'constituted' by the community or culture to which they belong and it is this that provides them with an ordering of values, meanings and concepts of the good. The systems of Procedural Liberalism ignore this fact by focusing solely on the rights and entitlements of individuals. The justification cited by Liberals in support of giving a priority to the 'right' is to ensure a neutral and unbiased context in which individuals are free to pursue their own conceptions of the good (so long as they do not harm others). Communitarians claim that such an account ignores how individuals acquire their values and conceptions of the good, and even their perception of themselves as individuals. The Liberal account is flawed because, by not taking into account the cultural context of a person, it conceives of them as abstract rights bearing individuals. This is because the set of rights that are allocated are negative rights, not positive rights that are reflective of the good. Communitarians believe Liberal accounts conceive individuals as 'empty' or rootless and that they disregard the values and attachments that real people have because of their situation in communities. Negative rights are meaningless when a person is conceived in this empty and abstract way, because their motivating values cannot be acknowledged.

The use of negative rights, in an attempt to preserve neutrality, means that there cannot be a system that recognises "... qualitative differences in desires of purposes."¹ There cannot be a rank-ordering of goods that we all have, that is, there is no way to distinguish between the deeper, or higher-order, goods and desires, on the one hand, and the shallow or unimportant on the other. It is the context of community that provides us with these and the formal theory of liberalism cannot reflect the commonly held assumption that supports the real existence of this distinction in members' lives. Communitarians would argue that any rights systems should combine both negative and positive rights that reflect the values of the community. Where there is a plurality of communities, a system of group-rights would also be needed to maintain the integrity of each community and enable them to utilise a system of positive rights reflective of *their* values, goods and requirements of justice (that is, if they accept the validity of individually held rights and/or the existence of other communities within the society).

Liberal reliance on such an empty account of persons means that they are unable to prioritise or endorse certain values or good over other, less meaningful ones (apart for abstract universal ones). But, according to the Communitarians, this is not what they actually do; abstract beliefs about values and goods (such as individual rights and resources) need to be actuated in a political society. Liberals

¹ Abbey (2000:111)

actually *do* this in a very detailed way, that is reflective of the values of that society, but by restricting rights to negative liberties, they are not entitled to. They are utilising the systems of values and goods that stem from the culture and history of the West. By doing this and claiming procedural neutrality, the cultural particular is masquerading as the universal. This is not neutral, either in justification or effect; it prioritises the specificities of Western Liberal culture and prioritises the status of the individual over the various communities that still exist in society. This is bad because of the role that communities play in providing collective goods, and as system for providing meaning to, and ordering of, those goods to their members. Certain goods may only be achieved collectively, these are therefore not possible, or at least at a distinct disadvantage, within a system governed by a philosophy that only recognises rights that are reducible to those rights that are able to be possessed by each individual. Therefore, those communities that place great importance on achieving goods of an irreducibly collective nature are always going to be at a disadvantage in a Liberal system. The liberal account rests on false neutrality; it is unable to account for the values that a person possesses and does not reflect the collective good that communities may attempt to realise. This latter point means that harm is done to the members of that community as important communal goods are restricted, or withheld, from them as a result of Liberalism's failure to recognise communal rights.

Communitarians believe that belonging and contributing to a community is a good thing, in fact, it may be the most important thing. Some believe, such as the radical Communitarian, that community is the source of "... a teleological political morality in which a shared conception of the social good is the fundamental end ..."², while others, such as the moderates, just believe it to be an important part of an individual's life that needs to be taken into account by political philosophy. The primary difference between these two positions, according to Buchanan, is that the former "... rejects individual civil and political rights out of hand ..." while the latter "... acknowledges individual civil and political rights but denies that they have the sort of priority that the liberal attributes to them."³ Both positions regard community as the source of an individual's values and morality but where they may differ is to the extent of the rigidity of that value system. They may conflict over whether or not absolute priority should be given to the good of the community over that of the individual member, to what extent the system should dictate the social role and priorities of the individual and to what status should individual rights have within each of the communities value systems. They both believe in the pursuit of the collective goal of goods that are irreducibly collective in nature and, as such, a certain degree of duty, if not absolute, is required of the membership in achieving this. That is, there should be either a *balancing* of the interests of individual members and the group, or the system of individual rights be *replaced* by a system of communally defined ordering of values and goods (and roles) that will apply to all of the membership. Both believe in the 'good' of community, but disagree on the

² Buchanan (1989: 856)

³ Buchanan (1989: 855)

status, or the independent existence, of the ‘right’ outside of the communal system of value. Either way, the goal is to achieve the collective goods as conceived by that community, one of which, of course, would be the continued existence and flourishing of that community.

These collective goods cannot be achieved individually. This is because they are *irreducibly social*, defined by Ruth Abbey as “... a category of goods that cannot be disaggregated or decomposed into individual goods but that must be shared by two or more individuals ...”⁴ by their nature they require the support of the whole of the community. This means that certain requirements are made of members, but, according to the Communitarians, the goods achieved are more than the sum of the membership. The community is morally significant, in and of itself, and is distinct from its membership in deserving separate moral status. It has its own *intrinsic* value as a source of individual and collective goods. Charles Taylor “... we can see two ways of defining irreducibly common goods ...” the first of these concern “... the goods of a culture that makes conceivable actions, feelings, [and] values ways of life...”⁵ This is a system of meaning (many refer to it as a ‘horizon’) providing the moral compass for its particular members and, as such, each of the particular communities within a society provides its own distinct system. Individuals have an obligation to support the integrity and wellbeing of their system of meaning for the overall good. The second category of irreducibly social (or common) goods is “... goods that essentially incorporate common understandings of their value.”⁶ Taylor claims that both can be seen in “... the culture of Quebec, and that means in practice the French language, at least as a common good in sense 1, the presupposition of the life they value; and sometimes as a good in sense 2 as well.”⁷ Taylor believes that such goods are ‘not susceptible of atomist analysis.’

I use the term communities in the plural because this is the point at which the Communitarian position links with that of the Strong Multiculturalist (or even Illiberal Nationalist, in the case of the radical Communitarian), and where the perceived non-neutrality of the Liberal system is shown to be particularly important to their argument. Many Communitarians see communities as being instanced in cultural groups, as they are believed to be relatively distinct. They argue that because ethnic groups still possess a communal way of life, this is worthy of protection by the state. This should be given in the form of group-rights that will promote the group identity rather than individuals. They claim that the means of transmission for the distinct system of ordered values, beliefs and goods comes primarily from the shared language, as well as a shared history of other traditional practices. This means that there are many distinct communities in modern societies and I will conflate the Communitarians and Strong Multiculturalists positions into an account that stresses their similarities, rather than

⁴ Abbey (2000:118)

⁵ Taylor (1995:140)

⁶ Taylor (1995:140),

⁷ Taylor (1995:140).

concentrating on their differences⁸. I do not believe that there are many, just differing areas of emphasis. Communitarians tend to emphasise the common internal structure of the group and make claims about membership loyalty, while Strong Multiculturalists tend to emphasise the boundaries of the group and make claims about ‘self-government’. The latter approach tends to distinguish between the different groups that exist within the broad political organization of the state, and therefore, emphasise their distinctness from others, rather than claiming a shared commonality across the whole. Strong Multiculturalism is basically the Communitarian recognition that there exists a greater degree of plurality within a state for community to be instanced at a national level of politics; consequently, strongly protective group-rights are needed to protect community at a sub-state level.

Strong Multiculturalism claims that distinct cultural communities are exposed to an unfair disadvantage compared to the majority, who are social descendents of the Western Liberal tradition. Paul Kelly offers an outline of Parekh’s claims, Classical Liberalism’s “... conception of individual human nature and flourishing [...] is closely tied to the theories of colonialism and the civilizing mission of liberal European Enlightenment.” These certain historical biases, for Parekh, go “... to the heart of the liberal project, which cannot be separated so easily from its history.”⁹ Given that the Liberal state is not neutral because of its biases towards individuals and their rights, and against those whose lives are directed towards, or dictated by, contributing to collective ends of the community. This latter group must be compensated; the Strong Multiculturalist claims that each of these cultural groups should be given the rights that it needs to ensure, maintain and develop its own distinct system of meaning. Group-rights must be given to the group in order to support and protect it as a community, as such, the individual member’s rights and entitlements (if any *rights* are given) will be defined (at least partially) by the group. This Strong Multicultural/Communitarian account is the first of the Multicultural responses to the Procedural Liberal account; it makes the general claim that some individual freedoms, if given rights status protection, can be detrimental to the group’s interests; therefore group-rights are needed to protect these. Individual rights either have to be balanced against, or replaced with group-rights that reflect and protect the groups separate moral status as provider individual and collective goods. I will return to this argument at the beginning of Chapter 2.

Part 2) Liberal Multiculturalism

Will Kymlicka believes the above assessment is misguided and that it has had a ‘disastrous’ effect on the debate on claims over group-rights. He claims that it was believed that group-rights would logically be to the detriment of individual autonomy. By this conception, the choice that members of ethnocultural groups face is between full and equal participation in Western Liberal

⁸ It is arguable that there is no difference in terminology, as illustrated in reference to the views of Charles Taylor, Jürgen Habermas (2005) refers to these as an example of “strong” multiculturalism, while Kymlicka (Raz, 2003) refers to it as ‘communitarian reasoning’.

⁹ Kelly (2003: 97)

society as individuals or membership in a group whose communal life is protected from the eroding effects of liberal autonomy. Contrary to this, he believes that some group-rights are *not* mutually exclusive to individual rights. He regards the communitarian critiques of liberalism as implausible¹⁰ and that liberalism is not as ‘atomistic’ as it is portrayed. Liberalism, he argues, “... offers a very plausible and compelling account of community and culture”¹¹ and that evidence points to the view that “...most ethnocultural groups within Western democracies do not want to be protected from the forces of modernity in liberal societies...”¹² They do, however, want to create a ‘distinct society’ because of the vital importance it has in their lives, but “... there are often no statistical differences between national minorities and majorities in their adherence to liberal principles.”¹³ He does not believe that liberalism precludes the granting of permanent rights on a group basis on the grounds that it is automatically detrimental to individual autonomy. There is possible scope for minority rights within a liberal theory and that such rights may even be necessary for the promotion of individual freedom. As a result, he has spent the last two decades advocating group-specific rights for cultural minorities as a requirement of liberal justice. His conception of liberalism argues for ensuring the suitable conditions necessary for individual autonomy and such rights are intended to help in the achievement of this. Linked to this is a belief that the world is divided into cultural communities, which may or may not reflect the political divisions, and that some rights should be reflective of these cultural divisions. A common national set of rights and entitlements is not enough; the different minority cultural communities should also possess “... something more than, or other than, the common rights of citizenship.”¹⁴

2a) *National/Immigrant Distinction and Types of Group-Rights:*

Kymlicka highlights a number of categories of groups that exist as minorities (or even majorities) within states and which may make demands for some types of group differentiated rights. These are national, immigrant, religious and what Kymlicka terms ‘*sui generis*’, a miscellaneous category that encompasses groups such as African Americans and Roma. The general reason for these rights claims is that they would help to mitigate some of the effects of inequality that exist between that minority group and the larger state. The first type generally wants rights that would contribute to some degree of group autonomy, while the second wants rights that would help to contribute to successful and fair integration. The latter may want some combination of national ‘self-government’ and immigrant ‘integration’ models, but I will not discuss these as it is the first two that provide the distinction that helps to clarify the general nature of the claims made by minority groups¹⁵. That is,

¹⁰ Kymlicka (1989: 172)

¹¹ Kymlicka (1989: 253)

¹² Kymlicka (2001: 20)

¹³ Kymlicka (2001: 20)

¹⁴ Kymlicka (1996: 23)

¹⁵ Kymlicka and Norman (2000: 24) Kymlicka has responded to criticism citing examples (African-Americans, Roma, illegal immigrants, etc.) that do not fit within his two categories by claiming that other difficult cases are a product of continuing injustice, that his theories categories “... *indirectly* helps identify solutions for these difficult cases (emphasis

national and *immigrant* groups, and all states have examples of one or both these. They have the former because they have incorporated previously self-governing, territorially concentrated cultures into the larger state, or they have the latter because they have cultural diversity arising from individual or familial immigration.

Kymlicka refers to a classification of cultural rights and accommodations developed by Jacob Levy¹⁶ in order to distinguish between the differing demands of national and immigrant minorities. National minorities may want rights that tend to support a degree of group autonomy:

1. Self-Government for national minorities and indigenous communities, e.g. secession (Slovenia) or federal unit (Catalonia).
2. External rules restricting non-members' liberty in order to protect members' culture, e.g. Quebec/ restrictions on English language, Indians/ restrictions on local whites voting.
3. Incorporation and enforcement of traditional or religious legal codes within the dominant legal system, e.g. Aboriginal land rights, traditional or group-specific family law.

Immigrant groups will want rights that help to support a more successful and fair integration into the dominant culture, such as:

4. Assistance to do those things that the majority can do unassisted, e.g. multilingual ballots, affirmative action, funding ethnic associations.

There are also other categories of rights that may be claimed (some controversially) both by national and immigrant groups, as well the other two categories, religious and *sui generis*.

5. Exemptions from laws which penalize or burden cultural practices, e.g. Sikhs/ motorcycle helmet laws, Indians/peyote, indigenous peoples/hunting laws, Amish/ schooling.
6. Internal rules for members' conduct enforced by ostracism and excommunication, e.g. Mennonite shunning, disowning children who marry outside the group.
7. Representation of minorities in government bodies, guaranteed or facilitated, e.g. Maori voting roll for Parliament, U.S black-majority congressional districts.
8. Symbolic recognition of the worth, status, or existence of various groups within the larger state community, e.g. name of polity, official name of ethnic groups, national holidays, teaching of history, official apologies.¹⁷

original)...” Kymlicka (2001:58), and claims “... I have concentrated on these two cases because they are the most common, the most successful, and the most relevant for future-oriented decisions.” Kymlicka (2001:59) He rejects the view that, rather than two distinct categories, there exist a continuum of types of rights claims, this is because he believes that this could result in a ‘slippery slope’ situation involving many types of immigrant groups claiming rights of self-government (and, alternatively, requirement of integration for national minorities). I regard the situation as being less clear-cut than Kymlicka claims and will support and elaborate this claim in the following chapters.

¹⁶ Levy (2000: 127)

¹⁷ Levy (2000: 25-9)

National groups "... tend to be historical communities, more or less institutionally complete, occupying a given territory or homeland, and sharing a distinct language and culture."¹⁸ There are two sub-categories, 'stateless nations' (e.g. Scots) and 'indigenous peoples' (e.g. Maori). The former usually form a majority in a particular area and have been incorporated into a state through conquest, annexation, or through (in Kymlicka's terms 'more or less') voluntary agreement. The latter tend to have been "... overrun by settlers and then forcibly, or through treaties, incorporated into states run by outsiders"¹⁹; as a result, they may or may not form a majority in a particular area. Both sub-categories attempt to maintain their own distinct *societal culture* (I will return to this in the next section) and resist assimilation into the dominant culture. In order to achieve this they will make rights claims for "... self-government powers, which enable them to live and work in their own educational, economic and political institutions, operating in their own language."²⁰ These are intended to ensure "... some form of political autonomy or territorial jurisdiction, so as to ensure the full and free development of their culture and the best interests of their people."²¹ The justificatory bases for the nature of these types of claims are a) historical, involuntary incorporation and b) current aspirations for group autonomy. Rights of the type 1-3 in particular can be seen to be supportive of such claims for group autonomy.

Immigrant groups are defined as individuals who "... leave their original homeland and emigrate to another society ..."²² They do not tend to attempt to completely reproduce their original societal culture within their new country, as they are not in a position to compete with the dominant societal culture, but do try to maintain many aspects of it. These groups fall into three sub-categories: those with rights of citizenship, who are expected to integrate, those without rights of citizenship, who may be deported, and refugees, who may intend to return home, but are expected to attempt partial integration while in the foreign country. Of these, Kymlicka's primary concern is with the first, which he has also referred to as 'legal/naturalized immigrants'. This group (hence shortened to simply 'immigrants') will make rights claims, the intent of which are to "...help ethnic groups and religious minorities express their cultural particularity and pride without it hampering their success in the economic and political institutions of the dominant society."²³ Though they are encouraged to participate in the "... common educational, economic, political, and legal institutions which operate in the dominant language" they are also "... encouraged to maintain some of their ethnocultural practices and identities."²⁴ The justificatory bases for the nature of these types of claims are a) voluntary emigration and b) group aspirations for fairer terms of integration. Along with type 4 rights,

¹⁸ Kymlicka and Norman (2000: 19)

¹⁹ Kymlicka and Norman (2000: 20)

²⁰ Kymlicka (2001: 51)

²¹ Kymlicka (1995: 27)

²² Kymlicka and Norman (2000: 20)

²³ Kymlicka (1995: 31)

²⁴ Kymlicka (2001:51)

type 5 rights are particularly helpful in enabling immigrant groups to achieve fairer integration, enabling "... the maintenance of these practices even as they integrate into common institutions."²⁵

2b) Internal Restrictions/External Protections Distinction:

Kymlicka is a liberal and believes that the above rights will increase the amount of personal freedom, and are justified on these grounds. He opposes some group-rights that would enable internal restrictions of members because "... liberals can only endorse minority rights in so far as they are consistent with respect for the freedom or autonomy of individuals"²⁶. Kymlicka states that there are two types of claims for group-differentiated rights that can be made by the group; those that are 'against its own members', and those that are 'against the larger society'. That is, he distinguishes between the different effects of 'group-differentiated rights', those that provide *external* protection, which are allowed, and those that provide *internal* control, which are not. Certain internal restrictions, he concedes, "...raise the danger of internal oppression"²⁷ but can be used by the group for positive and negative purposes; used in the former sense, individuals can be required to vote, pay tax and undertake jury service for the public good of the group. Used in the latter sense, restrictive rights may be used to "... compel people to attend a particular church or to follow traditional gender roles."²⁸ Kymlicka claims that rights of type 6 "... would usually be clearly unjust if imposed by the state."²⁹ They may occur informally and this may have a "... significant impact on the freedom and well-being of group members". If this is the case it "... may therefore be necessary for the state to intervene to protect vulnerable members of groups from particularly oppressive internal rules."³⁰ Despite this, Kymlicka believes that such oppressive practices are not the 'logical extension' of these rights. He believes that public policy can quite consistently prohibit illiberal group restrictions while endorsing liberal restrictions and some forms of external protections that intend to put "... various groups on a more equal footing, by reducing the extent to which the smaller group is vulnerable to the larger."³¹ Some can protect national minorities through devolved powers "... so that a national minority cannot be outvoted or outbid by the majority on decisions that are of particular importance to their culture ..."³², others can protect immigrant minorities' "... specific religious and cultural practices which might not be adequately supported through the market ... or which are disadvantaged ... by existing legislation ..." Both types of minorities can receive protection through "... group representation rights within the political institutions of the larger society ...[as these] make it less likely that ... [they] will

²⁵ Kymlicka (2001:51)

²⁶ Kymlicka (1995:75)

²⁷ Kymlicka (1995: 36)

²⁸ Kymlicka (1995: 36)

²⁹ Kymlicka and Norman (2000: 27)

³⁰ Kymlicka and Norman (2000: 27-8)

³¹ Kymlicka and Norman (2000: 36-7)

³² Kymlicka and Norman (2000: 37-8)

be ignored on decisions that are made on a country-wide basis.”³³ He claims that external protections intended to promote equality between groups can coexist with supports for individual equality within groups.

Kymlicka argues that group-differentiated rights do not have to be automatically to the detriment of the individual; they may be completely compatible. Kymlicka points out that many of these rights are actually exercised by the individual; they may be granted to the group as a whole or members of it. The real concern is not the primacy of the individual or the community, but the requirement for justice. Each right, be it exercised by group or individual, must be evaluated in regard to this end. In order to discern this, Kymlicka offers a complex account of the relationship between culture and freedom; as a consequence, he believes that it is possible to have group-rights that will enhance autonomy, while disallowing those that would restrict this. That is to say, there should be no *necessary* connection between a group right and loss of some individual autonomy; the two can sometimes be complementary. In fact, he wishes to claim that “... freedom of choice has certain cultural preconditions ...” and “... that issues of cultural membership must be incorporated into liberal principles ...”³⁴ in the form of group-rights.

2c) *Liberal Tolerance:*

Kymlicka’s argument for justifying *liberal* group-rights begins with an affirmation of the important role played by individual ‘civil and political’ rights that make up the ‘common rights of citizenship’:

“It is impossible to overstate the importance of freedom of association, religion, speech, mobility, and political organization for protecting group difference. These rights enable individuals to form and maintain the various groups and associations which constitute civil society ...”³⁵

He goes on to say, “Indeed, the most basic liberal right – freedom of conscience – is primarily valuable for the protection it gives to intrinsically social ... activities.”³⁶ But for Kymlicka, this is freedom of *individual* conscience, which is guaranteed by liberal tolerance. He is critical of communitarian accounts that object to the individual basis of rights, “... this criticism is profoundly mistaken, ... individual rights can be and are typically used to sustain a wide range of social relationships.”³⁷ His liberal account of protection for individual conscience differs from the communitarian accounts of tolerance which restricts tolerance solely to *groups*.

³³ Kymlicka and Norman (2000: 37)

³⁴ Kymlicka (1995: 76)

³⁵ Kymlicka (1995: 26)

³⁶ Kymlicka (1995: 26)

³⁷ Kymlicka (1995: 26)

“Liberal tolerance protects the right of individuals to dissent from their group, as well as the group not to be persecuted by the state. It limits the power of the illiberal groups to restrict the liberty of their own members, as well as the power of illiberal states to restrict the liberty of collective worship.”³⁸

He goes on to say “... Liberals have historically seen autonomy and tolerance as two sides of the same coin. What distinguishes *liberal* tolerance is precisely its commitment to autonomy – i.e. the idea that individuals should be free to rationally assess and potentially revise their existing ends (emphasis original).”³⁹ Respect of individual conscience requires individual autonomy, making it a precondition for the most basic right. From this liberal concern for individual rights and the importance of autonomy, Kymlicka develops an argument for group-rights. Two conditions provide the minimum requirements for individual autonomy, 1) to be able to make important choices about how you live your life and 2) to be able to revise those choices. These are two important aspects of individual freedom that I will return to throughout this thesis.

2d) *Endorsement constraint:*

The *first* of these conditions is the ability to ‘live life from the inside’. We cannot just lead lives in accordance with the shared ends of the particular community that we belong to or follow the instructions of others when our conscience does not dictate. This is Dworkin’s ‘endorsement constraint’, which claims that good lives cannot be led without the endorsement of the individual. We must be able to live our lives “... in accordance with our beliefs about what gives value to life”⁴⁰ and therefore, must have the resources and liberties to do this, “... ‘no component contributes to the value of life without endorsement ... it is implausible to think that someone can lead a better life against the grain of his profound ethical convictions than at peace with them.’”⁴¹ We have to be able to choose our own plan of life and act according to it; our freedom of action must not be too strongly limited by paternalistic restrictions. The state must be neutral and broadly *tolerant* of the choices that we make because they may be deeply important to the person; to force them to do otherwise would remove the value from the choice that they were required to accept. This rejects ‘strong paternalism’ and manipulation in favour of tolerance.

2e) *Rational Revision:*

The *second* of the conditions referred to is the individual need for the possibility of the rational revision of beliefs in order to have self-respect; “... freedom of choice is not a one-shot affair

³⁸ Kymlicka (2002: 231)

³⁹ Mendus (1989: 56) in Kymlicka (2002: 231-2)

⁴⁰ Kymlicka (1995:81)

⁴¹ Dworkin (1989: 486) in Kymlicka (1995:81)

...earlier choices sometimes need to be revisited.”⁴² We have an essential interest in leading a good life and this is different from leading a life that we currently *believe* to be good. It is not just about the success of particular actions, but also the value of the chosen pursuit; it is important to realise that our values could be mistaken. Raz and Rawls argue that no one would wish to lead a life that was based on false beliefs; education and freedom of expression are needed in order for individuals to “... have the conditions necessary to acquire an awareness of different views about the good life, and an ability to examine these views intelligently”⁴³. Through both education and free speech, we are exposed to different conceptions of the good, our cultural heritage and the wealth of knowledge that has been accrued. This is in order for us to be able to rationally “... assess our conceptions of the good in the light of new information or experiences, and ... revise them if they are not worthy of our continued allegiance.”⁴⁴ Kymlicka appeals to Rawls and Dworkin in support of this argument:

“... individuals ‘do not view themselves as inevitably tied to the pursuit of the particular conception of the good and its final ends which they espouse at any given time’. Instead, they are ‘capable of revising and changing this conception’. They can ‘stand back’ from their current ends to ‘survey and assess’ their worthiness (Rawls 1980: 544; Dworkin 1983).”⁴⁵

This is not to say that people are capable of standing back from all of their beliefs at one time, just that they are able to question certain aspects of these at various times. Kymlicka quotes Dworkin again, “... it is true that ‘no one can put everything about himself in question all at once’, but it ‘hardly follows that for each person there is some one connection or association so fundamental that it cannot be detached for inspection while holding others in place.’”⁴⁶

Rawls believes that we have to be able to have the freedom to form and revise our beliefs and that being able to do so “... is a crucial precondition for pursuing our essential interest in leading a good life.”⁴⁷ We are ‘conscious and purposive agents’ and we act upon those goals and purposes that we believe to be valuable at the time. We make decisions about the particular goals that we wish to pursue; this involves choosing from the various options that are made available to us. These options should not be greatly restricted, as some individuals may find that goal of great importance closed to them. The right social conditions are also needed to decide the value of the various options available, these include education and guarantees of personal freedom, but self-respect is also necessary. The freedom to form and revise beliefs gives us the “... sense that one’s plan of life is worth carrying out ...”⁴⁸ and in order to have this sense, we must have self-respect as a precondition. We must know that our actions are important, and the self-respect that comes from our personal independence in choosing

⁴² Kymlicka (1995: 92)

⁴³ Kymlicka (1989: 162)

⁴⁴ Kymlicka (1989: 162).

⁴⁵ Kymlicka (1989: 162)

⁴⁶ Dworkin (1989: 489) in Kymlicka (1995: 91)

⁴⁷ Kymlicka (1989: 163)

⁴⁸ Rawls in Kymlicka (1989: 164)

among options enables this. The liberty to change our beliefs, or to continue believing in them, allows for self-respect. The state must provide the conditions for, and allow people to, revise their commitments to the various choices that they have made. Such decisions need to be reasonable, informed and uncoerced and, under this approach, autonomy provides the minimal conditions for the good life *but* it does not provide the content. This is where Kymlicka's theory starts to differ from other liberal theories. It does argue for the liberal conditions necessary for an individual to freely choose from a broad range of options, and to revise their choices, but it also claims protections for the source of those options. "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."⁴⁹

2f) *Societal Culture and Options:*

Kymlicka claims "... societal cultures are profoundly important to liberalism ... because liberal values of freedom and equality must be defined and understood in relation to such societal cultures."⁵⁰ He defines a societal culture as "... a culture that provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres. These cultures tend to be territorially concentrated, and based on a shared language."⁵¹ In order for these societal cultures to 'embody' themselves in the lives of their members and provide them with the broad range of social meaning in a modern environment they "... must be institutionally embodied – in schools, media, economy, government etc." including "... a standardized language, embodied in common economic, political, and educational institutions."⁵² Individual autonomy requires the freedom to choose from amongst options, but an integral requirement of this is the meaning that those options have for us. Kymlicka claims that this is what our societal culture provides. It provides the options that we can choose from and also makes them meaningful to us. "People make choices about the social practices around them, based on their beliefs about the value of these practices (beliefs which, I have noted, may be wrong). And to have a belief about the value of a practice is, in the first instance, a matter of understanding the meanings attached to it by our culture."⁵³ Our societal culture provides the context of choice. It defines *freedom* by the range of opportunities that it makes available for individuals to autonomously choose from.

We need to ensure that a broad range of meaningful options is available to individual members of society and, in order to ensure this, we must take an active role in protecting and

⁴⁹ Kymlicka (1995: 84)

⁵⁰ Kymlicka (2001: 53)

⁵¹ Kymlicka (1995: 76)

⁵² Kymlicka (1995: 76)

⁵³ Kymlicka (1995: 83).

developing our societal culture. It is a common liberal view that we have some responsibility to protect aspects of our societal culture. Kymlicka cites Raz' belief that the state has a role in supporting, promoting and protecting the aspects of society that will encourage an individual's flourishing. Furthermore, there is Dworkin's argument; we have a moral obligation to protect our cultural structure, which is 'a shared vocabulary of tradition and convention' from 'structural debasement and decay.'⁵⁴ "We inherited a cultural structure, and we have some duty, out of simple justice, to leave that structure at least as rich as we found it."⁵⁵ It is important to have a healthy societal culture because, as it provides the context of meaningful options, it is the appropriate basis for institutions that equally distribute rights, resources and opportunities. That is, it provides the basis of *equality*. Kymlicka (like many liberals) has a commitment to 'equality of opportunity' in the form of "... equal access to educational and economic opportunities ... law courts, government services and democratic forums ..."⁵⁶ A societal culture provides the point of "... common language and institutions ..." necessary for the common participation of the membership. "To ensure freedom and equality for all citizens involves, inter alia, ensuring that they have equal membership in, and access to, the opportunities made available by the societal culture."⁵⁷

2g) Options Require Familiarity with Culture:

Kymlicka claims that we should have access to our *own* societal culture because, for options to be meaningful we need to be familiar with them. We have a language and history that provides a 'narrative' which 'renders vivid' the point or value of any activity. According to Dworkin, our societal culture "... provides the spectacles through which we identify experiences as valuable."⁵⁸ In the end, the decisions people make are their own, but what is valuable is a product of culture. We cannot just choose anything, "... we do not start *de novo*, but rather we examine 'definite ideals and forms of life that have been developed and tested by innumerable individuals, sometimes for generations (Rawls 1971, pp. 563-4)."⁵⁹ As we are brought up in our culture, we are taught about the options for life choices. These will be both the ones that "... we are already participants in ... and ... other ways of life which offer alternative models and roles that we may, in time, come to endorse."⁶⁰ Such external influences, according to Kymlicka, need to become part of "... the shared vocabulary of social life,"⁶¹ that is, they need to be 'translated' and accepted by a societal culture so as to give them meaning. We cannot just pick and choose aspects of various cultures; they must be made available to

⁵⁴ Dworkin (1985: 231) in Kymlicka (1995: 78)

⁵⁵ Dworkin (1985: 228) in Kymlicka (1995: 83)

⁵⁶ Kymlicka (2001: 53)

⁵⁷ Kymlicka (2001: 53).

⁵⁸ Dworkin (1985: 228) in Kymlicka (1995: 83)

⁵⁹ Kymlicka (1989: 164)

⁶⁰ Kymlicka (1989: 165)

⁶¹ Kymlicka (1995: 103)

us. There are distinct societal cultures, but these are in a state of continual development, incorporating new influences and sometimes rejecting older aspects. As a result:

“... our language and history are the media through which we come to an awareness of the options available to us, and their significance; and this is a precondition of making intelligent judgements about how to lead our lives ... we make these judgements precisely by examining the cultural structure, by coming to an awareness of the possibilities it has, the different activities it identifies as significant.”⁶²

Our cultural structure “... provides a secure foundation for individual autonomy and self-identity. Cultural membership provides us with an intelligible context of choice, and a secure sense of identity and belonging, that we call upon in confronting questions about personal values and projects.”⁶³ Kymlicka appeals to Margalit and Raz, who argue, “... that cultural membership provides meaningful options, in the sense that ‘familiarity with a culture determines the imaginable.’”⁶⁴

Immigrants do not possess a societal culture within their adopted society; they must integrate into the one provided by the majority. As they are unfamiliar with this, supports will need to be given in order to facilitate this in a fair way. In contrast to this, and as indicated previously, Kymlicka believes that those groups that fit within his category of national minority also possess a societal culture, along with the majority. National minorities existed separately as societal cultures before they were incorporated, “... their language and historical narratives were already embodied in a full set of social practices and institutions, encompassing all aspects of social life. These practices and institutions defined the range of socially meaningful options for their members.”⁶⁵ Despite strong pressure by the state to assimilate, these groups have maintained their own distinct culture and have continued to develop. For Kymlicka, the ‘pervasive’ or ‘encompassing’ nature of these cultures, and their continued relevance, is indicative of them being distinct ‘national’ cultures in their own right. He believes promoters of liberal equality need to take the existence of such groups (and the important role they play in the lives of membership) into account when discussing the conditions necessary for leading a good life.

2h) Summary:

In contrast to the communitarian/strong multiculturalist position, Kymlicka believes that group-rights do not have to be at the expense of individual autonomy. National minority groups possess a societal culture and claim rights of group-autonomy, immigrant groups do not, so they claim rights for fairer integration in to the majority societal culture (2a). Group-rights that restrict individual freedom are illegitimate, but group-rights that protect the minority from the majority are good for

⁶² Kymlicka, (1989: 165)

⁶³ Kymlicka, (1995:105)

⁶⁴ Kymlicka (1995:89)

⁶⁵ Kymlicka (1995:79)

minority group members (2b). In accordance with this, groups must be internally tolerant (2c) so as to provide the conditions for individuals to autonomously choose meaningful options. They need to be free from paternalist coercion to be able to endorse the choices that they have made (2d) and they need to have the possibility to revise those choices (2e). Having access to a societal culture is precondition for autonomous choice, as this provides the meaning and value to the options that it make available for individuals. It is also the appropriate unit for the distribution of rights, resources and opportunities, as it is the point of common language and institutions needed for making the decisions required for individual equality (2f). We must be familiar with the societal culture in order for the options that it provides to be meaningful to us. National minorities possess their own societal culture, while immigrants no longer do (2g). From this, Kymlicka concludes that ‘culture’ (both national and immigrant) is an appropriate object of concern in considerations of justice; he applies it to the theories of Rawls and Dworkin.

2i) Culture is a Primary Good:

Kymlicka has argued that “... cultural membership is important in pursuing our essential interest in leading a good life, and so consideration of that membership is an important part of having equal consideration for the interests of each member of the community”.⁶⁶ Therefore, cultural membership may be “...a relevant criterion for distributing the benefits and burdens which are the concern of a liberal theory of justice.”⁶⁷ He argues that cultural membership has a greater status than has been recognised by Rawls; it is actually a primary good⁶⁸. Rawls’s priority is individual liberty with the only legitimate grounds for unequal distribution being the “difference principle” and according to this, any protections for cultural groups would be detrimental to liberty. Kymlicka claims that members of minority cultural communities may be differently disadvantaged in regard to the good of cultural membership, compared to the majority, and this requires rectification through special rights. Rawls argues that in order to be able to form and revise our views about what is valuable to us, the right conditions are needed to make revision possible, such as personal independence without the fear of penalty. Through self-confirmation, by continuing to hold on to beliefs we have chosen to accept, comes self-respect. From this, Rawls states, “the parties in the original position would wish to avoid at almost any cost the social conditions that undermine self-respect”⁶⁹ Kymlicka goes on to say “... the loss of cultural membership is one such condition. Rawls’s own argument for the importance of liberty as a primary good is also an argument for the importance of cultural membership as a primary good.”⁷⁰ He believes that, because of the necessity of cultural structure in providing a context of choice, and the possibility that some would be differently disadvantaged in terms of access, people

⁶⁶ Kymlicka (1989:168)

⁶⁷ Kymlicka (1989:162)

⁶⁸ Kymlicka (1989:166), Kymlicka, (1995: 214 n. 11)

⁶⁹ Rawls (1971: 440) in Kymlicka (1989:166)

⁷⁰ Kymlicka (1989:166)

in Rawls' original position would have recognised this and therefore, consideration of this "... is an important part of showing equal concern for individuals."⁷¹

Kymlicka argues that, by not taking into account cultural membership, minorities would be at a disadvantage in self-respect and this lack of equality would be obvious to parties in the original position. He states that we choose freely to accept or reject particular options presented to us, "...but the range of options can't be chosen."⁷² We select what we believe to be the valuable options, but "...the range of options is determined by our cultural heritage"⁷³, we cannot just select anything, only those that "...are identified as having significance by our culture, because they fit into some pattern of activities which is culturally recognized as a way of leading one's life."⁷⁴ What we regard as worthwhile comes through our 'cultural narratives'; our language and history dictate significance. Therefore, Kymlicka argues:

"Liberals should be concerned with the fate of cultural structures, not because they have some moral status of their own, but because it is only through having a rich and secure cultural structure that people can become aware in a vivid way, of the options available to them and intelligently examine their value ..."⁷⁵

2j) Consequences for Equality:

It is morally important to protect the cultural structures of national minorities; without a rich and secure cultural structure, the meaningful options available to its members would be less and more restricted than what is available to an individual from the majority. It needs to be 'rich' because the 'endorsement constraint' requires a broad range of meaningful options, individuals cannot be said to have endorsed a choice when it is one among a number of poor options, and 'secure' because the cultural structure a minority person is born into will not be the same by the time they are adult and this places them at a disadvantage to the majority. It is unfair that individual's choices that have been made cease to be available over time because of uncontrollable external factors, despite their continued endorsement by the individual. Kymlicka distinguishes between changes in the content of a culture incurred '*because of*' and '*in spite of*' the wishes of the minority. It is examples of the latter that Kymlicka wishes to protect the culture from, and this is where the group-specific rights mentioned in the first section are useful because they allow internal changes to occur *because of* the wishes of the minority. Without protective group-rights, minority national groups are at a disadvantage because the state's political structure is not neutral; aspects of the majority culture are institutionalised throughout the polity. He believes that the idea of 'benign-neglect' is not in fact benign in the face of disadvantages that are not faced by the majority. In regard to national minorities,

⁷¹ Kymlicka (1989:166)

⁷² Kymlicka (1989: 164)

⁷³ Kymlicka (1989: 165)

⁷⁴ Kymlicka (1989: 165)

⁷⁵ Kymlicka (1989: 165)

the state takes a position on which languages are used in education and the provision of public services. He also believes it lacks neutrality in the drawing of boundaries and the distribution of legislative powers. I interpret Kymlicka's positions as advocating 'equality of opportunity' *within* a societal culture, while claiming something like 'equality of effect' between societal cultures, at least in terms of those 'decisions that are of particular importance to their culture'. There is an inequality of effect between societal cultures; as the majority is dominant, there is an extra burden placed on the minority. These are rights intended to help to protect the group by reducing "... its vulnerability to the economic and political power of the larger society ..." and are intended to "... promote justice between ethnocultural groups by ensuring that members of the minority have the *same effective capacity* to promote their interests as the majority (my emphasis)"⁷⁶, enabling the minority group to be able to negotiate on fairer terms with the majority as they would be in a position of greater power on issues concerning them.

Kymlicka refers to Dworkin's equity of resources scheme. This claims that equal concern for individuals requires the state to be 'ambition-sensitive' (reflective of the choices people make) but also not 'endowment-sensitive (not affected by unchosen differences in ability).⁷⁷ Equality of individual means that a system of compensatory insurance is needed for unchosen inequality (I will return to this in chapter 6). Given a plural society, Dworkin's resource distribution means that the minority must incur additional cost just to ensure the security of their cultural community, this is not so for the majority who can be sure of the security of their culture in the future. This leaves them free to pursue whatever options are open to them, while the minority must maintain the possibility of a structure of options and are therefore left with fewer resources. This is an unchosen inequality and justice dictates rectification by the state in the form of special protective rights. This is because differences in resources between people which are a result of their choices are allowable because this is their own responsibility, but:

"... differences which arise from people's circumstances – their social environment or natural endowments – are clearly not their own responsibility. No one chooses which class or race they are born into, or which natural talents they are born with, and no one deserves to be disadvantaged by these facts. They are, as Rawls famously put it, arbitrary from the moral point of view... Hence liberals favour compensating people who suffer from disadvantages in social environment or natural endowment."⁷⁸

Kymlicka argues that those in minority groups must 'outbid' those in the majority in a particular area in order to just ensure the existence of their cultural community and as a result, will have fewer resources to spend on other things. "This is a cost which the members of the majority culture do not

⁷⁶ Kymlicka (1999a: 116)

⁷⁷ Dworkin (1981: 311)

⁷⁸ Kymlicka (1989: 186)

incur, but which in no way reflects different choices about the good life,”⁷⁹ and as a result “... rather than subsidizing or privileging their choices, the special measures demanded by aboriginal people serve to correct an advantage that non-aboriginal people have before anyone makes their choices.”⁸⁰ Group-rights for national minorities will enable some independence from the majority, a way of ensuring stronger cultural stability and protection “... from decisions of the majority culture that could undermine the viability of their community.”⁸¹ An individual can be expected, as a primary good, to want access to their stable societal culture. Those in some minority groups are at an unfair disadvantage to the majority because they must devote extra resources to maintaining their societal culture. Kymlicka’s argument is that they should not have to pay this disproportionate cost because ‘... we should treat access to one’s culture as something that people can be expected to want ...’⁸² he later says, “... we can say that access to such a [societal] culture is a ‘primary good’ – i.e. a good which people need, regardless of their particular chosen way of life, since it provides the context within which they make those particular choices.”⁸³ He also says:

“Any plausible theory of justice should recognise the fairness of these external protections for national minorities. They are clearly justified, I believe, within a liberal egalitarian theory, such as Rawls’s or Dworkin’s, which emphasizes the importance of rectifying unchosen inequalities.”⁸⁴

Kymlicka’s argument can be summarised as ‘real’ equality requires the recognition of a basic interest that all individuals have, access to their societal culture. Where one of these is a minority within a state, extra resources may be need to be allocated in order for it to not be at a disadvantage, and consequently disadvantage its members, as there are extra costs to just maintaining it. Furthermore, group-right to partial (or full) autonomy may also be needed. Membership in a particular societal culture determines the range and type of available options to that person. If the state is governed in accordance with the norms of the dominant societal culture, supports will be directed towards those options valued by the majority. The valuable options for the minority culture may not all equally receive such supports and members may have to accept some of the options of the unfamiliar system of the majority, putting them at a further disadvantage. Group-rights that enable the minority societal culture to distribute resources, in accordance with principles of equality, in a way that recognises that culture particular ordering of values and options will be needed in order to treat its members fairly. That is, extra resources need to be given to the societal culture, combined with rights to group autonomy so that they may be distributed in a way that recognises group specificities. This can enable

⁷⁹ Kymlicka (1989: 189)

⁸⁰ Kymlicka (1989: 189)

⁸¹ Kymlicka (1992: 142)

⁸² Kymlicka (1995: 86)

⁸³ Kymlicka (1995: 214 n. 11)

⁸⁴ Kymlicka (1995: 109)

both equitable distribution and the availability of a broad range of culturally meaningful options so as to provide members with greater autonomy.

Chapter 2:

‘Collective’ and ‘Corporate’ Justifications for Group-Rights

In this chapter I introduce two forms of justification for group-rights, the first is the ‘collective’ conception, the second is the ‘corporate’ conception. I conclude that the former is the only one that can also possibly allow for coexistence with common Liberal rights, including the two necessary conditions for autonomy required by Kymlicka.

Part 1) ‘Collective’ Justification of Group-Rights

In his 1999 *Journal of Political Philosophy* paper titled ‘Group Rights and Group Oppression’⁸⁵, Peter Jones offers an interesting analysis of two forms of justification for group rights and an account of the weaknesses of both. This consists of, firstly, the ‘collective’ conception, which may be ascribed to both Joseph Raz and Will Kymlicka. This will be discussed in this first part. It also consists of the ‘corporate’ conception, which can be attributable to the supporters of Strong Multiculturalism and will be discussed in part 2. This latter view follows the Strong Multiculturalist argument in that it makes a claim about the moral status of a group, the nature of membership and value that it has for the individuals within that group. This argument is then used to justify various claims to rights and restrictions for the group. I will argue that both Procedural Liberals and Liberal Multiculturalists should reject this account because it restricts individual freedom for the good of an ‘intrinsically’ valuable group. This means that any form of Liberal justification for group-rights should take the ‘collective’ form of justification.

1a) Jones on Raz:

As argued at the end of the last chapter, Kymlicka claims that treating people equally requires taking into account societal culture, and recognising the disadvantages that those who are not part of the dominant culture face. This is an argument for ‘real’ equality, in which individuals from the minority can be seen to each have a strong interest in having this inequality rectified. They can claim that they have sufficient combined interests to claim that state has a duty to provide certain group-rights. Raz has developed an account of how interests can provide justification for rights, including group rights:

⁸⁵ Jones (1999)

“‘X has a right’ if and only if X can have rights, and, other things being equal, an aspect of X well-being (his interest) is sufficient reason for holding some other person(s) to be under a duty.”⁸⁶

Raz has applied his arguments to offer a Liberal justification for claims similar to Kymlicka’s immigrant and national minority group-rights, although he says, “I use ‘a right’ much less than Kymlicka does, probably because I believe that there are many fewer rights than he does.”⁸⁷ Both can be regarded as representative of the Liberal Multiculturalist position as there are strong similarities in their respective theories, and so, I will only highlight differences where they arise in the discussion. The point I wish to make is that the contribution that Raz makes to the justification of group-rights on combined individual interests is applicable to Kymlicka’s argument.

Jones outlines how Raz’ account can offer a ‘collective’ justification group-rights separate from standard individual rights (such as the ‘civil and political’ rights previously mentioned by Kymlicka). “Raz ... holds that a group can have moral rights. It has those rights if those who make up the group possess a joint interest in a good that justifies the imposition of duties upon others.”⁸⁸ He cites this passage from Raz’ *The Morality of Freedom* as to the “... conditions that have to be met for there to be a ... ‘collective’ right.”⁸⁹

“First, it exists because an aspect of the interest of human beings justifies holding some person(s) to be subject to a duty. Second, the interests in question are the interests of individuals as members of a group in a public good and the right is a right to that public good because it serves their interests as members of the group. Thirdly, the interest of no single member of that group in the public good is sufficient by its self to justify holding another person to be subject to a duty.”⁹⁰

Jones goes on to apply it to cultural minority claims:

“Each individual member of that minority may have an interest in the maintenance of the culture in which he has developed, secured an identity and developed a way of life. The interests of one individual may not suffice to justify imposing duties on the larger society to institute measures to protect and sustain that culture. But the joint interests of all members of the minority may well suffice, in which case we can ascribe the appropriate group right to the minority.”⁹¹

There are some individual interests that are sufficiently important to place a duty on others in their own *individual* right, such as some of the various individually based ‘civil and political’ rights.

⁸⁶ Raz (1986: 166)

⁸⁷ Raz (2003: 267)

⁸⁸ Jones (1999: 357)

⁸⁹ Jones (1999: 357).

⁹⁰ Raz (1986: 208)

⁹¹ Jones (1999: 357)

Group-rights may be justified through the *combination* of a number of individual's common interest. If we accept Kymlicka's claim that access to a societal-culture is a primary good (I don't think Raz does, but, as I will show, he regards culture a very important) then there is a strong individual interests-based argument for group-rights. But, because it is based on the moral claims for the well-being of *individuals*, if such a group-right is to be justified, it has to be so only for the *instrumental* value that it has to the individual members. This point will differentiate the 'collective' conception for the 'corporate' (I will return to this in part 2). Jones later goes on to say:

“The collective conception does not require us to ascribe moral standing to a group separately from the moral standing we ascribe to its members severally. The right is possessed by the members of the group only as a group, but the interests that ground their jointly held right are the several, if shared and interrelated, interests of the group's members ... There is no suggestion that a group has, or can have, moral standing that is somehow separate from and not wholly reducible to the moral standing of the several individuals who constitute it.”⁹²

There is one more important point of note concerning Raz' justification; because it is based on individual interests, and although the strength of the moral claim is important, the numbers of interests also matter. Jones claims, “... the greater the number of people who share an interest, the stronger the case for that interest's grounding a right ... the greater the number of people who enjoy a collective right ... the weightier the collective right. Thus size matters.”⁹³ I will now turn to Raz' argument.

1b) Raz' Liberal Multiculturalism:

Joseph Raz outlines his position on group-rights for minority groups in his 1994 essay titled 'Multiculturalism: A Liberal Perspective' and, with Avishai Margalit, in a 1990 paper in *The Journal of Philosophy*, titled 'National Self-Determinism'. In the latter, they define six characteristics that are relevant in defining what makes a societal culture, or as they call it, an *encompassing group*.⁹⁴ These are (1) It must have a common character and culture; (2) people growing up in the culture must be marked by its character; (3) members will recognise other members; (4) membership will be important for self-identification; (5) members belong and do not achieve membership; lastly (6) mutual recognition is based on general characteristic and not just personal familiarity⁹⁵.

1c) Culture is Meaningful:

Groups that possess most, or all, of these characteristics are pervasive cultures and differ from other types of groups in that they are of *crucial* importance to their individual members. This is because of two reasons, firstly, membership provides meaningful options for the individuals and secondly, the well-being (interests) of that individual is tied up directly with the groups. As a result,

⁹² Jones (1999: 362-3)

⁹³ Jones (1999: 369)

⁹⁴ Margalit and Raz (1990: 448)

⁹⁵ Margalit and Raz (1990: 443-7)

the health of such groups is of great importance, and if neglected, the quality and quantity of meaningful options available to individual members decreases. Individuals' goals and relationships are determined by their societal culture. Consequently, the well-being of such groups also matters because of the close relationship the individual has with their group, "... individual dignity and self-respect require that the group ... be generally respected and not be made a subject of ridicule, hatred, discrimination, or persecution."⁹⁶

1d) Culture Defines Options:

The moral reason that justifies Raz' argument is the same as for Kymlicka's; that is, one's culture provides the range of options, and meaning of those options, for the individual. Liberalism places great value on freedom; this freedom is defined by acting in accordance with rational laws and is not just the result of arbitrary choice. Freedom presupposes the availability of options, these options "... have an internal structure, an inner logic, and we can exercise our freedom by choosing them only if we comply with their inner reason."⁹⁷ These options, which rely on knowledge of 'unstated conventions', are complex, *but not fixed*, and so will allow for extensive variation and improvisation.

"The core options which give meaning to our lives ... are all dense webs of complex actions and interactions. They are open only to those who master them, but their complexity and the density of their details defy explicit learning or comprehensive articulation. They are available only to those who have or can acquire practical knowledge of them, that is, knowledge embodied in social practices and transmitted by habituation (162)."⁹⁸

One's culture constitutes the range of life options open to its members, the horizon of opportunities, and, as with Kymlicka, deep familiarity with that culture is needed in order for the goal that it provides to be made available:

"Individual well-being depends on the successful pursuit of worthwhile goals and relationships. Goals and relationships are culturally determined ... those goals themselves are ... the product of culture. Family relations, all other social relations between people, careers, leisure activities [etc] ... all depend for their existence on the sharing of patterns of expectations, on ... implicit knowledge ... of tacit conventions regarding ... what is appropriate and what is not, what is valuable and what is not. Familiarity with a culture determines the boundaries of the imaginable."⁹⁹

Therefore, "... membership in cultural groups is of vital importance to individuals."¹⁰⁰ Raz points to three ways in which this is so. The first of these being the extent to which cultural prosperity directly affects the richness and variety of opportunities available to its individual members. The second is that sameness of culture "... is a condition of rich and comprehensive personal relationships"¹⁰¹, in

⁹⁶ Margalit and Raz (1990: 449)

⁹⁷ Raz (1994a: 161)

⁹⁸ Raz (1994a: 162)

⁹⁹ Margalit and Raz (1990: 448-9)

¹⁰⁰ Raz (1994a: 162)

¹⁰¹ Raz (1994a: 162)

fact; Raz believes it is essential for a close relationship with one's children. Third and finally, membership in their flourishing culture is important to individuals because it is a major determinant in self-identity. He then concludes that for these reasons, the moral claim for the respect and prosperity of a culture is based on that culture's vital importance to individual human beings. Culture is "... a precondition for, and a factor which gives shape and content to, individual freedom."¹⁰²

1e) Value Pluralism:

Raz' argument denies the universal validity of political morality; this is because we cannot exhaustively state *every* moral response in the abstract. We will have different social situations in the future and the results of this will be that the concepts that we use now will later be inapplicable. Because of the contextuality of political morality, Raz' account, as I believe does Kymlicka's, claims that we must, therefore, presuppose *value pluralism*. That is, the irreducibility "... of all values to one value which serves as a common denominator to the multiplicity of valuable ways of life."¹⁰³ This is the belief that views different forms of life as valuable, even though they may be incompatible. This is illustrated in the claim made by Raz that some of those skills and attributes that are valued by one culture are handicaps in another. This conflict is endemic and "... there is no point of equilibrium, no single balance which is correct and could prevail to bring the two perspectives together."¹⁰⁴ Because various cultural groups, and therefore, associative value systems, cohabit a political society, conflict occurs. They believe that 'the fact of plurality' means that there is an incommensurability of values, as a certain good come into conflict and are unable to be ranked. Margalit, in another context, expresses the connection that is believed to exist between a cultural community and the values and way of life that the members possess:

"The idea is that people make use of different styles to express their humanity. The styles are generally determined by the forms of life to which they belong. There are people who express themselves "Frenchly," while others have forms of life that are expressed "Koreanly" or "Syrianly" or "Icelandicly"."¹⁰⁵

Given the different systems of value, and the vital importance that they have for their membership, consequences can be drawn as to its application.

1f) National Self-Determination:

I will only touch on this form of application; this is because it applies to the creation of a whole new state. I wish to then move on to describe the argument for application *within* a state, as this is more in line with the rest of the views I will be examining. Margalit and Raz argue that because individual well-being is tied up with their encompassing groups, it can then be argued that this is "...

¹⁰² Raz (1994a: 163)

¹⁰³ Raz (1994a: 164)

¹⁰⁴ Raz (1994a: 165)

¹⁰⁵ Margalit (1997) in Levy (2000: 102)

best served by their having a collective right to self-determination.”¹⁰⁶ They do not claim that there is an intrinsic value to self-government; the justification is based on self-government’s instrumental value in ensuring individual interests¹⁰⁷. It can be claimed that:

“The right to self-determination derives from the value of membership in encompassing groups. It is a group right derived from the value of a collective good ... It rests on an appreciation of the great importance that membership in and identification with encompassing groups has in the life of individuals ... That importance makes it reasonable to let an encompassing group that forms a substantial majority in a territory have the right to determine whether the territory shall form an independent state in order to protect the culture and self-respect of the group ...”¹⁰⁸

This is qualified by the need to ensure measures to protect the fundamental interest of its citizenship and to refrain from harming the interests of other countries. The general claim for gaining self-determination will also need to be weighed up against the interests of other people. Thus, it “... is neither [an] absolute nor unconditional”¹⁰⁹ group-right. Basically, combined interests claims may be able to justify self-government, but this is a high end of application. There are also grounds gaining group-rights within a state, as the barriers of competing interest are easier to overcome, and it is to these I turn.

1g) Immigrant Integration

Raz discusses this application within a Liberal state; he begins with the empirical claim that “Multiculturalism is often a result of a transition from life in a relatively homogeneous society to life in a multicultural one.”¹¹⁰ Individuals usually “... face great pressures to change in their new multicultural societies ...”¹¹¹ The results of this are a resistance by the emigrant to any pressures to change. In such situations there is a tendency for cultural groups to become “... more repressive than they would be were they to exist in relative isolation,”¹¹² a phenomenon that Shachar calls ‘reactive culturalism’ and which serves a ‘demarcation function’ for the group in order to distinguish it from the rest of society and maintain some original aspects¹¹³ (I will discuss this in chapter 3). Historically, Liberalism has responded to the claims of minorities in three ways. The first, and earliest, of these is ‘toleration’; the state lets “... minorities conduct themselves as they wish without being criminalized,

¹⁰⁶ Jones (1999: 363)

¹⁰⁷ They do actually claim that groups also possess intrinsic value, but there is not room to discuss this here. I will just concentrate on the argument for self-government, which relies on claims about its instrumental value. Both Waldron (1989) and Appiah (2005) discuss Raz’ claims about intrinsically valuable ‘collective goods.’

¹⁰⁸ Margalit and Raz (1990: 456-7)

¹⁰⁹ Margalit and Raz (1990: 461)

¹¹⁰ Raz (1994a: 165-6)

¹¹¹ Raz (1994a: 166)

¹¹² Raz (1994a: 170)

¹¹³ Shachar (2001: 35-6)

so long as they do not interfere with the culture of the majority.”¹¹⁴ The second liberal policy has been based on individual rights for minority members; these ensure equal protection against discrimination on the grounds of race, gender, sexual preference or religion. The third approach is for the liberal affirmation of multiculturalism, applied to all stable communities that are able to perpetuate themselves.

1h) Liberal Multiculturalism:

It is this final response that Raz is advocating. This involves endorsing non-discrimination rights combined with the acceptance of two other beliefs mentioned before. The first of these is “... that individual freedom and prosperity depend on full and unimpeded membership in a respected and flourishing cultural group.”¹¹⁵ This is based on the necessary interdependence between the individual and their cultural group. The second is the belief in value pluralism; this involves accepting the validity of the diversity of values that stem from different cultures, even though they may be incompatible with one another. The consequences of this are that the state must “... recognise the equal standing of all the stable and viable cultural communities existing in that society.” No single community “... should be allowed to see the state as its own or to think that the others enjoy their standing on sufferance.”¹¹⁶

“... the whole idea of multiculturalism is to encourage communities to sustain their own culture ... it is of the essence of multiculturalism that different communities should enjoy their fair share of opportunities and resources to maintain their cultures and develop them in their own way.”¹¹⁷

Raz believes that there are a number of implications for liberal political theory in regard to the way in which the state deals with minority cultures. By adopting what he calls liberal multiculturalism, governments must “... take action which goes beyond that required by policies of toleration and non-discrimination”¹¹⁸; they must have:

“...a political attitude of fostering and encouraging the prosperity, cultural and material, of cultural groups within a society, and respecting their identity, as justified by considerations of freedom and human dignity.”¹¹⁹

This is qualified by the claim that Raz’s liberal multiculturalism is not inherently opposed to change. He observes that change is usually resisted in the face of dominant hostility or attempted assimilation. Change may occur, and cultures may disappear or be absorbed but what matters is how this happens. “So long as the process is not coerced, does not arise out of lack of respect for people and their

¹¹⁴ Raz (1994a: 157)

¹¹⁵ Raz (1994a: 159)

¹¹⁶ Raz (1994a: 159).

¹¹⁷ Raz (1994a: 166)

¹¹⁸ Raz (1994a: 174)

¹¹⁹ Raz (1994a: 174)

communities, and is gradual, there is nothing wrong with it.”¹²⁰ There is a balance between protecting a culture from change and sometimes encouraging it.

li) Group requirements:

Raz’s conception of multiculturalism has two requirements for cultural groups to accept. The first is that, because of the many systems of value, each group has to *tolerate* the other groups; any that do not do so will ‘face great pressure for change.’ Peaceful coexistence and participation in political society requires some knowledge of the other cultures in the country. The state should provide encouragement and pressure to foster this. All cultural groups will take part in the same economy and political system; therefore, education should encourage the understanding and respect for the other cultures that make up the national society in order to promote a sense of national cohesion. The second requirement is an insistence on the right of *exit* from the group for individual members (this will be further discussed in part 3). Later, he also points to another responsibility:

“... liberal multiculturalism will also require all groups to allow access to adequate opportunities for self expression and participation in the economic life of the country, and the cultivation of the attitudes and skills required for effective participation in the political culture of the community.”¹²¹

These two requirements are an important aspect of Liberal Multiculturalism (along with other theories), I will return to throughout this thesis. For clarity they should be seen as the requirement of 1) tolerance *between* groups and 2) exit *from* groups. The third may be seen as a form of 3) tolerance *within* groups.

lj) State Requirements:

Combined with this, it is the state’s responsibility to introduce policies that practically support the conception that it is representative of all of the cultural groups in the society. This would require a series of group-rights measures, similar to those of Kymlicka, but which would be distributed to the various groups based proportionality on their *size* and the degree of ‘*commitment*’ of their respective memberships. Such rights would include; 1) the right to education in the culture of their group; 2) legal protection for customs and practices through exemptions, which would be recognised by both public and private institutions; 3) affirmative action programs intended to remove the inequalities between groups; 4) public resources for cultural institutions, and 5) allocation of some public spaces to specific groups. These rights should be applicable to all stable and viable cultural communities that are able to perpetuate themselves in the multicultural society. The results of such policies are “... designed to lead to relatively harmonious coexistence of non-oppressive and tolerant communities (ibid)” who will contribute “...to the emergence of a common culture which is respectful towards *all* the groups of the country, and hospitable to their prosperity.”¹²²

¹²⁰ Raz (1994a: 167)

¹²¹ Raz (1994a: 175)

¹²² Raz (1994a: 176)

A final point of note, being ‘a substantial majority in a territory’ is a requirement for Margalit and Raz’ self-determination rights, this has many similarities with Kymlicka’s ‘territorially concentrated’ national minorities seeking group-autonomy, but it goes a step further. On the other hand, although the rights are similar to Kymlicka’s immigrant rights (type 4 and 5), Raz’ multicultural rights for immigrant groups enable immigrant groups to ‘maintain their cultures and develop them in their own way’ rather than supporting integration. Both of the applications discussed by Raz rely on variants on the same interests based justification and such an account may also be applied to both of Kymlicka’s groups. I think that Raz’ account, which views interest based group-rights justification in terms of both significance and numbers, offers a graduated account that is more reflective of the range of claims. Basically, I am saying that the sharp distinction drawn by Kymlicka that divides the two types of groups is inaccurate. Although there is external pressure to integrate, there is also an immigrant desire for some group-autonomy in order to maintain aspects of their cultural structure (I will return to this point in the next part).

Ik) Summary:

The Liberal Multiculturalism that has been discussed offers a theoretical account that combines two important aspects, Liberal individual freedom and cultural context. This is important because the Strong Multiculturalist position is seen to neglect the importance of the former, while Procedural Liberalism is seen to neglect the importance of the latter. The account offered by Kymlicka and Raz places great value on ensuring the conditions required for individual freedom. Although I have not discussed it in reference to Raz, both philosophers regard individual autonomy as greatly important and a necessary precondition for leading valuable lives. Individual freedom involves autonomously choosing from a broad range of meaningful options. ‘Broad’ will require the egalitarian redistribution of resources so that each individual has ‘equality of opportunity’, as a minimum level of resources are needed to have a choice. While ‘meaningful’ will require access to their own cultural context of choice. Individual freedom and equality are dependent on a flourishing culture (offering resources and options to its members). Access to such a culture is an interest that all individuals have, and as such, the state should recognise the existence of disadvantaged minority cultures and provide them with extra resources in order for their members to be treated with equal concern. Furthermore, such groups have a legitimate claim, from combined significant interests, to seek group-rights to protect their interest in personal well-being. These may justify the creation of a new state, but it is more likely, given the ethnically mixed nature of modern societies, that it will justify the rights mentioned in 2j). These group-rights serve an instrumental role in ensuring the interest that each individual member has in freedom and well-being.

Part 2) ‘Corporate’ Justification for Group-Rights

2a) General Outline:

I will now turn to the Strong Multiculturalist argument that argues for a degree of primacy of the group over the individual. It claims, “... we should ascribe moral standing to a group *qua* group rather than only to its individual members”¹²³, and as such, groups should be given rights as a group to “... govern their members in accordance with their *nomos*”¹²⁴ and to receive support for their ability to maintain the integrity and continuity of that group. The claim is that:

- 1) *There is something morally significant about the group in addition to the sum of its members and*
- 2) *this means that the group should have some degree of authority to represent the group and to govern its members in order to protect the interests of that group as a whole.*

This latter claim to group *authority* over its members can be seen to have two components to its application in rights. The first 2a) is *external*; to claim to represent the group’s position at a political level governing its interactions with other groups and the state. This can be regarded as the Strong Multicultural aspect that is primarily concerned with interactions *between* groups. The second 2b) is the *internal* component, which can be regarded as more Communitarian, and is the claim to govern the group and require obedience from its members; this concerns the interactions *within* the group and can take the form of claims for loyalty to traditions or support in achieving the community’s collective goals. For example, Charles Taylor’s claims for accommodating the survival of distinct societies into the indefinite future require both group self-governance and certain internal restrictions. The consequences of the above positions are that the group claims priority over some individual rights, or individual’s actions, that are seen as being detrimental to the interests, either internal or external, of that group. The types of restriction include any additional limitations on the common ‘civil and political’ rights entitlements that are available to all members of the society. That is, limitations on either the freedom or equality of particular individuals because of the claimed separate moral status of the group. For example, the model endorsed by Charles Taylor that calls:

“... for the invariant defence of *certain* rights, of course. There would be no question of cultural differences determining the application of *habeas corpus*, for example. But they distinguish these fundamental rights from the broad range of immunities and presumptions of uniform treatment that have sprung up in modern cultures of judicial review. They are willing to weigh the importance of certain forms of uniform treatment against the importance of cultural survival, and opt sometimes in favour of the latter.”¹²⁵

¹²³ Jones (1999: 362)

¹²⁴ Shachar (2001: 28), *nomos* refers “... to minority communities that generate sets of group-sanctioned norms of behaviour that differ from those encoded in state law.” Shachar (2001: 2 n. 5)

¹²⁵ Taylor (1994: 61)

This then applies to groups *within* a liberal state, rather than separate illiberal countries. In part 3 of this chapter, I will briefly give the Liberal reasons for rejecting the Strong Multiculturalist position; I will elaborate on the consequences of this position.

2b) Account of Claim 1:

Strong Multiculturalists believe that groups are the right sorts of entity to bear rights, this is because of claim 1): *there is something morally significant about the group in addition to the sum of its members*. If this is accepted then this can lead to the justification of a group claiming rights as a group, this is because, as Jones puts it, "... moral standing is a precondition of rights-holding."¹²⁶ It is this moral status claim that differentiates the 'corporate' conception from the 'collective' conception, the latter whose basis rests solely on the weight of the combined interests of the sum of its membership in order to justify holding another, such as the state, to a duty. The Strong Multiculturalists claim that, along with all persons, 'groups' can be attributed moral standing. The separate moral status of a 'group' is a necessary condition for the 'corporate' justification for a group right. This also serves to separate the moral grounding of the group right for the group, *from* those rights and duties owed to its individual membership; this may even mean that there is a requirement that the membership have a duty or an obligation *to* the group. Assuming the correctness of the claim 1) for the separate moral status of the 'group', then the justification for claim 2), the argument for group rights, follows this reasoning:

"To violate a right is to *wrong* the holder of the right. It is to fail to do what is *owed* to right holder. That indicates that someone or something can hold rights only if it is the sort of thing to which duties can be owed and which is capable of being wronged."¹²⁷

That is, the object must have moral standing in a direct sense, not a derivative sense.¹²⁸ As a consequence of the 'corporate' conception, and in contrast to the 'collective' conception, a groups moral standing may be "... separate from and not wholly reducible to the moral standing of the individuals who constitute the group."

2c) Moral and Legal Status:

A group that possess moral standing as a group "... bears its rights as a single integral entity...", but it is not defined by its group rights. The group's moral standing is prior to its legal recognition and, as such, has its own "... identity and standing independently and in advance of the

¹²⁶ Jones (1999: 362)

¹²⁷ Jones (1999: 363)

¹²⁸ Jones says "A moral right is a moral title and only beings possessed of moral standing can posses entitlements which, in turn, are sources of moral obligation for others." When applied to groups, we must "... ask whether we should ascribe moral standing to a group qua group rather than only to its individual members. If we should, we can think of a group's bearing rights in the same immediate and nonreducible way in which an individual person can bear rights." Jones (1999: 262)

interests it has and the rights it bears.”¹²⁹ This shows why all of the Strong Multiculturalist accounts of ‘group’ place such an emphasis on the existence of a strong, distinct and, some critics would say, ‘essentialist’ account of group identity¹³⁰. A group’s moral status is derived from its distinct identity as a group, and consequently, this moral status is the justification for its claims to rights bearing status. The distinct identity of the group is the object of moral significance, in addition to its members, which provides the moral basis for its protection through group rights. According to Jones, under the ‘corporate’ conception, the ‘most favoured candidates’ for the “... groups that are alleged to possess fundamental *moral* right [...] are nations, ethnic groups and cultural groups – groups whose membership is not chosen but naturally or socially given and whose, on the strictest interpretation, cannot escape membership.”¹³¹ To sum up this account of how claim 1) connects with claim 2), the ‘corporate’ conception sees a ‘group’ as an object of moral standing, capable of being wronged, separate from, and irreducible to, the sum of its members, and possessor of a distinct identity, worthy of protection, that entitles it to bear group rights as a singular entity.

2d) Account of Claim 2:

Given this account, a number of consequences can be derived, both for the relationship that the group has with other groups and the larger state 2a) and the relationship that it has with its own members 2b). I will now turn to this second aspect of the Strong Multiculturalist argument; this is claim 2): *the group should have some degree of authority to represent the group and to govern its members in order to protect the interests of that group as a whole*. As the group is seen as being morally significant as a group, and the most likely candidates are the various forms of ethnic groups, then Strong Multiculturalisms justification for group rights has two components in practical application. They may be applied *externally* to the group, such as the right of national self-determination (among others) 2a), and *internally* to the group, in the form of a group corporately holding “... rights against, or over, its members severally”¹³² 2b). As mentioned earlier, claim 1) justifies a ‘corporate’ account of groups. This moral separation lends a distinctly ‘corporate’ nature to each of the two components compared to a ‘collective’ account. The former rests solely on individual interests, while the latter balances both individual interests and moral concern for the group.

2e) Account of Claim 2a:

I will start with the *external* component of the application. This deals with rights that are held by the group and which are intended to protect the interests of that group as a whole. They apply to the various forms of ‘group-to-group’ interactions that occur in the political sphere. As such, they are

¹²⁹ Jones (1999: 363)

¹³⁰ Barry (2002: 207)

¹³¹ Jones (1999: 374)

¹³² Jones (1999: 372)

usually in the form of group rights held "... against one another as groups rather than individuals ..."¹³³ and differ from the *internal* component, which tend to be group rights held by the group over individual members. As Jones states, "... many of the duties entailed by corporate rights are likely to be corporate duties"¹³⁴ I will illustrate this with the example of the 'corporate' justification for rights of national self-determination. This generally applicable account, offered by Jones, has a great many similarities with the various justifications offered by the Strong Multiculturalists. It is also typical in its reasoning, linking the separate moral status of the group with particular rights claims. Because I am dealing with group-autonomy rights *within* a state, 'self-determination' will not be full succession, but a weaker version, equivalent to Kymlicka's 'self-government' rights. I am making the uncontroversial claim that group-autonomy can be a matter of degree. According to the 'Corporate' account, a type of cultural group with a distinct identity may have the irreducible moral right, as a group, to claim self-determination rights. Its claim would take this form:

"On the corporate conception, a nation will be conceived as an entity with a distinct life and identity of its own which others must recognise and respect. Accordingly, it should receive political recognition and, more particularly, its right of self-determination must be acknowledged. To deny a nation that right is to affront its status as a nation, just as to deny someone the right to shape their own life is to affront their status as a person."¹³⁵

'Nations' must receive the right of self-determination because they are separate moral entities that are entitled to such rights in order to freely exercise their distinct life and identity without being restrained from doing so by another.

2f) Account of 'Nation':

Kymlicka's distinction between ethnic (voluntary immigrants) and national (previously self-governing indigenous peoples and sub-state nations) groups offers an account in favour of the latter. But, this distinction has been questioned, quite successfully, in recent literature.¹³⁶ A particularly notable account is offered by Sujit Choudhry, who questions, among many other aspects, Kymlicka's inconsistent reference to a group's institutional capacity, the scope of options offered by each form of culture and his necessary condition of territorial concentration to justify sovereignty. The last of these is seen as being unnecessary for partial self-determination, while the first two are available (to a limited extent) not just to national minorities, but also to ethnic immigrants. Choudhry believes that it is difficult to deny, at minimum, the 'institutional embodiment' and the meaningful scope of ethnic immigrants culture, even if they are 'institutionally incomplete'. There are many social groups that, in accordance with Kymlicka's definition of institutions, possess institutions encompassing "schools,

¹³³ Jones (1999: 371)

¹³⁴ Jones (1999: 371)

¹³⁵ Jones (1999: 363)

¹³⁶ Carens (2000: Ch. 3) Kukathas (1997) and Rubio-Marín (2003)

media, economy, [and] government”¹³⁷ that serve to ‘regularize and concretise social interactions.’ These are not just the sole domains of national minorities; ethnic immigrants *do* possess these, “... despite disparities in *size*, there are institutions which facilitate practices which are culturally meaningful ...” (my emphasis). These are no less significant than some of the institutions serving national minorities, in fact “... many of these [ethnic] institutions serve quasi-public functions, or operate in the public sphere.”¹³⁸

Furthermore, Choudhry claims that Kymlicka account does not do justice to the scope of meaningful cultural context offered within immigrant groups. He “... misdescribes the complex and rich patterns of social life mediated through the institutions of ethnic immigrant communities”¹³⁹ while they are more limited than some national groups on account of their limited public institutionalisation, “... it does not undermine their [cultures’] relevance to individual autonomy.”¹⁴⁰ Both national and ethnic minorities are able to provide an encompassing cultural context for their membership, the predominant difference being a matter of scale. The conclusion drawn by Choudhry is “... the sharp dichotomy that Kymlicka draws between ethnic immigrants and national minorities cannot withstand an encounter with reality. At best, these groups lie on a sociological continuum that Kymlicka attempts to shoehorn into his rigid categories.”

2g) *Immigrant Groups Possess a ‘Distinct Life and Identity’:*

The point that I have tried to make is that, despite issues of scale and the possible scope of cultural encompassment, immigrant groups are not fundamentally different from national minorities. They may, therefore, possess the ‘distinct life and identity’ that is the necessary condition of the ‘corporate’ justification for group rights as referred to by Jones. This account also leaves room for a broader range of other groups, such as exclusive religious groups, that may also possess this distinct identity. This blurring of Kymlicka’s distinction and the belief in the larger role played by immigrant culture in determining an individual’s context of choice has distinct consequences when applied to the ‘corporate’ conception.

As mentioned earlier, Strong Multiculturalist accounts of culture tend to emphasise the ‘distinct life and identity’ of the group to justify group rights. Support for this belief is reflected in a number of Strong Multiculturalist theories, such as the one offered by Bhikhu Parekh, who places great emphasis on the role immigrant cultures play in shaping, even dictating, the moral beliefs and range of life options available to their members¹⁴¹. Furthermore, I have outlined the argument for the *external* application of group rights (2a) which, along with an *internal* component (2b), is justified by the separate moral status of the group, claim 1). Groups should have the right to group autonomy. The

¹³⁷ Kymlicka (1995:76) in Choudhry (2002: 74)

¹³⁸ Choudhry (2002: 74)

¹³⁹ Choudhry (2002: 74)

¹⁴⁰ Choudhry (2002: 76)

¹⁴¹ Parekh (2000: Ch. 5)

reason I have attempted to apply this account to ethnic groups (but equally applicable to small indigenous groups) is because it serves to highlight the role of *group size* and *cultural encompassment* under the ‘corporate’ conception of group rights. Both result in distinct consequences for this account, the former affecting the external component and the latter affecting the internal component.

2h) Consequences of 2a: Size:

The consequence of the Strong Multiculturalist claims to group authority, when applied externally, is that the size of the group does not affect the rights that it may claim. As long as the group possesses a sufficiently distinct life and identity, then the group has separate moral status that deserves recognition and respect. This recognition will usually take the form of group rights intended to protect that identity. The group will have externally directed interests in being able to interact with others groups and the state at a political level. This will require rights of representation for the group and recognition by others at this level. Jones offers an outline of how the ‘corporate’ conception justifies its position:

“Each group [...] presents us with an identity, each identity should command respect, and each should command equal respect. Taking any single dimension of identity, no group’s identity matters more than the other’s and, accordingly, no group’s rights should count for more or less than another’s. Thus, if we ascribe rights to nations or to cultural groups, we can ascribe rights to each of them equally.”¹⁴²

The example that Jones uses is the right of national self-determination, “... small nations [...] will have the same rights, and rights of the same weight, as large nations”¹⁴³, but this is applicable more broadly to many protective rights. Once the moral status of the group as a group is accepted then it is in a position to claim accommodations intended for ensuring the group’s cultural resources. Moreover, given the actual inequality of circumstances for some groups, especially minority groups, then equality of rights may actually require special compensations in order to correct this inequality and provide real equality. This, I believe, is similar to the position argued for by Kymlicka; extra rights may be required by a minority group in order to achieve the things that larger groups may do without added assistance. The moral status of a small group is the same as that of a larger group; they both possess irreducible interests in maintaining their own existence. Given inequalities between the two, the smaller, weaker group will require greater resources and rights in order to maintain an equal status.

Further consequences, in addition to rights of national self-determination, may be derived using the ‘corporate’ conception of group rights. Other examples of special rights claims that could be

¹⁴² Jones (1999: 371-2)

¹⁴³ Jones (1999: 372)

made by minority groups as a group include the right to future survival, territorial claims, treaty rights and reparation rights for historical wrongs. For each of these examples the object of primary moral concern is the group, each serves as a means of protection for an aspect of that group that, according to the ‘corporate’ conception, is unable to be reduced to an interest of members.

2i) Account of Claim 2b:

I will now turn to the *internal* component of the Strong Multiculturalist claim to group authority. This concerns the interactions *within* the group and rests on the claim to govern the group and require obedience from its members in order to protect the interests of the group. This aspect of the ‘corporate’ conception also has a relationship with the second of the two issues raised by Choudhry, the extent of *cultural encompassment*. Because of the broader range of groups that may be said to possess a distinct identity, *many* types of groups may possess separate moral standing and, as a result, even those will less than an encompassing societal culture may require duties from the individual membership of their respective groups.

Under the ‘corporate’ conception; group rights held by the group may be internally directed against its membership. This is because of the moral separation between the ‘group’ and the individuals who are members.

“By common consent people cannot hold rights against themselves. Consequently, there can be a right/duty or a right/liability relation only if we can separate the party that holds the right from the party that incurs the corresponding duty or liability. The corporate conception makes possible the separation of a group from its individual members because, morally, it attributes standing to a group separately from its members severally.”¹⁴⁴

From this, it is possible to claim that, at least “... *morally*, by giving standing to a group qua group, the corporate conception does enable a group to be identified separately from its members. That separation, in turn, opens up the possibility that a group corporately may hold rights against, or over, its members severally.”¹⁴⁵ Some form of balancing of the interests of two types of moral claims must occur once the separate moral status of the group is accepted. Where this occurs need not automatically correlate with either the size of the group, of the extent of its cultural encompassment, in fact, small size and cultural fragility can provide grounds for a *greater* level of group authority over individual members.¹⁴⁶

2j) Consequences of Claim 2b: Cultural encompassment and revision

¹⁴⁴ Jones (1999: 372)

¹⁴⁵ Jones (1999: 372)

¹⁴⁶ Margalit and Halbertal (1994)

Once there is a combination with Choudhry's account of cultural membership a number of consequences emerge. As mentioned earlier, the types of groups that are most likely candidates for group rights under the 'corporate' conception are the various types of ethnic groups that possess a 'distinct life and identity'. To a certain extent, these are unchosen and involuntary in nature; furthermore, as argued by Choudhry, membership of these types of groups may be partial in scope. That is, the group may not be fully institutionalised within a society and as a consequence, may not be able to offer total cultural encompassment for its membership. As a result of such conditions its membership will have received cultural resources from the larger surrounding society, either through choice (where they reject some of what is offered, but accept others) or at least by necessity (where the minority culture is unable to reproduce some aspects and is therefore unable to offer them). This is not a problem when recognition of cultural membership is conceived in the 'collective' way as the range of options are dictated by either necessity (offering only those cultural resources that are available given the group rights received which, in turn, are dictated by the size of voluntary membership) or by choice (the extent of individual's voluntary chosen level of cultural encompassment by association) with the shortfall being taken up by the surrounding society, by other cultural affiliations, or by various combinations. Furthermore, the extent of voluntarily chosen cultural association and, relationally, the extent of cultural encompassment, will be open to possible *revision* by individual members.

In contrast, the partial scope of some cultural affiliations and the revision of those affiliations may become problematic when the 'corporate' conception is adopted. These can each be seen, respectively, as the problems of duty and dissent. They stem from the separate moral status of the group that, by claiming some authority over members, requires the balancing, and possibly, the prioritising, of the interests of the group. As with the size of a group, under the 'corporate' conception, the extent of members' cultural encompassment may also be seen as an *irrelevant* factor in the assessment of the moral value and consequently, the group rights status, of a cultural group. Because of this, normative claims may be made governing duty irrespective of the extent of cultural encompassment. Furthermore, the moral status of the group may also make demands on membership's loyalty that outlaw dissent and so, greatly limit, or rule out, the possibility of revision of the extent, or totality, of that membership.

2k) Duty:

The first of these two areas of concern emerges when the 'corporate' conception is applied to individuals with partial cultural affiliations. When the interests of an individual are the sole object of moral concern, as with the 'collective' conception, one's ethnicity may not be the object of voluntary choice, but the extent of the association with one's ethnic group, or groups, certainly is.¹⁴⁷ This may no

¹⁴⁷ Although externally attributed association with a group may be involuntarily *imposed* on an individual, either through formal legal categories (for example, apartheid), or informally, in the form of racism.

longer be the case when the moral status of the group is also included as an object of moral concern. Once this occurs, those individuals with a partial membership of the group, or even those that do not actively contribute, may be beholden to support the group. The group may make the claim that the group's right to future survival requires that 'members' actively contribute to realising the collective goals of the group and conform to its traditions. They may have a duty to become full member of the group and consequently, not associate with any other groups. The groups claim to ensure its own interests may also require compulsory use of, and education in, their native language, even when this may not be the wishes of some individual members. Recognising the group's interests may mean that full group membership may not be an option of *voluntary* choice, but a *moral requirement*, even for those who prefer partial membership.

Furthermore, external rights to group's autonomy may entail a duty on behalf of the state for, at minimum, non-interference in the affairs of the group. The state may even be obliged by a duty to ensure the group survival, or flourishing, to encourage 'members' to return to the group. That is, group claims to authority of the first type, the external component 2a) help to reinforce or enhance their ability to claim authority of the second type, the internal component 2b), over those that may not perceive themselves a full members. As Jones puts it, "... even corporate rights directed at parties outside the group can have adverse implications for those inside the group."¹⁴⁸ This *duty* also contrasts with one of the two key feature of the 'collective' conception of group rights, which is the *voluntary* nature of those group associations that may claim such rights.¹⁴⁹ I will return to this in Part 3.

2l) *Dissent:*

This brings me to the second area of concern with the internal component, the group's rights over dissenting members. This aspect also contrasts with the other key feature of the 'collective' conception, that of the ability of an individual to *revise* their association with a group through *dissent* when it does not reflect their interests.¹⁵⁰ As mentioned earlier, dissenters cannot logically be a part of a group that claims group rights justified on the basis of a shared of common interest. By dissenting, they cannot share the group interest, and therefore, their interest (being different) cannot contribute to the sum of combined interests that may require a group right. In contrast to this, not only may individuals be required to become members of 'their' particular group, they may also be required to conform to the wishes of that group. This aspect does not only apply to those that see themselves as partial or lapsed members, but also those who may have chosen in the past to actively associate with the group. Both types of members are seen as having some degree of moral duty to submit to the group's moral right of authority over, and representation of, its members.

¹⁴⁸ Jones (1999: 375)

¹⁴⁹ For example, Kymlicka, who can be seen to support a 'collective' conception, claims that Dworkin's 'endorsement constraint' is one of the "... two key preconditions for leading a good life"; this to correlate with voluntary choice, as opposed to paternalistic ascription, of association. Kymlicka (1995: 81)

¹⁵⁰ This can be seen to reflect the second of Kymlicka's preconditions, taken from liberals such as Rawls and Mill, for the freedom "... to question those beliefs..." through revision. Kymlicka (1995: 81)

2m) *Combining 2a) and 2b)*:

Jones offers a clear outline of the basis of such an argument: In cases of dissent, over religion for example, it may be that

“... a community’s internal affairs, including the place that religion has in its life, are matters on which only the community qua group has standing, external intervention designed to alter the characteristic of the community’s internal arrangements will be illicit ... If the group only has standing, the group’s ‘authoritative’ or ‘authentic’ voice is the voice to which we, as outsiders, should attend; the voice of the individual or the sub-group has no status.”¹⁵¹

Where dissent does occur the “group’s exclusive corporate right to order its internal affairs” (claim 2b) will mean that it may allow such an individual the right of exit from the group, or it may allow exit, but not as a right,¹⁵² or in some cases, exit may be the area of contention and therefore, the group may not allow for the exit of dissenting members and require conformity.

2n) *Dissent Harms Collective Interests*:

This is guaranteed by the externally protective rights derived from claim 2a) that disallows intervention into the affairs of the group in order to protect its interests as a whole. External recognition is necessary in order for the group’s distinct identity to be respected, which is important for the wellbeing of the group’s membership. Strong Multiculturalists, such as Taylor, regard external “... public recognition as central to the modern quest for authenticity and an integral part of the right to collective self-determination of political self-expression.”¹⁵³ That is, the claim to the right of group representation from claim 2a) requires external recognition of the group. This is because of the value that that recognition has in contributing the authenticity of individual group members, as well as the value it has to the group. Furthermore, the group members quest for authenticity is conflated with contributing to the group’s collective goals, which are based on “... publicly espoused notions of the good”¹⁵⁴ such as group self-determination and other types of rights derived from the claim 2a). For an individual to not support such collective conceptions of the good affects the group’s ability to make such claims and, consequently, this will then adversely affect the possibility of the group’s survivability into the future, as it limits those external protective rights and rights of group autonomy. In order to make claims of the type 2a) with an ‘authoritative’ or ‘authentic’ voice, claims of the type 2b) are required. Dissenters harm the pursuit of the goals stemming from the collective conception of the good; they harm the group’s interests and therefore, should be restrained for the good of the group.

2o) *Dissent Harms Individual Interests*:

¹⁵¹ Jones (1999: 376)

¹⁵² This is argued for in a paper titled ‘In Defence of Nonliberal Nationalism’, by Ranjoo Seodu Herr (2006: 326 n. 50). “From a communitarian perspective that values the flourishing of national common goods, detractors who desire to leave the community should be *allowed* to leave, not because they have a “right” to do so, but because the community would be better off to let go of these individuals.”

¹⁵³ Moore (2005: 279)

¹⁵⁴ Taylor (1993: 175)

Individuals *need* their cultural context, as it is prior to them. The group's quest for external recognition is harmed by the individual's dissent, and because group and individual recognition are conflated, then this means that individual's quest for authenticity through recognition is also harmed. Basically, as Seyla Benhabib puts it, it is a claim that "... subordinates moral autonomy to movements of collective identity."¹⁵⁵ It is in the interests of the individual that they should conform their preferences to those of the common good because this is the prior evaluative context of those preferences and, so, conformity to this standard *is* their best interest. Furthermore, given that the minority group is the source of a separate system of goods, offering a different order of values to its own members, it would be doubly wrong for the majority group, with its own systems of values, to deny the authority of the minority group. Not only is the majority group undermining the survivability of the minority group by recognising dissenters; they are harming the real interests of those individuals.

2p) Qualifiers:

The two qualifications are also commonly found in Strong Multiculturalist conceptions. The first is primarily concerned with the relationship between a minority individual and the minority group. It claims that individual's identity formation is developed in dialogue with their significant others, but also, may be, in opposition to them. On the one hand, it means that identities are not dictated and defined by culture, on the other; it is also very sceptical of any 'monological' account, as this rejects the claim that individual identity is culturally empty and is formed independently by the individual, separately from a cultural context. This account tries to steer a middle path between denying the absolutely defining role of culture, (thus enabling the possibility of individual autonomy) while also claiming it's essential role in individual's lives so as to enable the ideal of authenticity.

The second qualification is the 'presumption' of equality of cultures. There cannot just be the claim "... that we owe equal respect to all cultures."¹⁵⁶ The prospect of dialogue between groups, which is justified by the concern for individual members of the minority group, rests on the possibility of cross-cultural judgement; this requires the 'presumption', not the necessity, of equality of cultural groups. With the latter, inter-group relations would be severed, as any dialogue would fall into a form of culturally subjectivist relativism. On the other hand, the 'presumption' compels support for inter-group dialogue and recognition as it resists the assumption of an objective standard of cultural judgement. Basically, it tries to steer a middle path that supports a policy by the larger group of granting rights to the minority group because its initial assumption is that the latter group is a comprehensive system of values and goods that are worthy of protection. It attempts to enable a plurality of value systems which are incommensurable into a whole, singular ordering, but to also

¹⁵⁵ Benhabib (2002: 53)

¹⁵⁶ Taylor (1994: 66)

disallow the two extremes of "... subjectivist, half-baked neo-Nietzschean theories ..."¹⁵⁷ of cultural valuation that offer an "... inauthentic and homogenizing demand for recognition of equal worth ..."¹⁵⁸ that Taylor so obviously disagrees with, while also rejecting ethnocentric standards of false objectivity.

Combined together, the two qualifications cover the two areas of interaction that are at the core of the Strong Multicultural account. They attempt to create a balance point between the minority individual and the minority group, and between the minority group and the majority group. The first helps to distinguish the individuality of the member, while also enabling an account of the role that membership of the group plays in their lives. It attempts to create a space within the account of culture that allows for some individual freedom from a deep cultural conservatism that would define all aspects of their life, while emphasising the importance of the traditional structure. The second allows for the interaction between groups, allowing the possibility of group recognition or the incorporation of separate legal systems. It enables the downplaying of any essentialised differences between the groups and seeks to define the shared values of a state, rather than the divergent ones. The two qualifications, used together, enable the possibility of distinct groups, but allow for them to interact and find common ground. Another consequence of this account is that the interaction occurs between the groups, rather than between individuals.

Even taking into account the qualifications offered, the consequences stemming from the claims made by the Strong Multiculturalists seem to be strongly illiberal. To a certain extent, the theorists who support this 'corporate' conception of group rights downplay this, but I hope to have shown, at a philosophical level, the logic entailed in their argument and the corresponding consequences for individual members. The extent of these, of course, depend of the weight given to the interests of the group in balance with those given to the individual members, but I hope that I have shown the connection between the claims made about the nature of cultural groups and the duties entailed for those individual members. Under any analysis of the 'corporate' conception, the interests of the group matter, and this is at the expense of individuals.

Part 3) Procedural Liberal/Liberal Multiculturalist response to 'Corporate' Justification

3a) Rejecting the 'Corporate' Conception:

The intent of the previous section has been to elaborate the alternative justification for group-rights. The central difference between the two justifications is the existence, or not, of the groups separate moral value. Liberals reject this claim, as Brian Barry puts it, "Cultures are not the kind of

¹⁵⁷ Taylor (1994: 70)

¹⁵⁸ Taylor (1994: 72)

entity to which rights can be properly ascribed”¹⁵⁹, while Kymlicka claims, “Groups have no moral claim to well-being independently of their members ...”¹⁶⁰ Gutmann claims:

“Putting a shared identity above considerations of justice means elevating what is not morally fundamental above what is. Group identity is not morally fundamental. If it were [...] groups could subordinate just treatment of individuals (members and nonmembers alike) to the identity and interests of their group.”¹⁶¹

It may be possible to justify the ‘metaphysical assumptions’ that inform the claims of intrinsic value and separate moral status of the group, but this would have to be a strong argument because, as I have shown, acceptance would mean limiting individual rights. I will leave this possibility open, but maintain that Liberals must reject its illiberal consequences. My concern is with Kymlicka’s justification for the claim that some group-rights do not have to be at the detriment of individual autonomy. This is clearly not the case if the ‘corporate’ conception is adopted; it has the consequence of limitations on *both* of the necessary conditions for individual autonomy, and as Kymlicka has argued, autonomy is a precondition for the protection of the most basic right, freedom of conscience.

Duties arising from the separate moral status of the group will conflict with the ‘endorsement constraint.’ This means that some individual’s will face limitations on their acting in accordance with their beliefs on what is valuable. According to Kymlicka, this negates the value of the choices that they are forced to accept. This contradicts the Strong Multiculturalist claim about the priority of the group as provider of meaning and value to its members. Furthermore, the group’s moral justification for rights to restrict *dissenting* members is in conflict with the other necessary condition for individual autonomy. Individuals are restricted from changing their minds (if that conflicts with the position of the group). This restricts the individual’s range of available options to only those allowed by the group, and as such, this might lead to inequalities between individuals within the group. Some may be allowed access to many, valuable options, while other individuals may be severely restricted. The ‘corporate’ conception restricts the liberties of those who are members; this means that, within a liberal society, some citizens will not be being treated equally. I will conclude that, although Strong Multiculturalism may be able to argue that there are claims of greater importance that justify this inequality, this theory *cannot* claim that its group-rights justification does not limit individual freedom and equality.

3b) Accepting the ‘Collective’ Conception:

The ‘collective’ claim for group-rights provides the best justification because Kymlicka and Raz believe that their theory *can* support both group-rights and individual liberties. “Liberals can only

¹⁵⁹ Barry (2001: 67)

¹⁶⁰ Kymlicka (1989: 241-2)

¹⁶¹ Gutmann, (2003: 16)

endorse minority rights in so far as they are consistent with respect for the freedom or autonomy of individuals.”¹⁶² Their Liberal Multiculturalism rejects the restrictions of duty and dissent; they claim to support three principles that are central individual freedom:

1. Individual endorsement of choices:¹⁶³
2. Individual rational revision of choices:
3. The individual right of exit.¹⁶⁴

The right of Liberal tolerance protects all three of these principles from any groups (or the state) attempts at illiberal internal restriction. That is, *internal group tolerance* protects and promotes individual autonomy, which is then a precondition for freedom of conscience. Other conditions are also necessary, such as certain capacities and resources.

They also claim to support certain group-based freedoms are consistent with these principles. Following Kymlicka’s claim that tolerance and autonomy are two sides of the same coin, such freedoms can be called rights to group toleration/autonomy. Toleration concerns freedom from certain laws (negative freedom) and autonomy concerns extra rights (positive freedom). Examples of the former are group freedoms from intervention and certain exemptions, that is, freedoms *from* the constraints of the state. Examples of the latter are positive supports *for* self-government and ‘education in the culture of their group’ (from 1j). These also require certain group-based claims for extra and specific resources.

The problem for these two philosophers is that, by clarifying their position against Strong Multiculturalism, it highlights possible contradictions, and difficulty, in yielding the conclusions that they draw in support of group rights. Their interests based ‘collective’ account requires the assurance of the individual member’s right to personal autonomy (rejecting 2b). As well as this they also claim extensive group rights to self-government constrained by liberal norms (such as asymmetrical federalism for Quebec); the intent of which is to achieve a degree of group autonomy in relation to the larger state so that the inequalities that exist between the various groups may be partially rectified (a ‘collective’ conceptions justification of claim 2a). Reconciling these two goals may be problematic because group autonomy and individual autonomy and, consequently, attempts to ensure group equality and individual equality may not be totally, or even partially, compatible with each other.

¹⁶² Kymlicka (1995: 75)

¹⁶³ Although Raz justifies some coercion to prevent ‘harm’ see Raz, (1986: 412-20). I will touch on this in chapter 4.

¹⁶⁴ Raz calls this a ‘right’ in Raz (1994a:167), but in Raz (2003: 267) he claims “I think there should be opportunities of exit, but doubt that there is in general a right of exit.”

Chapter 3:

Feminist Concerns with Liberal Multiculturalism

Part 1) Feminist concerns with Liberal Multiculturalism

1a) *The Problem:*

Kymlicka and Raz claim that differentiated group freedoms are justified on *Liberal* principals of equality. They are intended to support the growth and continued existence of disadvantaged groups, by ‘encouraging the[ir] prosperity’. They are justified by concern for individual interests in their freedom and equality. A more responsive system of differentiated entitlements would mitigate the traditional disadvantages faced by individuals from minority groups. Susan Moller Okin was the first, among many, to raise a concern that group rights may conflict with the feminist goal of *equality* for women. Okin begins an analysis of a conflict existing between liberal goals. She defined the first claim as a combination of the “... beliefs that women should not be disadvantaged by their sex, that they should be recognized as having human dignity equally with men, and that they should have the opportunity to live as fulfilling and freely chosen lives as men can.”¹⁶⁵ The second is broadly defined as the claim that “... groups with cultures distinct from the majority culture are not sufficiently protected by individual rights of their members, and therefore need special *group* rights, in order to protect their distinct cultures, meaning “ways of life,” in such settings.”¹⁶⁶ By granting *extra* protective rights to minority groups, either by enabling some degree of group autonomy or group toleration, those members of the group who have been traditionally disadvantaged by those in authority *within* the group may find this discrimination further exacerbated. The concern is that some individual liberties would be further restricted by differentiated rights and are in direct conflict with their initial justification, and this is something that must be addressed. In short, by granting rights intended to ameliorate unjust effects on minority cultures, the state may increase the extent of injustice to some members of that culture. Ayelet Shachar has called this potential conflict the paradox of multicultural vulnerability.¹⁶⁷

¹⁶⁵ Okin (1998: 661)

¹⁶⁶ Okin (1998: 661-2)

¹⁶⁷ She elaborates: “Multicultural accommodation presents a problem, however, when pro-identity group policies aimed at levelling the playing field between minority communities and wider society unwittingly allow systematic maltreatment of individuals within the accommodated group – an impact which in certain cases is so severe that it can nullify these individuals’ citizenship rights. Under such conditions, well-meaning accommodation by the state may leave members of minority groups vulnerable to severe injustice within the group, and may, in effect, work to reinforce some of the most hierarchical elements of a culture. I call this phenomenon the *paradox of multicultural vulnerability*.” Shachar (2001: 2-3)

1b) Kymlicka's Liberalism:

Kymlicka justifies his theory as Liberal through two important qualifications on the granting of group rights; the first is that "... a liberal conception of minority rights will not justify (except under extreme circumstances) 'internal restrictions' – that is the demand by a minority culture to restrict the basic civil or political liberties of its own members."¹⁶⁸ This is because "Liberalism is committed to (perhaps even defined by) the view 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 allegiance"¹⁶⁹. The second is that group-rights should be 'external protections'; rights should not be granted that enable the domination of others, as the intention of group rights is to also "... promote equality between groups by rectifying disadvantages or vulnerabilities ...". This means that a system of minority rights accommodations is restricted to those that promote "... *freedom within* the minority group and *equality between* the minority and majority groups (emphasis original)."¹⁷⁰ Culture provides that context of choice but that context must be governed by liberal principles, otherwise the individual would not have the freedom to choose, freedom is therefore a necessary condition.

Furthermore, there *should* be equality within the group, Kymlicka claims, "... restricting religious freedom, or denying education to girls, violates one of the reasons liberals have for wanting to protect cultural membership – namely, that membership in a culture enables informed choice about how to lead one's life."¹⁷¹ Any "... burdens should be *equally* distributed amongst all the members ... and should ... be consistent with the principle of respect for the equality and dignity of persons."¹⁷²

Okin also cites examples of Kymlicka's support for "... liberal principles, neither infringing on the basic liberties of its own members nor discriminating among them on grounds of sex, race, or sexual preference."¹⁷³ She also highlights his *substantive* support for ensuring the two basic requirements for autonomy, endorsement and revision:

"The liberal view I am defending insists that people can stand back and assess moral values and traditional ways of life, and should be given not only the rights to do so, but *also the social conditions which enhance this capacity (e.g. a liberal education)* ... To inhibit people from questioning their inherited social roles can condemn them to unsatisfying, even oppressive lives (emphasis Okin)."¹⁷⁴

¹⁶⁸ Kymlicka (1995: 152)

¹⁶⁹ Kymlicka (1995: 152)

¹⁷⁰ Kymlicka (1995: 152)

¹⁷¹ Kymlicka (1995: 153)

¹⁷² Kymlicka (1995: 230 n. 1)

¹⁷³ Okin (1998: 677)

¹⁷⁴ Kymlicka (1995:92) in Okin (1998: 678)

Okin claims that, despite this, advocates of multiculturalism pay insufficient attention to two areas of feminist concerns (A) over the content of gender roles, and (B) the ‘informal’ restrictions that may exist within the private sphere.

1c) First General Concern: Inequality

The first (A) is a problem because the claims for cultural rights fail to sufficiently “... differentiate among those *within* a group or culture ... [and] the different positions of roles that various cultures require of their various members.”¹⁷⁵ According to Okin, it is unreasonable to ignore the differences that may exist between the relative statuses of the sexes within a group when examining the validity of collective rights. This point contains two aspects; first, a group may have clearly defined roles for each sex that may restrict the range of options available to women, meaning that they are unequal. The content of these options may also be confined to those that are undervalued and degrading (where women are viewed as inferior), severely restrictive (where women are viewed as the bearers of the group’s status), or a combination of the two. The second aspect concerns an unwillingness to change. Those in authority (usually men and elderly women) can be unwilling to support, or hostile to, any deviation from, or reform of, the content of such roles.

1d) Second General Concern: Restrictions

The second area highlighted by Okin (B) is that it is important to provide an adequate account of the feminist concern with the private sphere. Liberal multicultural theories should not “... avoid examining the context in which persons’ senses of themselves and their capacities are first formed *and* in which culture is first strongly transmitted – the realm of domestic or family life.”¹⁷⁶ She states that there are many ways in which pressures, restrictions and education within the domestic sphere can be used to control the range of viable options available to women. Okin believes that by neglecting these two areas, advocates of group rights are paying insufficient attention to the requirements for individual freedom for some members of the groups.

1e) Okin’s General Claim:

Her argument against Kymlicka is that *concessions on group rights for many cultures will further restrict the individual freedom of women within these groups*. In the case of some groups, the discriminatory nature of the gender roles and the restrictions within the private sphere may mean that these costs are so high for women as to outweigh the group’s claims for extra rights.

Okin believes that the informal factors that affect individual freedom need to be taken into account, “... the degree to which each culture is patriarchal and its willingness to change, in this

¹⁷⁵ Okin (1998: 664)

¹⁷⁶ Okin (1998: 664).

respect, must be seen as relevant factors in the consideration of the justification of group rights from a liberal standpoint.”¹⁷⁷ If Kymlicka wishes to be consistent regarding his views on the primary importance of individual autonomy, then he must take into account the informal restrictions on group members’ freedom and the pressures to conform to restrictive gender roles. Although some groups will formally respect the basic civil and political rights of women and girls, in the private sphere they do not “... treat them with anything like the same concern and respect as men and boys, or allow them to enjoy the same freedoms.”¹⁷⁸ This is a point that, Okin states, Kymlicka has endorsed in the past, “... he shows awareness of it in his chapter on feminism in *Contemporary Political Philosophy*: that the subordination of women is often far less formal and public than it is informal and private, and that virtually no culture in the world today, whether minority or majority, could pass his “no sex discrimination” test if it were applied in the private sphere.”¹⁷⁹ These private restrictions may come in many forms. The examples that Okin provides include; restrictions on dress, limitations on extracurricular and social activities, pressure to pursue certain jobs, and parental selection of spouse and the age of marriage. When these are exercised against women within the group, even when there are no formally recognised group rights, they serve to restrict the available options. Even if we accept Kymlicka’s claim that by granting group rights the range of options will increase, Okin’s claim is that there is no guarantee that these benefits will be evenly distributed throughout the group.

If) Formulation of Okin’s argument

Okin’s more recent arguments went on to offer elaboration on the two general concerns. At a basic level, the two variants concern structures of representation that limit dissent (through gender roles), and the limitations on a substantive right of exit (in the private sphere).

These have been refined to:

A1) Inequality: Group representatives tend to be invariably composed of older male members and cannot be assumed to represent the interests of all group members. This means there are inadequate mechanisms to ensure the equal participation or adequate representation of less powerful members. Certain options are closed to women, while for others there is little or no choice. Internal dissent, by rejecting some aspects, is not tolerated.

B1) Restrictions: Various cultural and religious practices concerning women, including educational content and discrimination, are liable to effectively nullify or severely restrict their individual rights of exit from these groups. This limits the ability to revise association with the group.

¹⁷⁷ Okin (1998: 678)

¹⁷⁸ Okin (1998: 678)

¹⁷⁹ Okin (1998: 679)

I will try to show that both of these feminist concerns with multiculturalism are each tied to the two basic requirements for individual autonomy. By not accounting for these feminist criticisms, Kymlicka's group rights accommodations could be, in some cases, at the expense of the individual's two fundamental interests. Interests that both *he* and Okin regard as fundamental.

These two basic requirements for individual autonomy are:

Requirement 1: The freedom to lead lives from the inside according to the values that they *endorse*, without fear of punishment or discrimination. This justifies the rights to privacy and security of the person (Chapter 1, 2d).

Requirement 2: The freedom to rationally assess our conceptions of the good in the light of new information or experiences and to *revise* them if they are not worthy of our continued allegiance.

This justifies the rights to expression and freedom of association (Chapter 1, 2e).¹⁸⁰

Furthermore, the opportunity to exit and/or dissent is also very important for the Liberal Multiculturalists. Raz emphasises exit because his discussion is mostly concerned with the prosperity of groups within a Liberal society, while Kymlicka is more concerned with dissent enabling liberal reform within the societal culture. Both are closely related, and contribute to the effectiveness of the other. Dissent involves the rejection of an *aspect* of the group life, while exit involves the rejection of the *whole* (although aspects may be able to be maintained after exit).

Group inequality is opposed to neutral internal tolerance. That is, tolerance allows individuals a broad range of options and makes them equally available. A1) is the situation where some options are withheld from some people. This particularly concerns opportunities for leadership, while some opportunities for choice are withheld i.e. Okin's point about dress and marriage partner. Pre-established inequalities enable the implementation of internal restrictions that contribute to the continued maintenance of group inequality.

1g) Biases in Group Representation (A1):

Okin begins by stating that there exists a "... vast range of beliefs and practices both within and among cultures about the appropriate status and roles of women,"¹⁸¹ and as a consequence, there will be some groups that make claims that will conflict with the feminist goal of "... equal dignity and respect for women."¹⁸² That is, some groups' gender roles will preclude positions of authority and leadership to women on the whole or to younger women and girls. Okin believes this is particularly so with some recent immigrant groups; some of these groups come from foreign cultures that are patriarchal and "... endorse practices that are oppressive to women ...". Although they are unable to publicly reflect these views in their new homeland, these beliefs can "... often remain hidden in the private or domestic sphere ..."¹⁸³ and be reflected in groups' organisational structure. Pre-existing

¹⁸⁰ Kymlicka (1995:81) and Choudhry (2002: 59)

¹⁸¹ Okin (2005: 67)

¹⁸² Okin (2005: 67)

¹⁸³ Okin (1998: 680)

biases and inequalities can privately reproduce themselves in liberal society. This is especially so for “... inequalities between the sexes, which are often less easily discernable, because they are less public than other inequalities.”¹⁸⁴

As group rights can mean that the rights of the group members will differ from those possessed by the rest of society (assumed to be liberal) and some groups may claim rights that will indirectly restrict the ability of the weaker members to exercise their individual rights, it is important to investigate which members of the group are acting as its representatives and whether they represent *all* of the members interests. Traditionally, the leadership roles in such cultural groups is gendered, reflecting the endorsed practices of their original societal culture and excluding those whose customary role does not include the option of leadership.¹⁸⁵ This undemocratic system is partially sustained by those in power who question the cultural authenticity or allegiance of dissenters. In order to maintain this structure, Okin claims that “... the privileged, male, traditionalist elite within their groups, accustomed to speaking for all, may question the loyalty of any members who offer any other perspective – especially a feminist one – on the cultural norms.”¹⁸⁶ When this is the practice, the result is that the account of cultural practices is solidified to the advantage of those whom the pre-existing biases favour.

Where these types of authorities are dominant, there exists very few, if any, means of changing the defined roles for individuals within that cultural community. There is the possibility of exit, which I will turn to next, but there also exists a strong desire on behalf of all types of group members to have some access to their cultural community, either as full members of their societal culture (with national minorities), or through voluntary associations (with immigrant and religious minorities). This can result in a situation where some members, who are discriminated against, are not only are unable to have their interests regarded, but also desire to maintain their association with the group. The threat of exclusion from the group served as a means of restriction on members. The consequences are, Okin believes, that the weak members’ socially prescribed roles are precluded from revision (by the leadership) for fear of having their loyalty to the group questioned. The cost of membership for some individuals is a restricted range of available options and an inability to question or revise this role.

1h) Liberal Duty to Examine:

Under Kymlicka’s theory, it is the state that has the authority to decide on whether to grant immigrant-groups rights. Because of this, Okin claims, the state must closely investigate any intra-group inequalities that may exist. Efforts must be made to examine if the claims made by the group

¹⁸⁴ Okin (2005: 72)

¹⁸⁵ Okin claims that, in many cases, the leadership of these groups is “self-proclaimed” and unelected, usually consisting of the older men and some of the older women. Okin (1999a: 24)

¹⁸⁶ Okin (2005: 74-5)

authorities are shared by all of the types of members, not just the elites.¹⁸⁷ Kymlicka precludes granting extra rights or exemptions to groups that impose internal restrictions, but the nature of repression that may occur in an illiberal group is confined to the use of *informal* mechanisms within the particular support granted. Groups can claim to be formally respecting the rights of all members, thus fulfilling Kymlicka's criteria, while at the same time applying social pressure on individuals to conform to their traditional roles within the group. The liberal state has a duty to investigate both the claims that are made by the groups' representatives and *also* those that are made by the females within the group. These may coincide but they may also differ. The state has a duty to consult with all aspects of the group when "... considering whether a relatively patriarchal cultural group should enjoy exemptions, subsidies, or other privileges that will – whether directly or indirectly – have differential impacts on the lives of its various members."¹⁸⁸

As mentioned before (chapter 2, 3b), group-rights enable some group freedom, even those that Kymlicka claims encourage integration. Freedoms 'from' or 'to' both allow group independence. This includes both of Kymlicka's exemptions and assistance rights (chapter 1, 2a); the first allows Raz' 'cultural education' (right 1) and 'legal protection for customs' (right 2), while the second supports rights 3, 4 ('autonomous cultural institutions'), and 5 (Chapter 1, 1j). That is, Kymlicka's immigrant rights allow Raz' multicultural rights, which, in turn, 'enable communities to *sustain* their own culture (my emphasis).' Three of these mentioned are particularly susceptible to Okin's claim of private restrictions occurring within the extra supports given that enable group independence. 1) Education in the culture of the group can compound gender inequality if it is biased towards this, 2) legal recognition of customs and practices through exemptions can excuse usually unacceptable gender bias, and 3) autonomous cultural institutions are partially separate from state authority; there is an expectation for the state to be tolerant of such organizations through non-intervention. This can provide a partial separation from the state that enables possible private gender discrimination.

Okin's primary concern is the extent of private restrictions on women. Public recognition of the traditional practices can contribute to the difficulty in reforming or expanding the scope of gender roles. Where women are in opposition to these practices, state support for the group will directly contribute to an option that they do not endorse. Attempts at reform are intended to broaden the options available to women, so that if the individual wishes to revise their chosen conceptions of the good, then there can be a better range of meaningful options for them to choose from. State support of differentiated rights, especially for biased accounts or cultural practices, could decrease the extent to which women are able to rationally revise options. This could be limited further, if rights to partially

¹⁸⁷ Okin has claimed, "The majority has ... a special responsibility to members of minority groups whose oppression it may promote or exacerbate by granting group rights without careful consideration of intra-group inequalities ... Giving credence to such claims of unity [as are put forth by the leaders of most groups] by granting group rights to a non-democratic community thus amounts to siding with those in power, the privileged against the marginalized, the traditionalists against the reformers, who often portray dissent as disloyalty to the group." Okin (1999b: 121)

¹⁸⁸ Okin (2005: 74)

control the content of the educational curriculum for members were extended to such groups. Not only could this affect the number of options but also the extent of the ability to *rationaly* revise such options. In sum, Okin claims that there are many private restrictions on immigrant women and girls, stemming from the transplantation of their original patriarchal culture into their domestic environment. Traditional norms of group representation perpetuate this through biased accounts of the culture. While not claiming self-government rights, the formal polyethnic rights, claimed from the state by authorities in the group, may serve to undermine attempts at reforming these private restrictions. This can compound the difficulty in achieving a more representative account of the culture through the greater participation of women in decision-making.

li) Raz on Exit:

Okin claims that advocates of group rights cite the right of exit as being an important factor in ensuring that abuses do not occur, or are at least lessened, within the group. For Raz, it serves as a transformative mechanism, facilitating reform within a cultural group if conditions are unsatisfactory for members, while also serving as ‘vital protection’ for those that are repressed. In the situation where there is a culture that possesses ‘unacceptable’ aspects, Raz believes that rights and supports should not apply. Some “... cultures repress groups of either their own members or outsiders.” Where this oppression is a “... result of a structural feature of that culture which systematically frustrates the ability of people, or groups of people, to fulfil or give expression to an important aspect of their nature within that society,”¹⁸⁹ Raz believes that the fault is with the culture and this may be a reason for suppression of that culture¹⁹⁰. But, oppression seems to be relative to the prevailing society, and in a homogeneous society the young may be ‘socialized’ into accepting certain differentiated gender roles that may limit the scope of opportunities available to each individual. When transplanted into a different environment that does not “... accept gender determination of opportunities,”¹⁹¹ the traditional practices of the group may take on new meaning, becoming ‘oppressive’ as some, usually younger, members begin to question these roles. This is a particularly important problem to resolve as he recognises that the earlier socialisation can occur within oppressive groups, meaning that others are severely limited in their ability to transplant and adapt themselves into the new society. This produces potential for conflict within the group, as some members attempt to enforce the (now oppressive) traditional socialisation on the dissenters. Here, the right of exit serves an integral role.

Like Kymlicka, Raz bases his justification for the preservation of cultural groups in terms of its contribution to the well being of people. Where there is systematic oppression of the individual, these cultures should be “... supported only to the degree that it is possible to neutralize their oppressive aspects, or compensate for them.”¹⁹² This is primarily achieved through provision of the

¹⁸⁹ Raz (1994a: 169)

¹⁹⁰ Raz (1994a: 170)

¹⁹¹ Raz (1994a: 171)

¹⁹² Raz (1994a: 169)

option of ‘convenient exit’ from the group. Without this, the basic justification for immigrant group rights is lost, as individuals would not find freedom to choose the options available from their cultural structure, and they may only find pressures to adopt the restrictive roles that their culture dictates. As a result, Raz argues that:

“... the opportunity to exit from a group is a vital protection for those members of it who are repressed by its culture. Given that most cultures are repressive to a lesser or greater degree, the opportunity of exit is of vital importance as a counter to the worry that multiculturalism encourages repressive cultures to perpetuate their ways. I have already indicated that political societies are entitled, indeed required, to discourage repressive practices in their constituent cultural groups. The groups should be encouraged to change their repressive practices. But this is a very slow process. Opportunities of exit should be encouraged as a safeguard, however imperfect, for members who cannot develop and find adequate avenues for self-expression within their native culture.”¹⁹³

Raz has recently indicated a greater opposition to intervention (or suppression). He has said that, in ‘contemporary conditions,’ he “... can object to supporting illiberal groups ... when ... [they] have seriously oppressive attitudes towards some of their own members, oppression whose ill consequences cannot be avoided through exit from the group, and where there are alternatives, less supportive policies which can ameliorate the conditions of the oppressed.”¹⁹⁴ But most “... present a mixture of oppressive and non-oppressive features” so that liberalising internal change, “... coupled with opportunities for exit, is more promising than any heavy-handed state attempt to reform them ...”¹⁹⁵ He goes on to say that the state should be wary of withdrawing all forms of support for illiberal groups.

1j) Restriction on Exit (1b):

Okin claims “any consistent defence of group rights ... has to ensure ... the right to exit one’s group of origin”.¹⁹⁶ This freedom must be a substantive one. This is not to say that such a right is sufficient in itself, as one aspect of a system of rights and entitlements available to all, but this particular right must have a realistic basis. This is one that recognises and compensates for the various restrictions and limitations that may prohibit it actually being exercised. Although Raz also claims this, Okin believes that this is not possible under the system of immigrant group rights that he is advocating. Her argument is that Raz’ approach does not offer the real possibility of substantive exit for some, as this is undermined by the detrimental socialisation that is possible under his system of group rights. For Okin, the consequences of Raz’ lack of compatibility between group rights and substantive exit mean a “... serious violation of the equality of persons that is basic to liberalism.”¹⁹⁷

¹⁹³ Raz (1994a: 172)

¹⁹⁴ Raz (2003: 266)

¹⁹⁵ Raz (2003: 266-7)

¹⁹⁶ Okin (2002: 205)

¹⁹⁷ Okin (2002: 206)

Although Raz does not believe that the liberal state should support cultural groups that oppress individuals, either internally or externally, Okin claims that his definition of oppression is problematic. She sees a conflict between objective and subjective definitions of ‘oppression’. He claims that there is nothing wrong with cultures whose members’ roles are ‘gender-sensitive’, “... so long as they succeed in socializing the young to a willing acceptance of their ways,”¹⁹⁸ and do not imply the inferior status of women. These roles differentiate the sexes and *can* contain claims of female inferiority and *do* demarcate a limited range of available options. For Raz, such socialisation is acceptable in the original homogeneous culture, but may be seen as ‘oppressive’ when transplanted into a liberal multicultural society. Okin believes that Raz has a problem because of his distinction between “slave cultures, racially discriminatory cultures and homophobic cultures,” on the one hand, and “sexist and patriarchal cultures”¹⁹⁹ on the other. The former are objectively defined as oppressive, while the latter only subjectively (dependent on the surrounding society). He states “Oppression ... [is] a result of a structural feature of that culture which systematically frustrates the ability of people, or groups of people, to fulfil or give expression to an important aspect of their nature within that society.” The nature of the *surrounding society* and whether or not there is the *perception* of oppression on behalf of the victim matters not; the fault lies with the culture. Consequently, the state is obliged to implement reform, mitigate the harms and, if these measures fail, suppression of the offending cultural group could be justified.

Not so for practices that enforce gender inequalities, for in these situations “... the key to what makes the previously non-oppressive practices oppressive on the subjective perceptions of its members: the young women who are now unable to be successfully socialized to accept them.”²⁰⁰ Sexist practices become oppressive when the liberal societies’:

“... prevailing notions of gender non-discrimination ... filter across the cultural barriers. It will affect the self-understanding of the young, and not only the young. It will inform their perceptions of their own native cultural practices ... It is understood by many of its own members as consigning women to an inferior status ... The true meaning of social practices is their social meaning. Thus existence of a cultural group in a new multicultural environment can lead to a change in the meaning of some of its practices and make them oppressive.”²⁰¹

1k) Socialisation:

If we follow Raz’ subjective account, then groups that succeed in socialising the young in opposition to feminist or liberal concepts, are not seen as oppressive, as they will have been endorsed

¹⁹⁸ Okin (2002: 210)

¹⁹⁹ Okin (2002: 210)

²⁰⁰ Okin (2002: 211)

²⁰¹ Raz (1994a: 171)

by those affected. This is further compounded both by the tendency for 'reactive culturalism',²⁰² amongst recent immigrant groups, some of which develop a cultural demarcation based on their 'anti-feminism',²⁰³ and also, a state policy of encouraging the toleration of all viable cultural groups. This contributes to the promotion of a more conservative and traditional interpretation of the culture, meaning that the socialisation of the young will tend to encourage aversion to the liberal ideas of the surrounding society. The effects of it will also tend to concentrate disproportionately on the young females, as it is "... women and the family [that] frequently become symbols of a *nomoi* group's "authentic" cultural identity"²⁰⁴ when that identity is seen to be threatened. The latter policy of group toleration further contributes to this by allowing a degree of 'non-intervention' into the affairs of cultural groups.

Okin claims that there is a conflict in Raz' account between the socialisation that he believes may legitimately occur, and his claim of the need for a substantial right of exit on the other. Given the tendency for some minority groups to become more restrictive when transferred into a multicultural society, combined with a 'hands off' policy by the state, such socialisation could severely undermine any realistic hope of an individual to exit an illiberal community. This is because the tendency for socialisation is to discourage those traits that would enable a high degree of individual autonomy.

Restrictive socialisation, according to Okin, is primarily achieved by two means; restriction of education and early marriage. Statistically, females are less likely to receive an education than males; "... cultural factors are clearly significant, since among both the poorest and the richest countries, those with highly patriarchal traditions and cultural heritages have some of the highest discrepancies between female and male literacy."²⁰⁵ As well as this, she also has concerns about the *content* of education received by girls from some cultures, that is, "... the message often given to girls is that they are less than fully equal to boys and that their proper role in life is to care for their families and obey their husbands."²⁰⁶ Okin's point is that the cultural roots that promote these attitudes towards the education of girls are partially transferred to liberal societies through the parents' rights to define and restrict aspects of their children's education. Continuance of education may be discouraged and the content adjusted to reflect and respect cultural traditions.

For Okin, marriage also has an important role to play in the socialisation of young women, "in many cultural groups, girls are married early ... and marriages are often arranged for them,

²⁰² Shachar defines this as: "... a strict adherence to the group's traditional laws, norms, and practices as part of an identity group's active resistance to external forces of change, such as secularism or modernity. Reactive culturalism can be expressed in various ways – in a rigid reading of a group's textual sources, for example, or by closely monitoring the behaviour of its [female] members and quickly quashing any unorthodox interpretation of the tradition as evidence of decay. In all, these amount to attempts to more clearly demarcate the group's boundaries by walling it off from the outside world." Shachar (2001: 35-6)

²⁰³ Reitman (2005: 197-8)

²⁰⁴ Shachar (2001: 36) a point also made by Saharso (2000: 227 n. 2)

²⁰⁵ Okin (2002: 217)

²⁰⁶ Okin (2002: 218)

regardless of their preferences about the timing or the husband.” This can “... radically affect a woman’s capacity to exit her culture of origin.”²⁰⁷ Many young immigrant women are socialised at an early age into accepting restrictive conditions within their cultural group. The longer-term consequences of early interruption of education, the content of that education, and premature entry into unequal marriage arrangements (such as child engagement) can have a strong effect on even the possibility of exit from the group. Furthermore, socialisation dictates and distorts the individual’s *preferences*, or those preferences are adapted to accord with a narrow set of opportunities, resulting in an artificial endorsement of their restricted or subordinate status.

11) Adaptive Preferences:

Martha C. Nussbaum introduces the problem of *distorted* and *adaptive* preferences, these act as a psychological barrier to the possibility of exit from minority cultural groups. She describes them as the “... ways in which women are led by social forces to internalise and endorse images of themselves that impose hardship and deform self-expression,”²⁰⁸ meaning that “... women who endorse their own inequality do so in a way that does not express their own true or authentic preferences.”²⁰⁹ As a result, Nussbaum claims that, citing Mill, liberal societies can contain within them “... preferences deformed by a legacy of social hierarchy and inequality,”²¹⁰ stemming from the original, traditionally patriarchal, societal culture. For Mill, the sources of *distorted* preferences lie in three factors (which are relational to the conditions for autonomy), these are: 1) Lack of information or false information about facts, 2) Lack of reflection or deliberation about norms, i.e. absence of public debate, and 3) Lack of realistic options.²¹¹ The appropriate response is for an “... intensive attention to the education of the young and [exposed to] the force of public persuasion and public argument.”²¹² That is to say, the state ought to pursue measures that it believes to be for the good of individuals, such as ensuring a comprehensive education for all group members, even where it is not the preference of some members.

Where there are narrow restrictions on the range of options and opportunities available to women, Nussbaum claims that individual preferences are shaped to accord with these; this is the occurrence of *adaptation*. A lack of information and a restriction of opportunities and possibilities lead to a situation where the individual adapts to their unavailability to a point where they are not consciously desired. In such restrictive conditions, “... it is very easy to internalize one’s own second-class status and learn not to strive for, or even desire, what tradition has put out of reach.”²¹³ As a

²⁰⁷ Okin (2002: 218).

²⁰⁸ Nussbaum (1999: 147)

²⁰⁹ Nussbaum (1999: 148)

²¹⁰ Nussbaum (1999: 149)

²¹¹ Nussbaum (1999: 149)

²¹² Nussbaum (1999: 149)

²¹³ Nussbaum (1999: 151)

result, we must be "... highly mistrustful of existing preferences ..." ²¹⁴ as individuals may have been socialised at a young age not to desire or even conceive of the possibility of exiting their cultural group. This may be a preference 'deformation' that creates a psychological barrier to exit, had these barriers *not* been socialised into the person, and had they instead been exposed to the relevant and reasoned information, they would have chosen differently. ²¹⁵ "Cultural forces, including ideas of the self and other imparted through moral teaching, are widely held to produce emotions and desires that are inauthentic in a sense of being inimical to self-development, self-expression, and rational autonomy." ²¹⁶ As a consequence, the state should be very suspicious of practices and rights that promote a negative form of socialisation, as it can produce inauthentic psychological barriers to the pursuit of some options. It also means that by not exiting, individuals may not freely be endorsing their group's illiberal practices; it may be that socialisation has rendered this option inconceivable.

1m) Summary:

Pre-existing inequalities can exist within a group, which may be reflective of traditional illiberal norms. These inequalities may distort group representation towards these biases and that, if group-rights are given, they could further support and compound this inequality. Private discrimination *combined* with a degree of group autonomy (tolerated by the state), mean that those who dissent in favour of Liberalisation are in a weaker position. The traditional authorities have greater resources in which to enforce conformity to socially proscribed roles (1g). A right of exit is important, but Raz' account of oppression allows for restrictive socialisation, and limits state intervention, these two combine to severely restrict the possibility of exit (1j). Transplantation from a restrictive culture into a Liberal society brings individuals with adapted preferences that have been formed in response to restrictive social conditions (1m). All of these factors contribute to limitations on the two conditions necessary for the exercise of individual autonomy. Furthermore, there is also a tendency to control the various background conditions for autonomous action, such as education (I will return to this in the next chapter). In general, there is a tendency to privately restrict an individual's ability to question or revise their commitments to the group. This is a conservative tendency of the hierarchy to maintain and control the group's traditional structure. Group rights in support of group autonomy can tend to restrict individual freedom (to dissent, reform or exit), in order to maintain group cohesion and agency. The feminist claim is that the state should ensure that there are *substantive* supports to enable the conditions in which all individuals are able to exit the group, should let internal inequalities be a factor limiting the allocation of group-rights (the "no sex discrimination" test) and should take into account adaptive preferences in education provision. But these assurances to a substantive right of exit are not enough, as its existence is the justification for group toleration.

²¹⁴ Nussbaum (1999: 151).

²¹⁵ John Harsanyi in Nussbaum (1999: 150)

²¹⁶ Nussbaum (1999: 152)

In) Exit as an Excuse for Abuse:

Ayelet Shachar says that the ‘right of exit solution’ has a number of problems as a justification for group rights; it claims to both serve as ‘implied consent’ while also having a ‘transformative function’ that promotes liberalisation of the group. The option of exit shows that those who stay consent to their status as members, and the possibility that they will exit means that the group will liberalise to maintain their allegiance. A mild version of this can be seen in the views of Raz. Oppressive cultures that discriminate against individuals are to be supported “... only to the degree that it is possible to neutralize their oppressive aspect, or compensate for them,” this compensation is provided through supporting a substantive exit *option*. This implies that if the exit is not taken, then individuals are then consenting to the group’s oppression. The ‘transformative function’ of exit works on the principle that “... the simple power to threaten exit allows one greater voice in influencing the course of events so as to take away the need for exit.”²¹⁷ I cite Raz’ support for this in 1i).

The general feminist claim is that, because of limitations on the ability to exit, a lack of exit may not imply consent and, secondly, if this option for exit is not available, or that it can be force on members, it may not have as much of a transformative function as has previously been attributed to it. The right of exit is claimed to be a solution to the possibility of abuse with in a group. If membership is a ‘private’ matter, and individuals are free to leave the group at any time, the state does not need to intervene because one of Liberalism’s basic commitments is to toleration, which requires the protection of the “... private sphere from intrusion,”²¹⁸ Both Kymlicka and Raz support ‘substantial’ conditions to ensure that it is a real possibility (such as an education, and freedom of association and speech).²¹⁹ But both would claim that ‘substantive exit’ would be solution enough to ensure systematic abuse does not occur, but generally oppose intervention.

Shachar claims that there are “... obstacles such as economic hardship, lack of education, skills deficiencies, and emotional distress might make exit all but impossible for some.”²²⁰ The result of transferring the responsibility away from the state and on to individuals means that members have a “... choice of penalties: either accept all group practices, including those that violate your fundamental citizenship rights, or (somehow) leave.”²²¹ As a result, a woman may not exit, but does not necessarily consent to her subordinate status. Some of the cost should be put onto the group, as an individual member is both part of that group and a citizen. The state should intervene in the affairs of the group in order to ensure that weaker members have some say. An individual must have the ability to be a member in a group *and* have an ability to affect change. Where the state embraces a policy of

²¹⁷ Reitman (2005: 196) paraphrasing Albert Hirschman

²¹⁸ Saharso (2000: 229)

²¹⁹ Kymlicka (1992: 143)

²²⁰ Shachar (2001: 41)

²²¹ Shachar (2001: 41).

little or no intervention, the group is to require dissenting members to either accept fully the conditions of group membership, or force their exit. This, for Shachar, is unfair, as forced exit means that "... those who are most vulnerable must pay the highest price while the abusers remain undisturbed in their home communities,"²²² and if exit is not pursued under these conditions, it is hard to argue that this implies the individual fully consents to their position within the group.

A substantive right of exit *combined* with the possibility of state intervention or regulation where necessary, are needed in order for there to be a 'transformative' effect. Basically, state intervention may be needed to enforce internal reform; a right of exit, in itself, is not enough and may be counterproductive. The state has a responsibility to its citizens, both those inside and outside of cultural and religious groups, to ensure that their rights are not being abused. This involves not just the formal possession of rights, but also the real possibility of being able to exercise these rights. Many factors, such as lack of education, adaptive preferences and informal group restrictions, play a part in limiting individuals', particularly young women's, ability to reform the group, exit it, or even just exercise their rights. The feminist claim is that the state cannot afford to be 'hands-off' but must intervene with substantial support, and even regulation of the group, in order to protect those most susceptible to abuse within it.

Part 2) Kymlicka's Reply:

2a) Note:

Similar to the concerns regarding the 'corporate' conceptions group requirements for *duty* and against *dissent* within the group (Chapter 2, 2k and 2l), and limitations on exit from the group, the two feminist concerns can be seen as a response to these pressures in a Liberal context. Here, they regard these as being exercised in private, but could be reinforced through group-rights. The first concern (1A) relates to the two requirements; women are pressured to fulfil their 'duty' by conforming to their proscribed role (with its restricted range of options), if they 'dissent' by attempting to question an aspect of their role within the group, they are threatened with various sanctions. The second concern (1B) relates to exit, here too, there are private group restrictions on the individual ability to exercise this. Duty conflicts with endorsement, some individual choices are being restricted, or even defined by the group. Those questioning this are restricted in their ability to revise their overall role and particular choices. These forms of oppression occur within the group, but there are also restrictions of exit. All three aspects of the feminist concern can be seen to have some conflict with the three principles that are central to individual freedom mentioned in the Chapter 2, 3b), which were supported by Kymlicka and Raz.

²²² Shachar (2001: 41)..

2b) *Kymlicka on Immigrants:*

I have intentionally restricted the discussion to immigrant groups to show that even these forms of group-rights can be restrictive on individual freedom. I have not actively discussed rights that would allow self-government, although, following the points made by the feminists that group-rights that enable a limited amount of group tolerance or autonomy can limit individual freedom, then a greater level of group autonomy has the potential for greater limitations. Kymlicka regards this distinction as valid (although Choudhry has placed doubt on it) and an important factor in determining the appropriate response to the existence of internal restrictions.

When people arrive as immigrants, “They bring with them a ‘shared vocabulary of tradition and convention’, but they have uprooted themselves from the social practices which this vocabulary originally referred to and made sense of.”²²³ It is nearly impossible to re-create their old societal culture in the new country as they are a minority and the existing infrastructure of the state is strongly reflective of the customs of the majority. Kymlicka claims “... most existing ethnic groups are too ‘dispersed, mixed, assimilated and integrated’ to exercise self-government”²²⁴ and they have also *voluntarily* chosen to move and there are some expectations of intended integration as a result of this. Immigrants are entering a new societal culture and therefore ‘... the expectation of integration is not unjust.’²²⁵ This integration is not easy; he describes the process of immigration as being analogous with a ‘vow of perpetual poverty’, As a result, the polity that is accepting immigrants into its society must make some concessions; it must “... ensure that the mainstream culture is hospitable to immigrants, and to the expression of their ethnic differences. Integration is a two-way process – it requires the mainstream society to adapt itself to immigrants, just as immigrants must adapt to the mainstream.”²²⁶

For Kymlicka, it is taken as a given that immigrants accept the political values of their new country, and that the political authority in that state has the right to require acceptance of the “... constraints of constitutional principles of equal opportunity and individual rights.”²²⁷ Basically, immigrant rights can only exist within the framework of the Liberal principles of the state and the state has authority to intervene in the affairs of ethnic minorities when they are acting contrary to this, just as it does for any other citizen. Kymlicka refers to the policy statements of a number of Western democracies on the responsibilities of immigrants and the state, and the limits of tolerance and accommodations offered to distinct cultural practices. The general point is that “... multicultural

²²³ Kymlicka (1995: 77)

²²⁴ Glazer (1983: 227) in Kymlicka (1995: 96)

²²⁵ Kymlicka (1995: 96).

²²⁶ Parekh (1990) in Kymlicka (1995: 96)

²²⁷ Kymlicka (2001: 174)

accommodations operate within the context of an overarching commitment to linguistic integration, respect for individual rights, and inter-ethnic co-operation.²²⁸

Kymlicka is a comprehensive Liberal and argues for the importance of promoting conditions essential for the full and informed exercise of autonomy. Immigrant minorities have voluntarily accepted the constraints of liberal toleration and so Kymlicka believes that it is "...legitimate to compel respect for liberal principles," through state enforcement "... so long as immigrants know this in advance, and none the less voluntarily choose to come."²²⁹ Just because 'internal restrictions' may occur in the private sphere and be conducted in subtle ways, this does not mean that they should be tolerated. Kymlicka claims that his distinction between allowing 'external protections' and disallowing 'internal restrictions' still stands and is able to accommodate Okin's concerns. "...I accept Okin's claim that we need a more subtle account of internal restrictions which helps us to identify limitations on the freedom of women in ethnocultural groups."²³⁰ He claims, there is no reason why a more detailed system of identification of individual rights abuse cannot be adopted by the state, while still maintaining a system of immigrant rights and exemptions. None of the rights argued for would formally restrict anyone's freedom and efforts to identify abuse should be supported. It is a misconception that by granting immigrant groups these supports, the liberal state is enabling them to have power that would restrict an individual members' freedom²³¹.

Ensuring the priority of individual autonomy within the societal culture serves as a veto against any other type of immigrant group-rights, other than those that promote integration. Liberalism, according to Kymlicka, is a matter of degree (all cultures have been illiberal at some time), so, the extent to which efforts are made to enforce 'formal' or 'substantial' conceptions of individual autonomy is a matter for the government to decide. Kymlicka's commitment to providing the conditions necessary for the full and informed exercise of autonomy supports state intervention in ensuring this through education etc. There is no reason to think that this could also include various 'substantive' measures, such as efforts to find, discourage and punish various forms of discrimination and rights violations against individuals. It could also support a system of compensation for the costs of exit, the reason for this is that immigrant and religious groups are not claiming autonomous rights and these groups are voluntary, so would not be undermined by policies that would enable individuals to exit, if they so choose. This is not the case for national minorities.

²²⁸ Kymlicka (2001: 174)

²²⁹ Kymlicka (1995: 170)

²³⁰ Kymlicka (1999b: 32)

²³¹ Kymlicka has reject Okin's implications on the nature of his immigrant rights: "... regarding the practice of female clitoridectomy, or compulsory arranged marriages. Although these practices are sometimes debated under the label of 'multiculturalism', no Western government has accepted them. They have been rejected, not because they would directly affect the social integration of immigrant groups, in terms of their participation in mainstream ... institutions, but rather because they involve a denial of individual liberties and equal rights." Kymlicka (2001: 164 n. 5)

2c) Kymlicka on National Minorities:

Kymlicka believes that societal cultures are the basic units for individuals within political society and, as such, national minorities should possess group-rights sufficient to allow for substantial autonomy. Kymlicka is weary of the majority culture providing substantive supports for exiting *from* national minorities; he prefers reform *within* the culture. For the majority culture to offer compensation for those wishing to exit a national group (unlike immigrant), it serves to undermine the viability of that group. It is far better for individuals to retain membership in such societies, this is both because of the importance of access to one's own societal culture and the unfairness of the extra burden of cost imposed on the individual in having to leave that culture. "People's self-respect is tied up with the esteem in which their national group is held..."²³² and if that is left to decay, or is undermined, then this will have negative effects on members of that group.

Where the group is illiberal, Kymlicka's claim is that those members of the group that support liberal ideals should attempt to reform the group, while liberals from outside the group should voice their disapproval, *but* the majority culture has no automatic right to impose liberal principles on a national minority. Kymlicka's intention for group-rights is to serve as a *protection* for the minority culture against the effects of the majority, he opposes internal *restrictions*, but sometimes these occur. He claims some American Indian bands are "... essentially theocracies, with an official religion."²³³ "... The Pueblo theocracy, ... [is] seriously deficient from a liberal point of view,"²³⁴ but even though the band "... might violate the right to equal treatment guaranteed by the American Constitution, ... Indian members can't appeal to that right, since the actions of a sovereign Indian band are not fully subject to that guarantee."²³⁵ "In this case, self-government powers are being used to limit the freedom of members to question and revise traditional practices."²³⁶ Kymlicka does not support these practices, the purpose of group-rights is to contribute to a broader individual autonomy for group members. These restrictions "...in no way promote[s] that"²³⁷, *but*, where national minorities are treating some of their members in an illiberal or unjust way, it is up to the individuals to seek redress in the courts of *that* culture.

Kymlicka justifies this by highlighting the concern that various communities have:

"... that white judges will impose their own culturally specific form of democracy, without considering whether traditional Indian practices are an equally valid interpretation of

²³² Kymlicka (1995: 89)

²³³ Kymlicka cites the Pueblo as an example, "members of other religious denominations are limited in their freedom to worship, and are sometimes subject to discrimination in housing benefits etc," Kymlicka (1989: 195) also, the Pueblo "... use sexually discriminatory membership rules. If female members marry outside the tribe, their children are denied membership. But if men marry outside the tribe, the children are members." Kymlicka (1996: 26)

²³⁴ Kymlicka (1995: 165)

²³⁵ Kymlicka (1989: 196)

²³⁶ Kymlicka (1996: 26)

²³⁷ Kymlicka (1989: 196)

democratic principles ... the identification of oppression requires sensitivity to the specific context, particularly when dealing with other cultures, and so it is not surprising that Indians would want these questions settled in a forum where judges are familiar with the situation.”²³⁸

Kymlicka believes that there are generally applicable liberal principles and that individuals from the majority and minority are both able to identify these, *but* he does not believe that the majority has the authority to step in and force compliance. Kymlicka’s justification for this position rests on an appeal to an analogy: At an international level, liberals are increasingly unwilling to impose their principles on groups that do not share them. Kymlicka believes that this is equivalent to the situation when a national minority *within* a country has violated the rights of its members. The authority to intervene rests in the hands of the government of that minority. When *it* is the perpetrator, the responsibility rests with the liberal members to enact reform. In such cases, external appeals for justice should not be made to the political unit’s Supreme Court. National minorities are distrustful of centralised judicial review because, historically, these courts have been used as a tool of oppression and a means of legitimising the loss of rights and land. Supreme Court “attempts to impose liberal principles by force are often perceived ... as a form of aggression or paternalistic colonialism,”²³⁹ Where intervention *is* justified is unclear for Kymlicka, it is certainly justified in cases of “... gross and systematic violation of human rights, such as slavery or genocide or mass torture and expulsions...” Concerning anything less than this, intervention depends on a number of relevant factors:

“... including the severity of rights violations within the minority community, the degree of consensus within the community on the legitimacy of restricting individual rights, the ability of dissenting group members to leave the community if they so desire, and the existence of historical agreements with the national minority.”²⁴⁰

This does not mean that external liberal groups cannot do anything to oppose situations in which a national minority is acting illiberally. They have “...the right, and responsibility, to speak out against injustice,” and to provide support for internal reformers. Liberals can also “... push for the development and strengthening of international mechanisms for protecting human rights.”²⁴¹ To conclude, comprehensive state intervention is legitimate when immigrant minorities are acting illiberally *within* the societal culture, intervention is illegitimate *between* societal cultures (even within a country), unless it is an extreme case of oppression.

²³⁸ Kymlicka (1996: 25)

²³⁹ Kymlicka (1989: 167)

²⁴⁰ Kymlicka (1989: 169-70)

²⁴¹ Kymlicka (1989: 168-9)

Part 3) Problems with Kymlicka's Distinctions

3a) Immigrant/National Distinction:

Kymlicka's justification for distinguishing between national minorities and immigrant groups and, consequently the different sets of rights that each may be entitled too, is based on his 'argument from consent' (voluntariness) and the second being his 'descriptive account' (immigrants do not claim rights to autonomy). He claims that access to one's own stable societal culture, but Choudhry claims that "... Kymlicka's distinction appears to embody two mutually inconsistent views on the value of cultural membership."²⁴² National minorities have their own, but "... for ethnic immigrants ... what matters is not membership in any particular, including one's own culture, but membership in *a* culture (emphasis original)."²⁴³ If it does matter to have access to one's own culture, "... it is unclear how he can stop at polyethnic rights, and not proceed to self-government."²⁴⁴ Ruth Rubio-Marín has argued for the involuntary nature of some immigration. This is based on a lack of viable options (forced through poverty), lack of informed consent (not knowing the costs of emigrating) and global and historic injustice.²⁴⁵ Furthermore, "... children born into a cultural minority household have not expressed consent to cultural uprooting; only their parents have."²⁴⁶ She claims that group-rights to language maintenance (and associated infrastructure i.e. schooling) should be given to immigrants because they have not truly consented to giving up the language rights to their culture. Choudhry claims, "... at least some ethnic immigrants are sympathetic to the idea of institutional separateness."²⁴⁷

If the distinction does not hold, then the implications are that immigrants and national minorities are each part of the same continuum of 'interests in *own* culture'. Numbers will matter as this will mean more rights for some immigrant groups than national minorities (especially small indigenous groups). Alan Patten claims that this fact means that Kymlicka cannot maintain his claim that access to societal culture is a primary good, it must be that "... substitute[d] for [the] ... toned-down view of the *interests* that people have in accessing their own culture..."²⁴⁸ Involuntary immigration combined with absolute claims about access to culture yield counterintuitive consequences for immigrant group-rights claims that support autonomy. On the other hand, making voluntariness the basis for consenting to give up entitlement to access to your *own* societal culture means, as Carens claims, "... immigrants have access the societal culture of the state they have entered and have waived the right to maintain their own societal culture. So, it is not clear why

²⁴² Choudhry (2002: 62)

²⁴³ Choudhry (2002: 62)

²⁴⁴ Choudhry (2002: 62)

²⁴⁵ Rubio-Marín (2003: 139-44)

²⁴⁶ Rubio-Marín (2003: 139)

²⁴⁷ Choudhry (2002: 77)

²⁴⁸ Patten (2003: 184)

immigrants are entitled to any special rights to maintain their distinctive cultural commitments.”²⁴⁹ Voluntary (or not) consent cannot serve as the defining basis for such a sharply defined distinction between rights to self-government, and, following Carens, rights to nothing.²⁵⁰

3b) *Internal/External Distinction:*

Harry Brighouse claims that Kymlicka’s emphasis of rational reflection conflicts with external protections. He claims, “... our ability to revise our practices and question authority depends crucially on what other opportunities are available to us.”²⁵¹ He implies the transforming effect of the opportunity of exit. Exiting enables another option outside of the culture and supports reform of options within the group.²⁵² The system of distinctions that Kymlicka develops to protect the individual from group-rights is susceptible to claims that integration rights enable some autonomy, this autonomy can be used to limit members opportunities, and those groups that Kymlicka believes forfeit their rights to autonomy may have a strong claim according to his theory.

Furthermore, Shachar points out that Kymlicka support the position that “... minority cultures which systematically impose internal restrictions on their members are not equally entitled to accommodation.”²⁵³ This is true in regard to immigrant group, as he is willing to impose intervention and restrict granting rights. This is indicated in his support for the ‘no sex discrimination’ tests and his supportive stance in regards to Okin’s concerns about immigrant rights abuse. Shachar claims that by opposing intervention in the case of illiberal national minorities:

“...Kymlicka is taking for granted that a certain type of group ... merits accommodation by the very *nature* of its group type. Yet this is not a sufficient test even according to his own account. We also need to establish that the group does not impose excessive internal restrictions upon its members ... [H]e upholds their entitlements to the fullest degree of

²⁴⁹ Carens (2000: 57)

²⁵⁰ Chandran Kukathas offers an illustration, “Many migrants ... are not voluntary migrants or voluntary members of a minority ... convicts ... Africans who were brought to America as slaves ... refugees ... some members of migrant families ... children (almost invariably) and spouses, usually wives ... and migrants emigrat[ing] reluctantly ... driven ... by economic necessity ...” Kukathas (1997: 413) He goes on to say, “Some indigenous peoples are members of national minorities by choice. In some cases this is because they can exit their communities at low cost and at low risk to live as (cosmopolitan) members of the wider society. This is true for many ... people of mixed descent ...[and] members ... who have become urbanized ... Similarly, many Quebecois are in a position to live either as French Canadians or as Canadians, but choose voluntarily to hold on to their heritage.” Kukathas (1997: 413)

²⁵¹ Brighouse (2004: 114)

²⁵² Brighouse claims, “The degree of permeability of boundaries between cultures affects what goes on within them, including the extent to which members ... can be restricted ... [T]he interest in having conditions ... to reconsider and revise our conception of the good ... supports and interest in having permeable boundaries ... But the permeability of boundaries will predictably be limited by many special rights, in particular by language rights ... children growing up as monolingual of a minority language ... limits their opportunities for exit, and thus their ability to reshape their home culture in their own interests.” Brighouse (2004: 114)

²⁵³ Shachar (2001: 30)

accommodation, even though this is precisely what needs to be established by his own internal-external distinction.”²⁵⁴

Kymlicka claims to protect the individual’s interests by “... putting in a qualification on accommodations, which state that no identity group merits differentiated rights if it uses such jurisdictional powers to impose unjust internal restrictions”²⁵⁵ but, the problem for Kymlicka is that he allows the rights *before* making the assessment. He supports the right, then assess that they are internally illiberal, but cites the right as reason for non-intervention. Restrictions on individual rights violate the “... state-individual-centred understanding of standard citizenship theory ...”²⁵⁶ It is illegitimate to prioritise (or replace) it with the “... state-identity-group-centred understanding. This is what strong Multiculturalism does, and is what Kymlicka’s theory wishes to avoid, but Shachar claims that he slips into this, in regards to national minorities. He grants the group-right to autonomy, *then* assesses the status of individual rights. Individuals may be members of a group, but they are also members of the state. For national minorities he assesses the state-group relationship, before the state-individual one, then site the former as reason for restrictions of the latter. It should be the other way around. He “... contradicts his own central tenant when he advocates accommodation even in cases where putting legal authority in the hands of the identity group means exposing certain group members to routine in-group violations of their individual citizenship rights.”²⁵⁷ His theory requires him to assess individual status before assessing group status, and this is what he does with immigrant groups.

The consequences are that there is a “... slippage in his position ... into ... the strong version, at least in relation to national minorities ... Kymlicka takes for granted what still needs to be established (that national minorities merit accommodation) ... He thus corners himself into a position that resembles the strong version of multiculturalism when he suggests that the state, as a third party, has little if any authority to intervene in the group.”²⁵⁸ Peter Jones makes the same point, claiming that he switches from a ‘collective’ justification (for immigrant rights etc. based on individual interest) to a ‘corporate’ one for some national minority right in order to justify strong group-autonomy rights, “... the difficulty for Kymlicka is that institutionalised rights, particularly rights of self-determination, typically take a corporate form.”²⁵⁹ He cannot justify the reversal of his original position (individual *then* group) to giving priority to the group (group *then* individual) without appeal to special status for the national minority group - ‘by the very *nature* of its group type’. Consistency with his theory requires the approach he applies to immigrant groups, priority of ensuring individual rights and *then*

²⁵⁴ Shachar (2001: 31)

²⁵⁵ Shachar (2001: 31)

²⁵⁶ Shachar (2001: 29)

²⁵⁷ Shachar (2001: 29)

²⁵⁸ Shachar (2001: 32)

²⁵⁹ Jones (1999: 375 n. 37)

determining accommodations based of the ‘collective’ conception of individual interests; not first assuming the special status of national minority groups, then seeking to ensure individual rights while respecting the rights already given.

I have just shown that consistency in his theory requires Kymlicka to *not* follow the application that has claims for national minority (i.e. non-intervention). That is because this is based on a ‘corporate’ conception assumption of group value, which is not even consistently applied to the immigrant groups. If he did, then some of the consequence for immigrant self-government rights discussed (chapter 3, 3a) would be applicable, but he *cannot* consistently accept the ‘corporate’ assumptions and support individual autonomy primarily for the reasons discussed; that they entail restrictions on endorsement, revision and exit (chapter 2, part 2). Therefore, he must follow the consequences of his own argument; individual rights have priority as there is nothing intrinsically valuable about the group, legitimate group-rights may be claimed by appeal to the combined collective interest of individual, and group-right that enable internal restriction are illegitimate as “... minority rights are limited by principles of individual liberty ...”²⁶⁰ furthermore, he allows intervention into immigrant groups where there is abuse because that is a limitation on individuals rights. They may be ‘compelled’ to respect liberal principles. Basically, they are subject to the common law and any exemptions are based on there not being illiberal or restrictive.

Consequently, given a group of individuals (including national minorities), Kymlicka theory supports the view that the state *firstly* has a duty to assess and ensure they each have their rights, resources and opportunities entitlement. It must investigate abuse, if there is, then it should intervene to remove those internal restrictions, as it is their duty to ensure equality of opportunity. A person who is restricted has less opportunities; rectifying this involves substantively ensuring the rights and conditions required for individual autonomy. This is the states duty to its citizens, and this has first priority. Once this is ensured (a difficult job) *then* the state may assess collectively justified claims for group-rights and, of these, “Liberals can only endorse minority rights in so far as they are consistent with respect for the freedom or autonomy of individuals.”²⁶¹ Any group-rights given would have to be consistent with the system of individual rights and entitlements that have already been ensured. He cannot ‘corporately’ justify a right of group-autonomy (separate from the interests of the individual members) and *then* go about attempting to ensure individual that individual have access to the condition required for autonomy and, where restricted, claim that they should not, but there must be prior respect for the group-right. Kymlicka’s liberal account obliges him to intervene to comprehensively ensure individual rights first, and then assess individual interests based claims second.

²⁶⁰ Kymlicka (1995: 6)

²⁶¹ Kymlicka, (1995: 75)

Chapter 4:

Common Framework

In this chapter I claim that the aspect of Kymlicka's theory that is commitment to individual equality and autonomy implies a support for a common legal framework. This supports state intervention into the group to substantively ensure access to the conditions required for individual revision of their commitments, including exit into the wider society.

Part 1) Conflict Between Individual and Group Autonomy:

1a) Introduction:

The feminist concern with Liberal Multiculturalism means that in order to ensure access to the conditions necessary for the exercise of individual autonomy, a common legal framework encompassing multiple groups in the society is necessary. In order to ensure that all members of a group are being treated equally, endorse their membership, and are able to revise aspects of, or exit, the group, there must be options external to those supported by the group. Where there are restrictions on the individual, the state must be able to ensure that there are alternative options available. This is necessary in order to ensure that all citizens are treated equally (in terms of equality of opportunities). The state must be able to ensure that everyone has *substantive* access to the conditions necessary for autonomy, because, without this they would be unable to follow the dictates of their conscience. Ensuring the conditions necessary for individual autonomy is a difficult goal to achieve. In this chapter I will offer an account of the general requirements that are needed in order to accommodate the concerns of the feminist critics and will direct this in criticism of the Strong Multiculturalist position. I believe that Kymlicka's argument justifying non-intervention across societal cultures is flawed; although, having said this, I support his, Raz' and the feminists' general Liberal concern for comprehensively ensuring individual equality, freedom and access to common entitlements. I will argue that this requires a single liberal framework covering multiple groups to ensure these conditions of individual freedom and equality.

1b) Conflicting Aspects in Kymlicka's Theory:

Here, I am indicating what I see as two separate aspects within Kymlicka's theory (mentioned in Chapter 2, 1k). Firstly, his claims about the nature of societal cultures and secondly, his claims about the importance of individual access to Liberal freedoms. The first is the justification for non-intervention (and consequently, differentiated legal frameworks) in the case of national minorities, as

it concerns interactions *across* societal cultures. The second justifies intervention *within* a societal culture (and within a common framework) to protect individual rights, which therefore supports immigrant group intervention. Both are intimately linked because, for Kymlicka, access to the former is a precondition for the latter, thus potentially making it prior to ensuring compliance with certain Liberal rights. I will delay critical discussion of this precondition until the final chapter. In this current chapter, I will concentrate on ensuring these liberal freedoms that he supports, utilising it in rejection of the Strong Multiculturalist position and showing that this aspect of his theory implies *support* for a common legal framework. By common framework I mean a system of equal rights, resources and opportunities for all individuals, regardless of group, within a state. This is in contrast to group rights claims that support varying degrees of group autonomy and consequently, authority over their members. Here exists a differentiation in the various rights, resources and opportunities possessed by the various individuals in the state. I will argue that equal treatment of individuals leads to a common system that requires intervention into various groups. I will utilise these points in the next chapter to elaborate a particular account (which is consistent with much of Kymlicka and Raz' views) of the requirements of this single Liberal framework that accommodates the feminist concerns.

1c) Group Autonomy and Individual Autonomy:

Kymlicka argues that those from minority societal cultures are not being treated equally under a common legal system. This is because the state is not neutral because of the dominance of the majority's societal culture. "The state unavoidably promotes certain cultural identities, and thereby disadvantages others."²⁶² He goes on to say "... the idea that the government could be neutral with respect to ethnic and national groups is patently false."²⁶³ Individuals require access to an encompassing societal culture as a *precondition* for autonomously choosing from a range of *meaningful* options. Autonomy requires liberal freedoms to choose amongst options, including conditions enabling endorsement and revision. Societal cultures must enable freedom (autonomy) and equality (of opportunities) for members. Group rights are needed to enable a degree of equality between majority and minority societal cultures. So, societal cultures define options, options are needed for individual freedom; a 'sick'²⁶⁴ societal culture offers poor options to its members, they have less freedom than those from 'healthy' societal cultures. Therefore, those from the latter culture have *more* freedom to choose from a *quantitatively* and *qualitatively* superior range of options. As a result, there is an inequality between the individual members of each societal culture that should be rectified. Inequality between cultures affects the freedom and equality of individuals.

²⁶² Kymlicka (1995: 109)

²⁶³ Kymlicka (1995: 111)

²⁶⁴ Kymlicka uses the word 'decaying'; by this I mean to describe those groups that are at a disadvantage in the 'cultural market-place' because of the dominance of, and biases in support of the majority culture stemming from differences in matters of scale, language, location etc. Kymlicka claims that sacrifices by members are needed just to maintain the culture in this weakened state in the absence of group rights for the rectification of this unfair disadvantage. See Kymlicka (1995: Ch 6)

There are three variable factors; societal culture, autonomy and equality. The *group's* well-being as a societal culture requires group autonomy (independence through group rights) and a degree of equality with other societal cultural groups in order to compensate for state non-neutrality. The group as a unit must possess its own 'rich' and 'secure' cultural structure, so that the members' well-being is ensured. Once this precondition is established, the *group* should ensure that members have individual autonomy (freedom to choose and revise choices from a broad range of options) and individual equality (equal range of opportunities to choose from). The potential difficulty is the use of the word 'group', limiting the role of ensuring individual freedoms to the particular societal culture responsible for those individuals, rather than the 'state'. This is because there may be more than one societal culture in a state.

1d) Conflict Between Types of Autonomy:

For comparison, the feminist (and the general procedural egalitarian liberal) claim is that substantive efforts are required to ensure conditions of freedom and equality for all individuals within the state. This takes priority over any concerns about the status of group welfare. Furthermore, there are doubts about the role, status, and existence of any specific societal cultural group unit. In contrast, the Strong Multiculturalist position claims greater status for the group, claiming that it has separate moral value and a degree of priority, meaning that individual members have certain duties to ensure the well-being of that group. This view regards the cultural group as being a distinct unit.

Basically, the Feminist position is substantially ensuring the goal of individual well-being through access to conditions of autonomy and equality. It claims that the state *can* be neutral in its justification by treating all individuals with equal concern through a common entitlement to a set of rights, resources and opportunities. The Strong Multiculturalist position is, to varying degrees, concerned with ensuring the well-being of the group by enabling group autonomy, and ensuring a degree of equality with other groups. It supports a balancing of the interests of individual members along with the collective interests of the group, and it claims that the liberal state *cannot* be neutral because its basis in individual rights is harmful to collective goals based on a shared conception of the common good. Kymlicka believes that both goals (group autonomy and individual autonomy) are mutually compatible, but rejects the promotion of common goods because these can conflict with individual freedom. That is, group autonomy is useful as an external protection, but the promotion of goods work as an illegitimate internal restriction.

Both the Feminist and Strong Multiculturalist positions believe that ensuring their particular goal may involve some costs. Ensuring individual well-being may place limitations on the freedom of the group; ensuring group well-being may place limitation on the freedom of individuals. I believe that Kymlicka is wrong in his belief of mutual compatibility; attempting to ensure one of these goals can be at the expense of the other. This may not be the case for some claims, clearly in the case of type 8 rights, and possibly for some of the type 4, 5 and even 7 rights (chapter 1, 2a). But group rights

claims that enable some form of group autonomy (or tolerance), and I have shown that this applies to both immigrant and national groups, will be at the expense of the members' freedom, limiting some of their ability to endorse their options and to revise those choices that are made available to them. Individual freedom enables the possible rejection of the common good, while group autonomy enables the promotion of a common good at the possible expense of individual freedom.

1e) Objection to Strong Multiculturalism:

Strong Multiculturalists justify their claims for group autonomy by appeal to the survival of the group. They claim that the group has intrinsic value and therefore there is an interest in the survival of the object of separate moral concern. An important aspect of ensuring this survival involves limitations on the individual autonomy of members of the group (as well as possible restrictions on outsiders) and a consequence of this is that the treatment of members is not equal to non-members. Kymlicka opposes this - the interests of all individuals should matter equally and he regards the two aspects of individual autonomy, rational revision and endorsement, as vitally important interests needing protection. Furthermore, the value of a group is in its instrumental value to the interests of members and it is those interests that justify any claims for group supports, not continued survival of the group for the group's sake.

The aspect of Kymlicka's theory committed to individual equality, endorsement, revision and the instrumental value of the group membership conflicts with the position of the Strong Multiculturalists. The rest of this chapter will argue that these commitments imply that there must be a commonly applicable legal framework covering multiple groups. It is necessary for treating individuals with equal concern and enabling the continued future survival of the group (part 2) and to enable a substantive possibility of exit, including the assurance of the presence of 'informed consent' and other minimum requirements (part 3). I will elaborate on each of these in turn. The conclusions reached will provide the basis of the Liberal position that will provide the objection to the aspect of Kymlicka's theory concerned with access to societal culture (justifying group autonomy), but will be consistent with the aspect concerned personal autonomy.

Part 2) Priority of Individual Equality and Autonomy

2a) Habermas: Individual Basis for Groups

Jürgen Habermas offers an interesting discussion of cultural and religious group-rights in a paper entitled 'Equal Treatment of Cultures and the Limits of Postmodern Liberalism' (2005). In this he makes the argument for the priority of the right over the good, mediated by a system of toleration that requires a commitment to show 'equal respect to each citizen'. A common framework is needed to treat individuals equally and to enable group survival. He claims "only the difference-sensitive egalitarianism of equal rights can fulfil the individualistic requirement to guarantee equally the

vulnerable integrity of individuals with distinctive life histories.”²⁶⁵ This is consistent with Kymlicka’s claim that the requirement which “... forms the basis of contemporary liberal theories of justice” is Dworkin’s ‘abstract egalitarian plateau’ on which “the interests of the members of the community matter, and matter equally.”²⁶⁶ Habermas claims that this equal concern for the interests of all requires a common legal framework.

2b) Conflict Between Group and Individual Autonomy:

This is because there is a paradoxical relationship between group autonomy and individual members’ equality if the ‘liberal intuition’ that legitimate group rights must be derived from the rights that are possessed by individuals; that is, if there is *instrumental* justification for group rights. This is consistent with the point made (chapter 3, 1h) that many forms of group-rights enable group autonomy that can be used to impose restrictions on individual autonomy. From Habermas’ assessment, there exists a conflict that can only be resolved by either showing that, “... from the perspective of civic equality, legitimate group rights *cannot* conflict with the basic rights of individual group members.”²⁶⁷ Strong Multiculturalist claims cannot be acceptable under Habermas’ assessment because they make the claim, assuming “... a metaphysically grounded ethics of the good ...”²⁶⁸, that the group is *intrinsically* valuable, meaning that cultural resources are *directly* worthy of rights. Individual freedom of action, particularly revision of, or dissent from, cultural practices, will come into conflict with cultural rights claims to group autonomy. Benhabib supports Habermas, claiming that fundamental conflict can exist between the interests of the group and the interests of an individual member. Discussing Taylor’s arguments (which I cited in chapter 2, 2n), she highlights the potential for conflict between the ‘individual’s search for an authentic selfhood’ which involves “... the recognition of one’s individual, unique identity”²⁶⁹ and the collective’s (possibly various and competing) ‘aspirations to cultural recognition’. There is the possibility of conflicting interests in the sense that there may be a requirement for the subordination of the individual’s interests to that of the group. She argues:

“It is both theoretically wrong and politically dangerous to conflate the individual’s search for the expression of his/her unique identity with politics of identity/difference. The theoretical mistake comes from the homology drawn between individual and collective claims ... facilitated by the ambiguities of the term *recognition*. Politically such a move is dangerous because it subordinates moral autonomy to movements of collective identity ...”²⁷⁰

²⁶⁵ Habermas (2005: 13)

²⁶⁶ Dworkin (1983: 24) in Kymlicka, (1989: 13)

²⁶⁷ Habermas (2005: 20)

²⁶⁸ Habermas (2005: 21)

²⁶⁹ Benhabib (2002: 52)

²⁷⁰ Benhabib (2002: 53)

She then moves on to say that “the right to equal dignity – autonomy – undergird the right to authenticity. But if so, Taylor must also admit the possibility that collective movements for the assertion of group rights may conflict with individual claims to autonomy...”²⁷¹ Strong Multiculturalist arguments claim that the group’s rights may sometimes (or often) outweigh the rights of members. But, Benhabib argues, the claims in support of “... the pursuit of collective difference presupposes a framework sustained by the premises of individual equality ... conflicts between individuals and movements searching for recognition are inevitable ...” Like Kymlicka’s claim that members’ interest cannot be sacrificed for the interests of their group, “... groups have no moral claim to well-being independently of their members...” and “... every individual matters equally ...”²⁷² Group rights are justified because they support the existence of minority groups and this matters because of the value that belonging to such groups has to their members as individuals of equal worth. Individual equality is the basis for any group claims; group autonomy cannot override individual freedom and equality.

2c) Habermas: Group Survival Requires Individual Revision

Habermas flatly denies the possibility that groups may be rights holders, independent of their membership, but, interestingly, he backs this claim by arguing for the prior necessity of rational revision in enabling group agency. Strong Multiculturalists argue that the intrinsic value of the group justifies restrictions on revision, but, instead of just denying the intrinsic value of the group and therefore, the legitimacy of restrictions, Habermas argues that revision is a precondition for the group agency and, therefore, continued existence of the group. So, for example, instead of claiming, as Taylor does, that the continued survival of the group requires restrictions on what members may do (such as on what languages they may speak, and where they may go to school), Habermas claims that, without members’ endorsement, the group, as a whole, would cease to be able to exercise agency and, therefore, would fail to continue to survive. The individual must have the possibility of revising their association with the group in order for there to be continued endorsement of that association. These individual rights are actually *instrumentally* necessary for the continued existence of the group. He supports the claim that groups *qua* groups cannot be ascribed rights; it may be possible to have groups rights justified indirectly from the interests of members, but cultural groups are not able to function directly as rights-bearers.²⁷³ Habermas (like many Liberals) believes that cultures do provide structures of context that inform the individual’s worldview, but he rejects the Strong Multiculturalist

²⁷¹ Benhabib (2002: 53)

²⁷² Kymlicka (1989: 242)

²⁷³ Habermas argues, “A Culture is not suited to be a legal subject as such, because it cannot meet the conditions for its reproduction with its own power; instead, it depends upon the constructive appropriation by autonomous interpreters who say “yes” and “no.” Therefore, for empirical reasons the survival of identity-groups and the continued existence of their cultural background *cannot* be guaranteed by collective rights at all. A tradition must be able to develop its cognitive potential, such that the addressees are convinced that this tradition is really worth continuing; and the hermeneutic conditions for the continuation of traditions can be guaranteed only by individual rights.” Habermas (2005: 22)

account - these are not just 'found'. An individual does not just mindlessly accept and reproduce a traditional structure, "... a culture cannot be maintained through drills and full-blown indoctrination; neither ... through the implicit habituation of the young ..."²⁷⁴ Habermas claims, like many Liberals, that "... traditions prove their viability by ... passing a critical threshold of the autonomous endorsement of every single potential participant." This means "young people must be *convinced* that they can lead a rich and meaningful life within the horizon of the acquired tradition." This endorsement may only be valid (and beneficial for the tradition) if there is 'a range of genuine alternatives' from which to choose from.

2d) Habermas: Individual Equality Requires a Common Framework

Cultural groups must exist within a single system of civic equality providing equal rights. This is because "... according to the modern understanding of the law, there really cannot be a "state within a state"". He believes that group based legal autonomy will result in 'irresolvable contradictions'. Habermas sees this primarily occurring when the separate jurisdiction of the group, especially when it is illiberal, comes into conflict with the 'egalitarian principle ... of "equal rights for all"²⁷⁵. I make these points in order to emphasise the importance to the Liberal in having a single overarching system of law in which individuals are treated equally, and which can then be used to justify their defence of the requirement of rational revision. Without it, the Strong Multiculturalist is able to claim the priority of the good over the individual right of revision because the members must exist within that cultural system, the good of the system then matters a great deal and must be then protected, as it is the source of the goods for the members. This creates a system of contradicting or separate legal systems in which certain individuals are treated differently from others. Under the opposing Liberal conception, the basis ensures legal equality of individuals, and this requires the individual right of revision, which produces the endorsement from members of the (not legally entrenched) traditional system of goods provided by the group. This then ensures the system's continued existence, if sufficient endorsement is given. In order for them to realistically do this, alternate options must be available to individuals, both in terms of the group providing multiple options (as preferred by Kymlicka), but also in the surrounding society, providing a broad range of options that members may choose.

Habermas' requirement for a singular 'legal order' is necessary in order to ensure the alternative options that are necessary for genuine revision to be possible, this enables the endorsement of choices, and consequently, (if continued acceptance of group membership is endorsed) the continued existence of the cultural tradition is supported. The single system protects the existence of 'a range of genuine alternatives.'

²⁷⁴ Habermas (2005: 22)

²⁷⁵ Habermas (2005: 23)

Habermas claims that under these conditions "... the principle of civic equality confronts all cultural groups with the universal normative expectation that their members not just be unconsciously initiated into traditional convictions and practices, but be taught to reflectively appropriate a tradition."²⁷⁶ Any form of collective rights that may exist within this system "... can only strengthen a group in its self-assertion if they also ensure the individual members the latitude to use them *realistically* in reflectively deciding between critical appropriation, revision or rejection."²⁷⁷ Enabling the conditions for rational revision, and 'a realistic right of exit' means the cultural traditions will survive as they are actually supported by those who live in, and accept, the cultural structure. Those groups that resist this, under a common legal system, will fail, as members are provided with other realistic options and choose to reject the restrictive culture. This means that the group loses its conditions for reproduction as its membership declines. "A dogmatically protected culture will not be able to reproduce itself, particularly in a social environment rich with alternatives."²⁷⁸ This too is supported by Kymlicka who claims, "... there is no inherent connection between the desire to maintain a distinct societal culture and the desire for cultural isolation."²⁷⁹ To offer a basic contrast, Taylor's position is that group survival requires group *differentiated* legal frameworks, which place different requirements on members and mean that there is inequality of individuals across groups.

2e) Summary:

To summarise, treating people with equal respect requires an egalitarian system of equal rights - individuals are the basis of all groups, and group autonomy and individual autonomy can conflict. Individual members of groups must endorse their continued membership, and this requires the possibility of revision, which in turn requires the existence of alternatives. The alternatives need to be available both internally and externally from the group. Group survival depends on the continued endorsement of membership, rather than restrictions justified by a claim of the intrinsic value of the group. The possibility of revision means that the individual endorses the continued membership in the group. This also means that, with sufficient numbers in support, the future survival of the group is ensured. This does place greater pressure on the group to ensure that it gains the endorsement of its membership by not restricting them. This, though, is legitimate because of the egalitarian requirement of 'equal rights for all'.

Treating individuals' equality is of primary importance and part of this requires ensuring that group members have alternative options available to them. This requires a common legal framework, as separate legal systems (group autonomy) conflict with individual equality. The generally applicable requirement for *all* citizens to "...reasonably reckon with the persistence of disagreement...", means

²⁷⁶ Habermas (2005: 23)

²⁷⁷ Habermas (2005: 22)

²⁷⁸ Habermas (2005: 22)

²⁷⁹ Kymlicka (1995: 103)

that it is not a one-sided burden, as the majority is not entitled to ignore the reasonable concerns of groups, but must engage with them in developing the framework (I will discuss this further in the next chapter).

2f) *Framework Protects Individual Freedom:*

Habermas has emphasised the beneficial effects of state support for ensuring the conditions for rational revision for the continued survival, even flourishing, of the group. Others Liberals have differed in their approach, emphasising the need for a common framework on the grounds that it is harmful for the members to be deprived of the conditions that are necessary for the revision of their cultural associations. This does not necessarily mean that the ‘ideal of autonomy’ must be promoted and that individuals must be encouraged to reassess all attachments (either as a whole or aspects over time). It just means that the conditions to enable revision (particularly exit) must be made available.²⁸⁰ This approach involves emphasising the central importance of individual rights over any claims of the group. Ensuring this involves ensuring the individuals’ ability to revise the associations that they find themselves in. This involves ensuring both the possibility of exit from, as well as the revision of the terms, of that association and providing the necessary background conditions to enable both. Rational revision, dissent and exit are all relational to each other, and the extent of the possibility to enact any of these is limited by the extent of the group’s authority over its membership. As claimed in the introduction, rational revision involves the possibility, by the individual, to revise their commitment to the choices that they have made from the range of options available to them. Dissent involves the questioning of limitations on those options available, or the creation of new possibilities for options. Exit involves the rejection of the association with the group and its structure of options that it makes available and meaningful to those who are members.

I have already mentioned Kymlicka’s support for internal liberalisation *within* the group by the revision of terms of membership protected by the prohibition on internal restrictions (chapter 1, 2b and 2e), but, as the Feminists and Raz have claimed, exit *from* the group is also necessary. I believe the feminist concern is legitimate and that both aspects are necessary (and complimentary), exit alone is insufficient, and appeals to internal reform of groups, without external protection of individual rights (including exit and the conditions to enable its exercise), is also insufficient.

²⁸⁰ Brian Barry claims “The ‘ideal of autonomy’ is, it may be said, a conception of the good life like any other, so the inculcation of autonomy by the state is as much of a violation of neutrality between conception of the good as would be the inculcation of, say, some specific religious doctrine.” Barry (2001: 123) Although it may be possible to argue that autonomy may be justifiably promoted by the state as a perfectionist goal. Steven Wall, following Raz’ ‘social forms argument’ claims “personal autonomy has intrinsic and instrumental value” because “for the vast majority of people in modern western societies, personal autonomy is a central component of a fully good life. This provides support for the claim that political authorities in these societies have strong reasons to create and sustain conditions that best enable their subjects to lead autonomous lives.” Wall (1998: 182) His argument, “...justified by direct appeal to autonomy ...”, claims that the government has “... a general duty to promote the autonomy of all children subject to its authority.” Wall (1998: 207) I believe that it is better to confine the defence of personal autonomy to a Liberal account of a common framework providing equal rights, resources and opportunities, which can justify substantively ensuring the *conditions* for the exercise of autonomy, not the promotion of it.

Part 3) A Common Framework is Necessary for Exit

3a) Barry on Exit:

Brian Barry emphasises the important role that the possibility of exit plays in ensuring that the individual's continued association with the group is actually endorsed. The viability of this option depends on there being a common framework encompassing the group so that there is an external alternative for members. His position is:

“The fundamental liberal position on group rights, which received its classic formulation in *On Liberty*, is that individuals should be free to associate together in any way they like, as long as they do not in doing so break laws designed to protect the rights and interests of those outside the group. There are only two provisos. The first is that all the participants should be adults of sound mind. The second is that their taking part in the activities of the group should come about as a result of their voluntary decision and they should be free to cease to take part whenever they want to ...”²⁸¹

This follows the Millian ‘harm principle’ that enables personal freedom to only be limited where their actions are harmful to others. For Barry, this freedom is ensured by a common set of rights and rules that provide a framework under which people may live. They provide equal freedom through various institutions, such as “... civic equality, freedom of speech and religion, non-discrimination, [and] equal opportunity”²⁸². The second proviso is ensured by attaching ‘crucial significance’ to the voluntariness of group membership. These “... include the capacity of individual group members to make well-considered and well informed choices from a range of realistically available options.”²⁸³ The best way to ensure this is to “... eliminate gratuitous barriers to exit from groups, because where exit is impeded this creates a presumption that the state needs to stand ready to intervene to protect the interests of individuals.”²⁸⁴ This supports a prohibition on internal restrictions that is guaranteed by the possibility of state intervention where they exist, in accordance with the Feminist conclusion (chapter 3, 1n).

3b) Education and Exit:

A particularly strong limitation on exit is group control of education leading to socialisation of adaptive preferences (chapter 3, 1j-1l). It is important that the state provides education to allow for the ability of possible exit, “... children must be brought up in a way that will eventually enable them to leave behind the groups into which they were born, if they so choose.”²⁸⁵ “Basic education ... is manifestly in the interests of the recipients, so states have a clear paternalistic duty to ensure that all

²⁸¹ Barry (2001: 148)

²⁸² Barry (2001: 122)

²⁸³ Barry (2001: 147)

²⁸⁴ Barry (2001: 148)

²⁸⁵ Barry (2001: 149)

children receive such an education, whether their parents wish it or not.”²⁸⁶ Without this, as adults, they would not have the resources to choose to, or succeed in, exiting a group and would therefore be dependent upon it. There would not be a fair or equal choice set open to them and they would be unable to revise their position in, or reject unwanted aspects of, their group association.

For Barry, the real possibility of revision through exit is necessary for voluntariness of membership. “If you remain in some association that you have the power to leave, that establishes a presumption that the perceived benefits of staying are greater than the benefits of the most attractive alternative.”²⁸⁷ Similar to Habermas, what matters is whether there is value in the alternative:

“Where even the best alternative is very poor, your choosing to stay does not entitle us to conclude that you are not suffering from some kind of oppression, exploitation or injury. If, however, your staying means that you are passing up at least one reasonably eligible alternative, that is a much sounder basis for inferring that the association is not treating you too badly.”²⁸⁸

The common framework is necessary in order to provide options external to those provided by the group so as to ensure that the association is voluntary. In accordance with the Feminist claim, it is the authority needed to intervene if there are ‘gratuitous barriers’ in place, limiting exit. It is also needed to provide certain minimum conditions, such as education. If such conditions are met, when combined with an equal set of rights and entitlements (including freedom of association), they are sufficient grounds for both enabling that the various forms of cultural and religious associations to occur (and, maybe, flourish) within a society, and to ensure that individual membership is not coerced, but voluntary.

3c) Voluntariness Requires ‘Informed Consent’:

The possibility of exiting an association is a necessary part of treating people equally, as it ensures that the association is voluntary. In order to *substantively* ensure that exit is a possibility, one of the minimum conditions required is the common provision of education. In chapter 3, 1n) I mentioned the claim that lack of exit is ‘implied consent’ to the oppressive conditions of group membership. Margalit and Halbertal²⁸⁹ are one of many that make variations on this claim; according

²⁸⁶ Barry (2001: 149)

²⁸⁷ Barry (2001: 149)

²⁸⁸ Barry (2001: 149)

²⁸⁹ Margalit and Halbertal (1994). Although it may be disputed that their theory may be rightly called Communitarian, they propose strong community based rights conclusions and I am in support of Harry Brighouse’s assessment that they “... support a set of group-related policies more amendable to communitarians” Brighouse (2004: 115). This is because they do not regard culture as providing options, but defining content. “In contrast to what Kymlicka defines as the reason for the importance of culture – the fact that it gives people *alternatives* from which to choose” they claim that “the members of a particular culture consider it important because the *particular content* of the culture gives their lives meaning ... (my emphasis)” they go on to say “Kymlicka’s interpretation of the importance of societal culture as giving individuals alternatives for choice does not agree with the viewpoint of the culture-bearers themselves ... the notion of an abstract cultural context lacks all value for members of a particularist group unless they happen to be liberals of Kymlicka’s sort for whom the supreme good is the ability to examine and change one’s life, which can be granted by any sort of culture that offers alternatives for choice.” For members of ‘particularist cultures’, some things are “... particularly significant in their culture, and they are willing to make considerable sacrifices in order to preserve them” and that “... the ability to choose has

to Gutmann's assessment "... their argument tries to justify subordinating all individual rights but one (a right to exit) to a group right to culture."²⁹⁰

As mentioned in earlier sections, if an individual is lacking the conditions, or is subject to restrictions on those conditions, that enable them to exit the group, their ability to change their conditions *within* the group is also affected. They are less able to affect change, or dissent from practices that they oppose. Parekh has claimed, correctly I believe, that cultural communities not only create meaningful options, but also close options for their membership. Furthermore, (and in accordance with feminist concern A) the distribution of duties and burdens within the group may not be equal in its allocation, placing greater restrictions and providing fewer or less valuable options for some. Group autonomy, by enabling the group to have a degree of authority over its membership, both directly affects the extent to which revision, dissent and exit are available to members, and enables the uneven distribution of options and restrictions to the various members of the group. The broader the range of such authority, the more restricted the ability of the individual member to choose options outside of, or in opposition to, those options that are made available to them by the group.

Gutmann responds to Margalit and Halbertal's 'implied consent'; if consent is going to be the sole justification for group autonomy and the toleration of the violation of other rights, then "... a democratic society needs to defend the conditions that make a right to exit effective and not only a formal right."²⁹¹ Of primary importance in ensuring the effectiveness of this is access to an education; she claims:

"For informed consent to cultural group membership to be real, at minimum, states would need to ensure that all children receive an education that enables them to exercise informed consent about membership in any given cultural group, which means being exposed to alternatives and taught the skills of critical thinking about them."²⁹²

In order for this to happen, such an education cannot be 'exclusively controlled by a single cultural group' because the state "... needs to ensure that children are educated to understand and then actually have viable alternatives to remaining within even the most encompassing cultural communities."²⁹³ If the "... state cedes to dominant members of a group the political authority to control the schooling of children ... it denies the effective right of exit to the most vulnerable members. The more encompassing a group is that flouts basic rights, the less effective is the freedom

little if any value and certainly does not constitute the particularist culture to which they belong." Margalit and Halbertal (1994: 505-6)

²⁹⁰ Gutmann (2003: 59)

²⁹¹ Gutmann (2003: 60)

²⁹² Gutmann (2003: 60-1)

²⁹³ Gutmann (2003: 61)

of its most vulnerable members to leave it”²⁹⁴ and “... when dissent takes uncommon courage, its absence cannot be considered consent.”²⁹⁵

3d) Consent Cannot Justify a ‘Right to Culture’:

Gutmann’s argument against Strong Multiculturalism can be interpreted as follows; pre-existing cultural groups that restrict their member’s rights cannot justify this restriction by claiming that members consent to this treatment. This is because, like Habermas has also claimed, members have not been sufficiently exposed to the existence of alternative and viable options external to the group. Where the group has a degree of autonomy, such as when it is in control of education, it is able to formally restrict the range of options, or informally the range of perceived options, that are available to its membership. Consequently, it cannot be said that members are informed sufficiently to consent to their rights being restricted, and therefore, the claim that the ‘right to culture’, combined with the right of exit is sufficient grounds for the restriction of other rights is flawed. In fact, Gutmann claims that substantive conditions are implied in the right of exit:

“To defend a right to exit from cultural groups is implicitly to acknowledge the value of individual informed consent and respect for persons. We cannot consistently acknowledge this value and then subordinate individuals to cultural groups that deprive them of the necessary conditions for making the right of exit effective.”²⁹⁶

To ensure that the conditions of informed consent are met is very difficult as it is “... a rigorous standard and probably not a viable one for membership in many cultural groups”²⁹⁷, but this does not mean that people are not free to join groups, only that illiberal restrictions cannot be justified by appeal to informed consent. Basically, it means that the existence of one individual right (exit) cannot justify the relegation of all other individual rights to a subservient position to that of the right of autonomy for the cultural group. It means that the right of exit is necessary but insufficient in itself to justify consent to internal restrictions. Meeting the minimum requirements of ‘informed consent’ is a necessary requirement for the availability of exit, and this involves a common education, separate from the control of the group, which requires a common framework. I am claiming that exit cannot be used to separate itself from the other requirements of a range of internal options.

3e) Against a Cultural Control of Education:

Amélie Osenberg Rorty highlights a concern with the tendency for cultural essentialism and internal repression within the theories of both Charles Taylor and Margalit and Halbertal. These, she argues, must be countered with an emphasis on ‘cosmopolitan education’, which involves both cross-cultural interaction and a central role for the state. I believe that this account offers the best type of

²⁹⁴ Gutmann (2003: 61)

²⁹⁵ Gutmann (2003: 62)

²⁹⁶ Gutmann (2003: 62-3)

²⁹⁷ Gutmann (2003: 61)

common education (needed to protect the possibility of exit) that is referred to above. She is critical of the Strong Multicultural account of culture, that group rights are claimed to support the survival of cultural groups, and that this creates restrictions, including pressure to conform to a definition of the culture. If the state "... undertakes the obligation to assist the preservation of a minority culture, it becomes a party in the combat over political charged issues: the closure on cultural essentialism."²⁹⁸ For Rorty, this tendency for "... cultural essentialism is, if not coercive, as least often oppressive, even when individual rights are strictly preserved."²⁹⁹ This is because, even at a minimum, there is "... the presumption of active participation in promoting specific policies" where dissenting or voicing opposition can "... carry costly personal consequences in losses of alliances and friendship."³⁰⁰

3f) Recognition has a Homogenising Tendency:

The formalisation of a cultural group's defining characteristics, in order for state recognition and support, leads to the possibility of repression in order to conform to and maintain the 'dominant model.' James W. Nickel makes reference to this tendency; in order for groups to exercise collective rights they must have threshold ability for "... *effective agency* and *clear identity* (emphasis original)."³⁰¹ He argues that these aspects, when they are lacking in sufficient strength within a group, can either result in individual rights *or* attempts to "... construct clear identity and agency ..." which may involve encouragement and/or coercion. Although Nickel is supportive of collective rights, he states that these measures are "... likely to transform a ... minority group ...", and, as such, "... the consequences of these changes are likely to be sufficiently large and enduring to warrant careful evaluation of the steps intended to create clearer identity and more effective agency for minority groups."³⁰² The reason I refer to this is to support the point that granting group rights involves creating clearly defined groups to bear those rights - this requires a degree of coercion to create sufficient group integrity.

Rorty, argues that attempting to define cultures by specific characteristics, as well as being in danger of contributing to repression, is also unable to account for internal variation and other factors in an individual's identity formation. The state cannot rely on a cultural definition for the representation of the interests of that cultural group, "The continuity of a culture is often as marked by deep internal divisions as it is by a consensus on a comprehensive way of life"³⁰³ She claims that "cultures are not identified by a set of beliefs or principals: they cannot be characterized by an

²⁹⁸ Rorty (1995: 165)

²⁹⁹ Rorty (1994: 159)

³⁰⁰ Rorty (1994: 159).

³⁰¹ Nickel (1997: 235)

³⁰² Nickel (1997: 253)

³⁰³ Rorty (1995:164)

overlapping credal consensus.”³⁰⁴ She rejects such measures as those proposed by Margalit and Halbertal for the control of group members’ education justified by an “individual or collective right to the preservation of a culture, still less of “an individual’s *own culture* (emphasis original).”³⁰⁵ She replies:

“Defining an individual’s identity by a specific cultural group is procrustean, if not actually coercive; it is as misleading as defining her identity by her nation-state. An individual’s identity-defining allegiances and differences may be cultural; but they may also be economic, ideological, and occupational.”³⁰⁶

3g) *Minimum Requirements and ‘Harm’*:

Rather than claiming for state support of cultural preservation, which would grant ‘special identity protective privileges’, the state must support a ‘cosmopolitan education’ that “... fosters its citizens’ cultural and historical understanding ...”³⁰⁷ This should be combined with a traditional Liberal system of state protection for the “... right of its citizens to express and perpetuate their culturally specific modes of life”, constrained by “... an extensive interpretation of the harm principle ...”³⁰⁸ Rorty refers to the procedural liberal argument, basically claiming that the reason for supporting the continued existence of cultural group is derived from their value to individuals, not the other way around. Individual “... rights of free association, free speech, and other fundamental civic liberties ...”³⁰⁹ are needed to secure the individual’s freedom of association. Combined with this, I would regard her limitation on freedom of association, described as an ‘*extensive interpretation*’ of the harm principle, as being substantive in scope. That is, not just restricted to a formal tolerance of an extensively defined private sphere, but a requirement for the state to play a substantive role in ensuring that individual rights and entitlements are actually made accessible to all citizens in the society. In order to ensure this she claims “... cross-cultural criticism is appropriate: justice and integrity may require a culture to abandon some of its practices, however long-standing they may be.”³¹⁰ This is consistent with the Feminist claim for intervention where necessary (chapter 3, 1n) i.e. where there is harm occurring. Restricting the education or other restrictions on the conditions of autonomy (exit, revision or endorsement) of a person is a harm that may justify intervention. I will have more to say about this in the next chapter.

³⁰⁴ Rorty (1994: 160)

³⁰⁵ Margalit and Halbertal (1994) in Rorty (1995: 162)

³⁰⁶ Rorty (1995: 162)

³⁰⁷ Rorty (1995: 162)

³⁰⁸ Rorty (1995: 161)

³⁰⁹ Rorty (1995: 161)

³¹⁰ Rorty (1994: 160)

3h) Consent Cannot Contravene the Harm Threshold of Justified Intervention:

Cross-cultural assessment is possible, and where the assessment finds restrictions on freedom conflicting with the minimum requirements for a member's ability to revise, or exit, (such as limitations on education) then the state must intervene to remove these harmful restrictions, unless they have been justified by meeting the requirements of the 'informed consent' of its membership. Basically, the state has an obligation to everyone to substantively ensure access to the same rights, resources and opportunities as everyone else. It also has an obligation to enable revision, particularly in the form of exit. Cultural, or other, associations must justify any deviance from equal concern for its membership by establishing that the consent has been given by members. This minimum level, which satisfies the 'extensive interpretation' of the harm principle, can be seen as the required threshold for the limitations on the freedom of association. That which is consented to cannot violate the harm principle. So, for example, an interpretation could claim that restricting the content of a child's education to only those areas that are needed for the continuation of their traditional roles within a cultural or religious group could be seen as a harm to them and therefore, illegitimate and requiring state intervention. So too could an education that gives false or distorted accounts of the options that are available outside of those condoned by the group or social structures that place excessive burdens on those who do not conform. This interpretation 'harm' may then be set at the minimum requirement for informed consent.

3i) Cosmopolitan Education:

Rorty argues that the state must inform its citizens; it has an obligation to provide a 'cosmopolitan education' to all, justified by the view that it "... provides the *primary condition* of free and equal citizen participation in public life (my emphasis)."³¹¹ The 'public life' is not just the options of group life, but the ability to choose from options external to the group. It is also beneficial to the interests of all groups in society to be well informed about the others. This requires cross-cultural communication and an understanding of other groups, rather than confining the education of children to a particular cultural tradition.

"A pluralistic democratic liberal society must accord high priority to the education of its citizens: it should provide a deep, complex, and fair-handed understanding of their intellectual and political history; it should trace the ... relations among the various groups that constitute its population; it should present competing analyses of the ways that the various criss-crossing segments of the society – its ethnic, religious, economic, racial, occupational divisions, each with its own "culture" – affect political dynamics."³¹²

³¹¹ Rorty (1995:162)

³¹² Rorty (1995:162)

This is necessary to avoid cultural essentialism, “when the state undertakes its educational obligation to provide a rich account of the history, beliefs, and practices of its constituent and neighbouring cultures, it undertakes to analyze their dynamic diversity without any misleading essentialist assumptions.”³¹³ Furthermore, it is also “... an absolutely necessary condition for the vitality of a genuinely democratic state; citizens who participate in public life must be deeply informed of the history and interests, the allegiances and enmities that form their public life ...”³¹⁴ A cosmopolitan education is a precondition for individual freedom and equality. To be deprived of it (through a culturally limited education) is to harm the individual by restricting the range of options that are available to them, consequently, the state is justified in intervening to require such an education.

3j) Note on Cross-Cultural Criticism:

Given this role for government in ensuring that minimum conditions are met, especially in terms of education, the option of cross-cultural criticism must be available, both in the sense that it is *needed* and in the sense that it is *possible*. Here I am justifying the need, but it may be argued that, according to the ontological claims (to use Taylor’s terms) of the ‘plurality of values’ thesis, intercultural evaluation may not be possible or, at least, difficult. This would follow the general claim that a cultural community possesses moral significance in itself and its unique nature is the source of a common form of life, including shared conceptions of communally defined, irreducibly social goods, containing a distinct ordering of values and range of available options that differentiate it from other groups and provide a cultural horizon of meaning for its membership. This means that the cross-cultural comparison and criticism is difficult because of the ‘deep-diversity’ that exists between groups. Those external to the group do not have the familiarity with its shared understandings and values.

As I have mentioned previously, one of the Strong Multiculturalist qualifications highlights the possibility for intercultural evaluation, but in very guarded terms (Chapter2, 2p). It is basically used as a defence from the claim that the account descends into cultural moral relativism, but is limited, on the other hand, by the claims about value systems and the need to ensure survival of a morally valuable entity. The consequences are that it is unwilling to concede much in terms of cross-cultural comparison because of the necessity of the incommensurability thesis in the justification of its arguments. I discuss this objection in the Appendix, arguing that Liberal account justifiably claims that this is insufficient in terms of the extent to which cultural interaction is possible. The state *is* able to assess the range of options that a cultural community makes available to its members, and *should* do so as to ensure that conditions of civic equality are made available to members. In the next chapter I will argue that it is indeed possible to develop a common meaningful framework, and I state in the

³¹³ Rorty (1995: 165)

³¹⁴ Rorty (1995: 162)

Appendix that claims against that position are contradictory or overstated. In general, the Strong Multiculturalists make claims about areas of commonality where there isn't (separate moral status), and where there does not need to be (common morality). They also draw normative conclusions that do not follow from their claims (group authority). Those supporting a relativist account are contradictory, imply unacceptable conclusions, do not reflect common assumptions about minimum conditions and moral progress, and conflict with examples of evidence to the contrary. While value pluralism either succumbs to slipping into relativism through the rejection of cross-cultural judgement, or alternatively, is subject to indeterminate boundaries and internal variation that, consequently, means that the supposed point of 'resolution' of value systems is unclear, perhaps even subject to perpetual regress. I conclude that this has consequences for the rejection of claims that link cultural and political autonomy by common values, as it places doubt on the correlation between cultural commonality and common value.

3k) Summary:

Gutmann, Rorty and the others, have all highlighted the importance of ensuring that individuals are aware of the range of options available to them and ensuring the conditions so that those options can actually be chosen. This is the obligation of the state, for if it were to neglect this, it would not be treating those individuals within the group as 'civic equals'. In order to do this there must be a common legal framework covering all the groups in society. An important part of fulfilling this role (removing harms) involves state involvement in the common education of all citizens. This is for two reasons, firstly, it provides a greater assurance that individuals within a group consent to being there, and have the possibility of exit if they so choose, and secondly, it helps to facilitate cross-cultural criticism and comparison, which are both necessary and beneficial for a democratic society. As mentioned, these conditions are going to be insufficient to guarantee the justification of any broad ranging internal restrictions justified from consent.

I will now sum up the main Liberal points that have been mentioned so far. A single legal system that is without contradiction and is not confined to a single group is justified because of the necessity of a common framework in providing the conditions in which rational revision and endorsement are made possible. Differentiating legal systems enable group autonomy but this is at the expense of the conditions which are required for individual autonomy. As individual equality is a basic principle of concern, and group value based on its instrumental value to individuals, 1) group survival requires the possibility of rational revision of association so that members may endorse their commitment to the group and thus, continue to contribute to its future survival; 2) An aspect of ensuring revision is the possibility for exit, this requires options outside of the group; and 3) As the right of revision and exit must be ensured, the conditions required to substantively enable their exercise (the removal of barriers and a common cosmopolitan education) need also to be provided -

the state must take responsibility for this out of equal concern for all citizens. This will involve intervention into the group where harm is occurring (such as restrictions on the conditions required for individual freedom). The equal treatment of individuals requires the common provision of the conditions required for their personal freedom, not the restriction of that freedom so as to enable the group to have freedom of action.

31) Individual Basis for Group Agency:

Group agency requires respect for the equal value of individuals and the Liberal justification for group authority. Cultural groups are not corporate entities, whose value is irreducible to the sum of its members; they are not deserving of separate moral status, deriving from it values as a source of meaning and collective goods for its membership. Authority is needed for group agency and this is provided by *individuals* who must gain the consent of members for their positions of authority.³¹⁵ Such individuals can provide a source of agency for the group. In fact, the ‘collective’ conception of group agency (a position supported by Liberal Multiculturalists) can accommodate this, and may be able to justify group rights status in support of this, although questions of difficulty emerge. This is because group rights, (which contribute to authority and therefore, group agency) are justified by combined interests, but individuals cannot both have an interest contributing to a rights *and* a duty to that same right. This means that such rights can only be externally directed, but the authority required for certain types of agency might make requirements that are internally directed at members.³¹⁶ Although, following Habermas’ claim, it would cease to be a group, and therefore lose its agency as a group (achieved through whatever representational, or authoritative, mechanisms it exhibits), if it lost its memberships endorsement. Groups within a Liberal society need to gain this endorsement, because, even with illiberal restrictions, a group that has been rejected by its membership will not be able to continue to reproduce its traditions. Submission to authority can only be voluntarily given and the extent to which that authority’s mandate can extend cannot conflict with the minimum conditions below which harm occurs. Another problematic aspect is that individuals in a group may have some interests that are held in common, and others that are in conflict; this would either mean that agency is restricted to what is held in common, or systems of authority would have to be added that may make possible actions that are contrary to some members’ interests - this then makes problems for the original justification which is based on combined interests. Basically, the extent of legitimate group authority is limited by the priority of concern for the individual interests in freedom and equality.

Group agency *should* be derived from a system of authority that is acceptable to the Liberal claims about the equality of citizens (as consistent with resolving feminist concern (A). Agency

³¹⁵ Attempts can, of course, be made to force the ‘endorsement’ of individual members in support of the authority of those individuals that provide the group’s agency. This may, or may not be successful, but the point is that such illiberal measures are wrong, as they are internally restrictive and contrary to Kymlicka’s requirements for a *liberal* justification.

³¹⁶ Jones (1999: 373)

should not be sourced through illiberal restrictions that treat members in an unequal way. Equality of opportunity means that an equal range of options (both internal and external) should be available to members. Consequently, group membership (and the system of authority that is derived from those members) should be the result of their autonomous (and informed) endorsement. If there are restrictions imposed on membership then those individuals are not being treated equally as the range of opportunities available to them is limited, justifying state intervention.

I refer to internal and external options because this indicates a difference in emphasis within the Liberal theories, with Barry stressing exit and Kymlicka internal liberalisation. I claim that both are necessary, exit is needed to ensure options external to the group are available, while a range of options within the group are also needed to avoid the stark contrast of exit or subordinate membership mentioned by Shachar (Chapter 3, 1n). This can then have the liberalising ‘transformative’ effect of more equitable treatment of members within the group. A further aspect that is needed is minimum level of ‘informed consent’ that can be used to distinguish an ‘extensive interpretation’ of harm which can then be used to define illegitimate restrictions. This covers the minimum necessary standards of education, which must include information about available options that are external to the group and the capacities for choosing them.

3m) Combining the Above Claims:

Individual Interests:

Beginning with the egalitarian position of all individual interests mattering equally, we can conclude that this requires the support for a common framework. Kymlicka supports equal concern for individuals - the instrumental value of the group (thus, a collective justification for group rights) and the importance of ensuring endorsement and the possibility of revision. Habermas argues that the equal respect requires civic equality within a common framework because group autonomy can conflict with individual autonomy. If there is group autonomy this causes legal contradictions and legitimate group rights (based on combined interests) cannot conflict with individual rights (based on individual interests). This is constant with the rejection of group rights justified on the intrinsic value of the group and is also constant with the points made about Liberal group agency being unable to conflict with the individual interests of its own members. This applies to claims about group survival; the Strong Multiculturalist appeal to the intrinsic value of group survival cannot justify group autonomy at the expense of individual members’ interests as this conflicts with their equal treatment.

Revision:

Like Kymlicka, he claims that individual equality requires that the possible survival of the group depends on the continued endorsement of the membership. In order for this to be truly endorsed there must be real opportunity to revise the association with the group. Like Barry, he claims that

there must be a choice of viable alternatives. According to Kymlicka and the Feminists this must involve the opportunity to choose amongst an equal, and broad, range of meaningful options within the group. They must also have the opportunity to create new options through reform and dissent, without this there would not be any meaningful way to oppose pre-existing inequalities and biases within the group (chapter 3, 1b).

Exit:

Another part of ensuring ‘a range of genuine alternatives’ involves an opportunity for, not just reforming, but rejecting the traditional structure. This means that there must be a *substantive* possibility for exit. The fact that this is an option does not mean that the requirement for a broad, and equal, range of options *within* the group is invalid; Gutmann argues that exit does not justify a restricted group structure; alternative options must be both available internally and externally to the group. Certain minimum requirements are needed so as to pass above the threshold of the harm principle. Acting in accordance with an extensive interpretation of this harm principle means the right of exit must be substantively ensured. This requires the removal of gratuitous barriers to exiting and ensuring that all individuals have the capacities needed to do so.

Common Education:

These require the provision of education, and a culturally restricted one limits individual freedom by closing options external to the group. This is a barrier to exit and therefore harmful. The restricted content means that members are not sufficiently informed to consent as they are not aware of ‘viable alternatives’ external to the group and may be unequipped for choosing them. A common cosmopolitan education is needed so that there is an equal range of options available to all, thus contributing to enabling the equality of opportunities for each individual. This cosmopolitan education means that individuals who choose to revise do not have to do so from amongst a (perhaps very limited) range of culturally defined options. It means that the rejection of these proscribed options, dissenting from within the group, is also possible and the threat of exits gives added force to any dissent. This education is guaranteed by the state’s requirement to intervene where revision is restricted.

Chapter 5:

Development and Content of the Framework

In this chapter I will offer an account of what is entailed in the development of a common framework. This will involve a process of deliberation across groups. I will then defend a substantive role for the state in ensuring the conditions required for individual autonomy.

In the previous chapter I argued that the liberal commitment to individual equality and the conditions of autonomy (endorsement and revision) imply support for a common framework. In this chapter I will begin by arguing that the Liberal commitment to endorsement requires that the community must be internally tolerant of individual members, as well as also being equitable in its treatment of those members, and both stem from the general requirement for equal concern and respect for individuals (Part 1). I have claimed that supporting the liberalisation of a community is insufficient in itself, part of revising one's commitments is having the possibility to reject them; this requires a broader society in which an individual may possibly exit into. A common Liberal legal framework must govern this broader political society in order to treat all individuals with equal concern. I will argue that one can be developed that is justifiably neutral in its treatments of individuals from multiple groups (Part 2). In the final part I will argue that equal concern for individual conscience means that this common framework is justified in intervening into groups to substantively ensure the conditions for the exercise of personal autonomy. This involves meeting the minimum standards needed for 'informed consent', and ensuring change to both aspects that have been rejected by the membership from within, and those that have been rejected by the state as being 'harmful', i.e. below the minimum standard. It argues against extensive *group* tolerance and is supportive of ensuring *individual* tolerance within the groups (Part 3). These three sections will support the general argument that 1) individuals *should not* be treated unequally and with intolerance, 2) they *need* to have the protection of a common system of rights and entitlements, and 3) they need to have *substantive* access these rights in order to be able to exercise their freedoms.

Part 1) The Internally Tolerant ‘Liberal Community’:

1a) Equality Requires Internal Tolerance:

This first claim is the least controversial aspect of the Liberal position that I am advocating. It is primarily directed against the more extreme position of the Strong Multiculturalists that advocates a degree of internal restriction and draws from the criticisms offered in the previous two chapters. This position supports the *internal tolerance* of individual members within the community. This involves the broadening of the range of accepted options that are available to those within the group, and it also involves the *equal distribution* of those available options within the group (I will return to these two aspects in the section discussing Dworkin). I will call the position advocated ‘Liberal Community’,³¹⁷ as it concerns the nature of the internal structure of the group (rather than the conditions external to the group needed to ensure the possibility of exit).

Following the argument of the previous chapter, the assumption in support of the ‘abstract egalitarian plateau’ (the equality of individual interests) means that there must ‘a range of genuine alternatives’ from which to choose, so that all individuals are in a position in which they are able to offer their ‘autonomous endorsement’ of their association with the group. As I have claimed, enabling the possibility of rationally revising one’s association with the group, or to exit, is an important part of treating individual citizens equally and also creates the conditions in which cultural traditions can be reproduced. Group authority, as the source of agency, must be reflective of the interests of the membership in order to ensure the continued survival of the group. It may be claimed that groups may be internally illiberal, as long as there is a possibility of exit, but I have also claimed that exit is insufficient in itself. Internal inequalities and restrictions, and the ‘all or nothing’ nature of exit, limit the effectiveness of its exercise. Enabling the possibility for exit, as well as the conditions in which groups may be assessed as to the extent of their internal restrictions, requires a common legal framework. Treating people equally requires ensuring the necessary conditions for autonomous choice and a broad range from which to choose. Consequently, *internal tolerance* of those options chosen by the group’s membership, along with even distribution of the opportunities to the membership, is an important aspect of treating individuals with equal concern.

1b) Liberal Community Rejects Conservative Intolerance:

The ‘Liberal Community’ position of internal tolerance rejects group claims to restrict the range and availability of the options available to their membership on the grounds of their duty to the security and survival of the group. It claims that internal change and reform is possible and that group use of internal restrictions to maintain the traditional structure is illegitimate. Group survival does not require the member’s duty to conform to their group’s proscribed roles, which they may not endorse.

³¹⁷ This is taken from the term used by Ronald Dworkin, ‘Liberal Community’, in his discussion of the subject. Dworkin (1989)

Instead, group survival requires that the group be internally tolerant of the choices made by, and equal in its treatment of, its members. This point amounts to, basically, the traditional Liberal critique of Conservatism. Concern for the civic equality of individuals means that internal restrictions cannot be justified, as they would mean that some (or a great many) options are not available to members and therefore, those members are not being treated equally as their options are restricted and they may not endorse such restrictions.

The use of restrictions can be seen as a form of cultural perfectionism that imposes a limited range (or even a defined role) of options on its members. Such a position is intolerant of those options that are not culturally sanctioned, furthermore, the range of available options may be unequally distributed, imposing certain gender, sexual, religious, caste etc. biases on allocation. These are illegitimate because they can conflict with the requirement that an individual must endorse the options that they have chosen and not to have them imposed upon them. Such endorsement can be restricted in two related ways, either by *uniform* group intolerance of a particular option, for example homosexuality, meaning that the interests and well-being of certain individual members are denied. Or, there exists *selective* inequality, where the range of socially acceptable options is more restricted than they are for some other members, for example gender discrimination. Restrictions of both of these types conflict with the 'individual interest' justification for group support as the interest of some are being denied in favour of the group interest.

The Liberal claim is that, internally, it is legitimate for individuals to question those restrictions, or practices, that they object to. Members must be free to choose amongst a wide range of options and in order to do this a sufficiently broad range of alternatives must be tolerated by the group. Dissent may be successful or unsuccessful in changing an aspect of the group, but the group is not justified in placing restrictions on individual's freedom of action (either revision, dissent, or exit) to choose alternative options. An especially important part of this is that the group may not restrict an individual from choosing options that are external to those traditionally supported by the group.

1c) Kymlicka's Support for Internal Tolerance:

Kymlicka offers a clear outline of the Liberal position linking concern for individual interests with support of internal tolerance by groups. In response to a critique provided by the Strong Multiculturalist Bhikhu Parekh, he cites the instrumental nature of a cultures value:

"Parekh ... exaggerates the extent to which my approach rejects ... the idea that cultures have intrinsic value ... There is nothing in my approach that prevents individuals from adopting such an attitude towards their culture. This is one of many attitudes towards one's culture that is fully permissible within a liberal society. What is true, of course, is that my theory does not

rest upon such an attitude. It is the instrumental, not intrinsic, value of culture that grounds the claims for political powers and resources in my liberal theory.”³¹⁸

This does not justify internal restriction:

“... while individuals are free to adopt such an attitude for themselves, and to try to persuade others to do so, it doesn’t allow the group to restrict the basic civil liberties of its members in the name of the ‘sacredness’ of a particular cultural tradition or practice. It is up to the individuals themselves to decide for themselves to decide how sacred they view the particular traditions and practices of their culture.”³¹⁹

He then highlights the possibility of internal reform:

“There are political theories that would see the sacredness of culture, not just as a permissible attitude, but as an obligation the state should impose. But this could not be a liberal theory. If we accepted the idea that the state should view cultural practices as sacred, then liberalism would never have arisen. In every society where liberalism has emerged, it has emerged precisely by defeating the claims of cultural conservatives that existing practices and traditions are sacrosanct. And it is this liberal attitude that is now shared amongst virtually all ethnocultural groups in the West ...”³²⁰

Culture is instrumentally valuable; as a result, groups may not legitimately claim to restrict individuals. The ability for individuals to choose a certain (non-traditional) option may be a vitally important interest to them; groups must be tolerant of these choices, as their value is in their contribution to the interests of the membership, not in, and of, themselves as an entity separate from their members. There is an interest based argument for tolerance.

1d) Dworkin’s ‘Liberal Community’:

Ronald Dworkin is also critical of the Conservative Communitarian argument against the internal tolerance of those practices that, it is claimed, will harm or destroy the group.³²¹ He claims that internal moral tolerance will not lead to the destruction of the *functional* mechanisms of the community, such as those that “... rationalize production and consumption, [and] provide public goods ...”³²² because “... there is no reason to think that these instrumental benefits of community

³¹⁸ Kymlicka (2001: 62)

³¹⁹ Kymlicka (2001: 62)

³²⁰ Kymlicka (2001: 62). Kymlicka then goes on to oppose external intervention into the affairs of the group “... liberals cannot simply presuppose that they are entitled to impose liberal norms on non-liberal groups ... any enduring solution will require dialogue.” Kymlicka (2001: 62) This final point is disputed in the final part of the chapter, but, like other liberal accounts, he highlights the desirability of internally liberal groups and claims that internal reform is possible.

³²¹ These points are directed particularly at Lord Patrick Devlin’s response to the Wolfenden report that recommended liberalisation of laws against homosexuality, basically increasing internal tolerance. “Devlin said that a community cannot survive unless it achieves moral homogeneity backed by a sense of intuitive outrage, and that tolerance is therefore a kind of treason. His claim was widely attacked and seems contradicted by the stubborn survival of famously tolerant political communities such as Scandinavia.” Dworkin (1989: 487)

³²² Dworkin (1989: 487)

require moral homogeneity.”³²³ The distributive function of society will not collapse without a common, rigid moral intolerance of those who dissent, or wish to revise commitments. Neither, in responding to Michael Sandel, does it require a prohibition on revision for members’ *intellectual* well-being. Although Dworkin concedes, “we can have only the thoughts, and ambitions, and convictions that are possible within the vocabulary that language and culture provide ...”³²⁴ this is a descriptive function; it does not follow that community is necessary for members’ “... identity and self-reference ...”³²⁵ He rejects the Communitarian interpretation of a cultural community,³²⁶ Dworkin claims, “... no one can put everything about himself in question all at once. But it hardly follows that for each person there is some *one* connection or association so fundamental that it cannot be detached for inspection while holding others in place.”³²⁷ As such, the fear of cultural destruction (either functionally or intellectually) if any reform of illiberal practices occurs, is unjustified.

1e) Need for Equality and Tolerance:

Dworkin offers an argument, based on equal concern within the community, for a just distribution of resources and interests based justification for internal tolerance guaranteed by rights. He claims that an individual’s “... critical interests are inevitably thwarted when his community fails in its responsibilities of justice ...”³²⁸ This is both when resource distribution is unjust and when there is community intolerance of certain options. “An integrated citizen accepts that the value of his own life depends on the success of his community treating everyone with equal concern.”³²⁹ He argues that ‘critical interests are thwarted’ when there is inequality. He notes that, “No one should think his own critical interests tied to the success or failure of a community that does not recognize him as an equal member ...”³³⁰ Anyone in a society could potentially be in such a situation, either in the sense that they do not receive an equal share of resources or that illiberal internal restrictions mean that they do not have the right to do certain things that are central to their well-being. Where such restrictions are in place the Liberal is correct to claim that justice requires that they be removed or reformed, even if it is a small minority of individuals that are affected by intolerance. Part of treating people with equal concern involves “... recognizing that all citizens are entitled to a just share [of resources]”³³¹ but, importantly, it also requires internal tolerance. Because of the mixed nature of modern communities, Dworkin claims that “... it is deeply implausible that the characterization of communal

³²³ Dworkin (1989: 488)

³²⁴ Dworkin (1989: 488)

³²⁵ Dworkin (1989: 488)

³²⁶ This claims that, for members, it is a “... morally homogeneous [...] community of shared beliefs that helps constitute their own identity. If the community tolerates deviation, such citizens will suffer the shock of deracination. They will lose the connection to a moral faith that is essential to their proper self-identification.” Dworkin (1989: 489)

³²⁷ Dworkin (1989: 489)

³²⁸ Dworkin (1989: 504)

³²⁹ Dworkin (1989: 501)

³³⁰ Dworkin (1989: 499 n. 25)

³³¹ Dworkin (1989: 503)

life that best fits such a community could be one that assumes that it must choose one faith or set of personal ambitions or ethnic allegiance, or one standard of sexual responsibility, as a healthy person must.”³³² In order to safeguard against this possibility of majority domination, “the institution of rights is therefore crucial, because it represents the majority’s promise to the minorities that their dignity and equality will be respected ...”³³³ Dworkin, in another paper, claims that the “... various substantive and procedural civil rights ...”³³⁴ developed from a conception of equality:

“... will function as trump cards held by individuals; they will enable individuals to resist particular decisions in spite of the fact that these decisions are or would be reached through the normal workings of general institutions that are not themselves challenged. The ultimate justification for these rights is that they are necessary to protect equal concern and respect ...”³³⁵

If) Summary:

Internal freedom is necessary because it is part of treating individuals with equal concern. This involves both equality of rights and resources, but also involves the liberalisation of those rights that people are entitled to (and the changing of the character of their community in the process) up to the ideal in which “... every individual has the full range of civil and political liberties to pursue the life she sees fit.”³³⁶ This liberalisation process is, basically, ensuring the equal redistribution of resources and the toleration of minority practices.³³⁷ This is good because it increases the range of options available to people, but, more importantly, it removes limitations that conflict with the ‘critical interests’ of individuals within that community. Increasing the individual member’s freedom and equality creates the conditions, by the removal of restrictions, in which they can revise, and therefore, endorse their continued membership. The group may then justifiably claim to represent the interests of the group because it is able to prove the lack of restriction. Changes to the character of the group will be justified by being the combined and uncoerced interests of the free and equal individual

³³² Dworkin (1989: 497-8)

³³³ Dworkin (1978: 205)

³³⁴ Dworkin (1985: 198)

³³⁵ Dworkin (1985: 198).

³³⁶ Kymlicka (1989: 171)

³³⁷ The communitarian conservative rejects one or both of these, and supports their position by making claims about the harm that any liberalisation will do to the health of the community. Following the point made earlier about the shift away from Communitarian emphasis at a national level this can occur in any part, or level, of a society with a degree of political authority. Dworkin was making his argument in response to the appeals to ‘community’ that have been used to justify the maintenance of legislation making homosexual acts criminal. Similarly, such claims have been used to argue for restrictions on speech, religious or women’s rights, or against the equitable distribution of resources or opportunities, applicable at either a national, sub-state or community level. An important aspect about the rejection of these claims, as mentioned earlier, is that these claims are made to be applicable, not at a private, but at a public level. Although there are justified restrictions on some forms of private discrimination, there is a lot of freedom for individuals to privately associate with illiberal associations. The argument made by the Communitarian is that the community should maintain and enforce intolerance and/or inequality at a political level, with the support of law, so as to maintain the communal structure of values and goods. The arguments given by the Liberals claims that these should not be given legal force and that the removal of such restrictions makes the community a more tolerant one.

members.³³⁸ An important point to note is that, because it is *individual* autonomy, the form of toleration that is justified under this approach also will have an *individual* basis to it.³³⁹

Part 2) The Common Liberal Legal Framework:

2a) *The Possibility of Developing a Framework:*

The argument in the previous section has claimed that groups should be internally liberal, in order to ensure that such changes are possible (where lacking), cross-cultural barriers cannot be so great as to make this comparison impossible. Cross-cultural interaction and comparison are possible, and the extent to which this is so is a matter of degree. It is not impossible, but it is also not easy, but for Liberals, "... the issue ... must be the philosophical one about the *possibility* of reasonable agreement ... (my emphasis)"³⁴⁰ Culture is an aspect of the 'fact of pluralism' that needs to be accommodated in order for the state to treat its citizens with equal concern, but the difficulties in overcoming these differences, and developing a common framework, are overstated.

2b) *Liberal Valuation of Culture:*

Liberals do not dispute that culture, and the communities that are reflective of this, are very important to individuals. As quoted before, Dworkin points out that culture and language provide the 'vocabulary' for individual 'thoughts, and ambitions, and convictions,' he then goes on to say "... we are all, in a patent and deep way, the creature of the community as a whole."³⁴¹ Culture has a great influence on the way that individuals lead their lives. It is a set of norms and historical practices that have guided the interactions of its members across a broad range of social experiences.

The Liberal philosopher Paul Kelly provides a useful assessment; although "... the fact of difference and pluralism does pose a challenge, it remains unclear what precisely that challenge is and how seriously we should take it."³⁴² The Communitarian critique rests on a strong account of culture

³³⁸ There may be an illiberal minority within the group that would object to liberalising changes. Here, the Liberal response is also applicable, because of the power of the majority to democratically enact certain conceptions of what it considers to be the good, those in the minority must, too, (out of equal concern) be able to appeal to individual rights and be entitled to toleration by the majority. The extent to which illiberal values should be tolerated by the majority will be discussed in the final part, but it may be basically defined as that which is bound by the minimum requirements for, and extent of, individual autonomy, "the right of autonomy is what ... defines the limits of toleration." Saharso (2000: 229)

³³⁹ I mention the individual basis of this approach to distinguish it from the various 'pluralist' theories that advocate a *group* basis for toleration, and also mention the (substantive) minimum requirements for autonomy to distinguish the approach for those that, while endorsing an individual basis for toleration, require very little in terms of minimum conditions for individual autonomy (i.e. just a formal right of exit). Both accounts, though different in process, reach a similar and strongly tolerant, conclusion; the former by the provision of group based exemptions from what the common (comprehensive) legal framework says, that is, 'millet' or 'mosaic' recognition based on group ascription. The latter by restricting the (formal) legal framework so that it says very little, that is, the creation of space for political power negotiation based on group association. The difference being in the role of the state (extensive or minimal) in the process, with the common end being the creation of tolerated, independent groupings within that state. I will return to this in part three.

³⁴⁰ Kelly (2005: 114)

³⁴¹ Dworkin (1989: 488)

³⁴² Kelly (2005: 120)

that makes deeper claims than just its value to people. The creation of a Liberal framework is a response to the fact of pluralism; "... the liberal aspiration is to provide a framework within which difference can be channelled in benign and non-conflicting directions, so in that sense it is an accommodation to, and not denial of, difference."³⁴³

2c) Dworkin's Framework:

Ronald Dworkin offers an account for developing a Liberal legal framework that does not appeal to the 'common good' as a basis for political authority. Although I regard this is flawed by an oversight (underestimating cultural differences), this is rectifiable by reference to contributions made by Waldron. Dworkin argues that a common framework is necessary because a political society must exhibit *integrity* in matters of principle 'as a political ideal'. Justice and fairness require that the state should be neutral between conceptions of the good.³⁴⁴ Under the Liberal conception of community, those in authority do not paternalistically impose what the majority regards as the good on those that disagree because people cannot be forced into leading a 'good life' if they do not endorse that conception. Such a community is governed by a concept of justice. A system of individual rights is needed to protect citizens from the tendency of the majority to try and impose 'the good', even though it is in violation of the procedural norm. Their crucial interest in pursuing their conception of the good is protected in rights. Treating people with equal concern and respect requires a just (and neutral) program of redistribution that strives for the "... complex and unattainable ideal of equality"³⁴⁵. This is achieved through the concept of 'equality of resources' in which liberty and equality are interdependent, the former being intrinsic to the latter. Ideally, resources are quantified into a metric through an auction process and equally distributed; individuals are then free to use them how they wish. This is a market-based system of just resource allocation, rights ensure that individuals are tolerated so that they have personal liberty, but this is also supported by each having the equal resources to pursue their ideas of the good life. This creates the conditions in which Dworkin is able to differentiate between those inequalities that are chosen and those that are unchosen, extra compensation should be given to in the latter cases and there can be a system of insurance to protect all equally against the risk of unchosen loss.

2d) Criticism of Dworkin's Theory:

³⁴³ Kelly (2005: 120). He goes on to say, "I am not denying the significance that people attach to familiar beliefs and practices, or the general need to show sensitivity to those practices in liberal legislation. In so far as this is the multiculturalist claim, it is uncontroversial for liberals ... What I am denying is the stronger claim, often also advanced by multiculturalist critics, to the effect that cultures themselves serve as discrete conceptual schemes that preclude the possibility of universalist norms and principles." Kelly (2005: 123)

³⁴⁴ Dworkin argues, "Since the citizens of a society differ in their conceptions [of the good life], the government does not treat them as equals if it prefers one conception over another, either because the officials believe that one is intrinsically superior, or because one is held by the more numerous or more powerful groups." Dworkin, (1985: 191)

³⁴⁵ Dworkin (1985: 208)

Chandran Kukathas argues that Dworkin's concept of a political community of commonalities is too strong. He refers to it as having "... a preoccupation more with social unity than with respecting the diversity of ways of life ... It values political society too much, and other forms of human association not enough."³⁴⁶ I regard his point about the existence of varying levels of association that are in competition for allegiance, even jurisdiction, with the state, as being valid. Similarly, Charles Taylor makes reference to the existence of groups that are supportive of claims for a common, and "... publicly espoused notions of the good", such as that which claims that "it is axiomatic ... that the survival and flourishing of French culture in Quebec is a good."³⁴⁷ For Taylor, Dworkin's commitment to a "... society [that] is based around strong procedural commitments to treat people with equal respect"³⁴⁸ amounts to an imposition by the majority onto the minority that must be limited by acknowledging the existence of, and creating space for, a 'second-level' or 'deep-diversity.'³⁴⁹ Kukathas' point is that Dworkin claims too much commonality and disregards competing forms of authority, while Taylor claims that Dworkin must limit his account of the common framework to accommodate the existence of other forms. Both claim the existence of competing authorities³⁵⁰.

Dworkin *does* assume this commonality, as it is important in ensuring the success of the 'community of principle'. Recent writings have emphasised the 'organic' nature of "... our [American] culture [which] is in a large part a vector of many millions of ... decisions that people make, as individuals, one by one, every day"³⁵¹, combined with the 'collective' shaping done through the law via various legislation. He believes that commonly agreed shared principles are able to be arrived at within such a broad community, but I think he underestimates the challenge of the competing authorities, some whose conceptions of the good do not easily boil down into the common culture and push for separation instead.

³⁴⁶ Kukathas (2003: 191)

³⁴⁷ Taylor (1993: 175)

³⁴⁸ Taylor (1993: 174)

³⁴⁹ Taylor (1993: 183)

³⁵⁰ Taylor's and Kukathas' points about the need/existence of competing authorities and jurisdictions defined by common good, although useful in highlighting the differences, need to be resolved *within* the common framework. Their alternative is to move (with a minimal common framework) towards what Tully has explicitly argued for, to "... codify the traditional internal morality of one group ...", where "... each group recognises the equal status of the other, and that they proceed to negotiate or deliberate about the terms of their coexistence." Levy (2000: 50) This, of course, could lead to legal contradictions and inconsistencies and would pose a problem for Dworkin's ideal of equality of resources, as members of the 'state' would hold greater allegiance to their own narrow community of group membership who share their common goods, rather than to any broadly common 'political community' that shares any agreement on justice. The 'pluralist' account assumes incommensurable differences between groupings of values, Benhabib rejects this because it associates 'systems of belief' with social positions, which "... then falls into pure essentialism in that it is premised upon the reduction of structures of individual consciousness to delineated group identities." Benhabib (2002: 137) Such a formalisation of jurisdictions, defined by the assumption of commonly held goods, is also untenable because of the harm to individuals given the fact of interaction, impossibility of recognising both group and individual and the contradictions on necessarily resolvable areas that can exist between these jurisdictions of morality. These three factors mean that a common framework is required, but a thin one is not a good option (as I will argue). By the state saying nothing, it creates space for potential violence where the contending authorities conflict with either other groupings, or even with the state. Broad toleration, in the form of non-interference into group practices (rather than individual practices), amounts to a state decision to grant decision-making authority to the various groups that may exist at a sub-state level.

³⁵¹ Dworkin (2006: 75)

Waldron's account outlines a deliberative process that is able to resolve some of the force of these claims by distinguishing cultural appeal from reasoned claims and developing a framework that is still able to strive for the 'complex and unattainable ideal of equality.' That is quite in accordance with Dworkin's argument in support of moral progress and the ideal of objectivity achieved through reasoned argument³⁵². Basically, Waldron's approach is needed to get to the degree of commonly held 'community of principle' in which "... people ... accept that their fates are linked in the following strong way: they are governed by common principles, not just by rules hammered out in political compromise."³⁵³ It is that latter account that is implied by the general multiculturalist critique. Consequently, there needs to be an account of robust deliberative mechanisms for dealing with 'deep-diversity' and the conflicting claims to allegiance and authority. There is a need to achieve a 'just' framework, rather than a series of 'good' frameworks that are competing or merely balanced through compromise in a political *modus vivendi*.

2e) Connecting Dworkin and Waldron:

Waldron argues that every person in a country has a duty of 'civic participation' to "... come to terms with one another, and set up, maintain, and operate the legal frameworks that are necessary to secure peace, resolve conflicts, do justice, avoid great harms, and provide some basis for improving the conditions of life."³⁵⁴ I regard the claim 'to justice', and 'improving the conditions of life' as being consistent with the general argument offered by Dworkin in developing his ideal of 'equality of resources', the claim 'avoid great harm' is consistent with the extensive interpretation of harm that is the basis for civic or cosmopolitan education and justifies ensuring the conditions for the exercise of individual autonomy. Dworkin's 'genuine political community' is an ideal about a common commitment to justice, consequently, this *can* incorporate people with very diverse views in a way that a common good cannot. I emphasise word 'can' because it is an ideal that requires the prior settlement on a framework. This makes the 'civic responsibility' for a reasoned settlement is particularly necessary because of the mixed nature of most modern societies. Waldron emphasises the weakness in Walzer's Communitarian claims:

"In recent communitarian political philosophy there has been a tendency to insist that a well-ordered society should be thought of as something constructed among those who *share* certain fundamental understandings and beliefs (emphasis original)."³⁵⁵

It is better to:

"... begin from *the opposite assumption* ... we are likely to find ourselves ... alongside others who disagree ... if there is to be community or a common framework for living, it has to be

³⁵² See Dworkin (1996)

³⁵³ Dworkin (1986: 211)

³⁵⁴ Waldron (2000a: 155)

³⁵⁵ Waldron (2000a: 171)

created in the form of positive law, constructed out of individual views ... (emphasis original)³⁵⁶

2f) *Necessity to Develop a Common Framework:*

Waldron's reasoning for the necessity of a common framework can be summed up into three general points:

Individual Interests: Because individuals interact with each other and require 'proper attention to their interests' they need common rights of protection. Levy highlights Waldron's reoccurring claims about "... the importance of a structure of rights that people can count on for organizing their lives, a structure which stands somewhat apart from communal or affective attachment ..."³⁵⁷ There are always going to be people who are in the position straddling the various groups in society. Waldron claims we must develop a framework to cover all, not just one for each clear-cut group. This must pay "... proper attention to the interests, wishes, and opinions of all the inhabitants of the country", he goes on to say that "one plausible and attractive conception ... [of this] involves the inviolability of the individual..." which would mean that "... we should not set up laws and policies that sacrifice individuals ... to secure some social good."³⁵⁸ All members of the state have certain interests, there must be a resolution of the disputes as to which interests fall into the category of deserving protection in the form of rights that contribute to the framework.

Group and Individual Interests: As I indicated in Chapter 4 reconciliation of *group* and *individual* claims of recognition are untenable. Waldron call it 'immeasurably more difficult' to develop a framework that both respects various groups and also maintains a system of individual rights.³⁵⁹ Different cultures will have differing ways of dealing with the various aspects and problems that are faced by individuals in their lives. Each culture can have a different system, but you cannot both accommodate each system and maintain an individual based framework that protects those interests.

³⁵⁶ Waldron (2000a: 171). He goes on to say, in support of the former point, "In the circumstances of modern life, that geographical relation - being unavoidably side by side with others - is no guarantee whatever that common moral views and shared understandings can be taken for granted." Waldron (2000a: 173)

³⁵⁷ Waldron (1993) in Levy (2000: 48). Levy goes on to point out: "... members of ... communities will fall in love, have children, trade, commit crimes against each other, hybridise their languages ... proselytize and convert and apostatize, and so on. If there are not legal arrangements that can accommodate these interactions, if the law rests on an assumption of integral and discrete communities, then there are risks of intercommunal conflict and of intercommunal oppression of those who are seen to jeopardize communal purity (emphasis omitted)." Levy (2000: 48)

³⁵⁸ Waldron (2000a: 156)

³⁵⁹ Waldron claims "It is hard enough to set up a legal framework that furnishes respect for persons as individuals, and which ensures that the interests and freedoms basic to individual identity are not sacrificed for the sake of the common good. But if respect for an individual also requires respect for the culture ... then the task becomes very difficult indeed, particularly in circumstances where different individuals in the same society have formed their identities in different cultures." Waldron (2000a: 160)

There are two variable factors, but their needs to be only one and this has to be based on protecting an individual's non-negotiable interests.³⁶⁰

No Contradictions: Like Habermas, Waldron claims that those interests that are non-negotiable must be "... disciplined by a norm of compossibility"³⁶¹, that is, one such interest (which would yield a right) cannot "... preclude the existence of ... [another] or even presuppose that the other does not exist."³⁶² The potential problem that is faced in a multicultural society is when "... identity claims are presented as essentially non-negotiable."³⁶³ (For example, Taylor's quote in 2d).

2g) *Cultures' 'Solutions':*

Waldron's describes culture as an:

"...enduring array of social practices, subsisting as a way of life for a whole people. Moreover, a culture is not like an array of clubs and hobbies; it represents a heritage of a particular people's attempt to address and come to terms with the problems of social life ... So when a person talks about his identity ... he is relating himself not just to a set of dances, costumes, recipes, and incantations, but to a distinct set of practices in which his people ... have historically addressed and settled upon solution to the serious problems of human life in society."³⁶⁴

The difficulties posed by living in a multicultural society are that other cultural groups will also have differing 'solutions', and, furthermore, "the larger society also has to deal with the ordinary problems of social life among its inhabitants. It too will be trying to set up practices and rules to govern relations ..." These "... solutions will implicitly contradict some of the solutions arrived at as part of the heritage of the smaller cultures that make up the fabric of the larger society's multiculturalism."³⁶⁵

Cultural groups cannot just be left to do things according to their own way; they may conflict with each other and restrict or harm the lives of individuals (either members, or non-members) who come into conflict with their ways of doing things.³⁶⁶ Neither can the majority impose their system on the

³⁶⁰ Kukathas has also highlighted this difficulty, in which he refers to it as 'the problem of equality.' You can have equality between groups, or you can have equality between individuals, but you cannot have equality between groups and, also at the same time, equality between individuals (what he calls Complete Equality). He claims "There are, in fact, numerous groups whose various ways make the prospect of their becoming equal decidedly remote. This is because groups display a diversity of attitudes to wealth (what it is and how it is distributed), to status, to income, to choice, to opportunity, and generally to well-being. Diversity – or, more specifically, differentiation – is, quite simply, an obstacle to equality." Kukathas (2003: 214-9 at 219)

³⁶¹ Waldron (2000a: 159)

³⁶² Waldron (2000a: 159 n. 5)

³⁶³ Waldron (2000a: 158)

³⁶⁴ Waldron (2000a: 161)

³⁶⁵ Waldron (2000a: 161).

³⁶⁶ Levy précis Waldron's "need for conventions and law to govern interactions among groups ... we live 'unavoidably side-by-side' in a crowded world and so can never rest simply on our own communal laws, rules, and social understandings. Because our claims and our demands and our beliefs about what is right collide with one another, no one group's demands or identity beliefs about justice can, by themselves, provide sufficient reason for decisions of law and public policy in favour of

rest. Consequently, a single standard of appeal must be developed to mediate between groups, and to protect individuals.

2h) Public Deliberation Through Reason Giving:

Waldron rightly points out that there will be, in many cases, no problem with one group doing something one way and another doing it another, “if mutual accommodation and toleration are in fact available ...” without there needing to be a single resolution on an aspect of the overall framework, then this should occur. But, he goes on to say, “... accommodation is not always practicable”³⁶⁷ there are certain cases where there will be contradiction between what one group and another group support. The state cannot be quiet on some things; it must be reasonably comprehensive in scope to be able to show equal concern for all. The various solutions offered cannot be seen as non-negotiable *interests*, but should be seen as *opinions*, that need to be offered, argued, reasoned and deliberated upon in deciding what should be applicable to all.

There should be no down-playing the importance that such opinions can have to individuals,³⁶⁸ but there should be no additional requirement to give extra weight,³⁶⁹ as cultural claims are opinions that can contribute as *reasons*. There is a requirement to justify all of the aspects of the framework (and objections to established aspects) through reasoned deliberation. Good *reasons* should be the justification for the development of a common framework and good *reasons* should be the basis of a justified objection to an aspect of the existing framework. Benhabib describes it as, “the process of “giving good reasons in public” and will not only determine the legitimacy of the norms followed; it will also enhance the civil virtues of democratic citizenship by cultivating the habits of mind of public reasoning and exchange.”³⁷⁰ Legitimacy is important; Dworkin’s political community is based on the commonality of a shared conception of the ‘right’ by exhibiting integrity on matters of principle. A deliberative process helps to create a common sense of justice, and treating all contributions with equality and respect contributes to the inclusiveness of the political community making more likely that support for the equal distribution of resources can occur.

the group. We must always think about the problems of compossibility – whether one group’s demands, desires, identities, or beliefs can coexist with those of the other groups that live side-by-side with them.” Levy (2000: 49)

³⁶⁷ Waldron (2000a: 162)

³⁶⁸ Benhabib outlines the need for the principles ‘universal respect’ and ‘egalitarian reciprocity’ in governing the process of deliberation, requiring “... that we recognize the right of all beings capable of speech and action to be participants in the moral conversation ...” and “... each should have the same right to various speech acts, to initiate new topics, and to ask for justification of the presuppositions of the conversation, and the like.” Benhabib (2002: 107)

³⁶⁹ Waldron claims “People should advance their opinions and, even when these opinions are deeply treasured artefacts of a culture they identify with, the most that should be demanded for them in the way of respect is that people listen to their opinions, take them seriously, not make fun of them, but rather respond to them in practical deliberation, making the best effort they can to see whether there is anything in them that is true, insightful, or persuasive.” Although he goes on to say that they cannot be given extra status, “I don’t think anyone should insist, as a condition of respect *for him*, that his opinion on a matter of common concern be accepted or implemented or treated as immune from criticism in political debate.” Waldron (2000a: 167)

³⁷⁰ Benhabib (2002: 115)

2i) *Lack of Consensus*

Given the broad range of conflicting opinions about even the most basic claims, I do not think that there is sufficient agreement to provide grounds for an *overlapping consensus*. I agree with Benhabib's criticism of Rawls, "... there are simply too many clashes and conflicts over some of the constitutional essentials to which most liberal democracies subscribe ..."³⁷¹ Some of the basic Liberal rights may "... in many cases contradict the practices of ethnic and religious minorities ..."³⁷² Furthermore, any kind of formal consensus that can be reached would not offer resolution to many of the areas of comprehensive areas of conflict. It is unable to account for changing conditions and new conflicts that may emerge. "A Minimal liberalism of an overlapping consensus does not offer guidance as to how consensus can be re-established in the event of ... clashes between conditional essentials on the one hand and the practices of certain cultural groups on the other."³⁷³

2j) *Resolution of the Framework:*

There may not be a *consensus* on the status on even the most basic rights, but a *resolution* on their status must be reached because of the conflict of opinion over that status. Basic rights, with or without non-negotiable status, can be reasonably justified. On these (and other more controversial areas needing resolution) there is conflicting opinion, and because there must be a resolution for a consistent framework, a decision on their status must be reached. Given that basic rights *are* justified in their inclusion (as with any other resolution), the group that opposes them (because of the rejection of their objection) will have to accept the validity of their applicability to *all* (including the membership of their own group). There cannot be an opt-out or an exemption for the group's members; they have the opportunity to offer their opinion in objection, but if this is reasonably rejected, then they are subject to that rule. Waldron points out, as some political decisions about the content of the framework necessitate a resolution, "Nothing tyrannical happens to a person *simply* by virtue of the fact that his opinion is not acted upon by a [political] community of which he is a member (emphasis original)."³⁷⁴ He goes on to say, "It simply cannot be the case that someone is wronged every time an opinion about rights is rejected in politics"³⁷⁵, although they may be wronged if it is *unjustifiably* not acted upon.

2k) *Reasons Internal to Culture:*

³⁷¹ Benhabib (2002: 111)

³⁷² Benhabib (2002: 111)

³⁷³ Benhabib (2002: 112). There may be some non-negotiable interests; Waldron mentions the "... fundamental interests in life, freedom and well-being ..." Waldron (2000a: 156) while Benhabib mentions the 'constitutional fundamentals of liberal democracies', whose general premises include "... the guarantee of basic human, civil, and political rights ..." Benhabib (2002:107) But these could still be the subject of contention, and it opens the possibility of groups claiming that their culture is a non-negotiable interest, meaning that rights, resources and opportunities will then be able to be differently distributed in accordance with each group.

³⁷⁴ Waldron (2000a: 165)

³⁷⁵ Waldron (2000a: 166)

Like Waldron, Brian Barry rejects "... the assumption that the appeal to 'culture' constitutes some sort of justification in and of itself."³⁷⁶ Individual *opinions* must be offered as to the appropriate *solution* to the various aspects needing *resolution*. The process in which the resolution is arrived at, involves various individuals (from various groups) offering their reasoned justification opinions³⁷⁷. Cultures have their own reasons for doing things; individual members, in offering their opinions about particular policy, are able to offer this reasoned content, rather than just appealing to cultural norms as a reason in itself.

Within cultural groups, the "... social norms and practices ..." that provide the various 'solutions', "... exist in a context of reasons and reasoning"³⁷⁸ which are made available to their membership. These groups "... make deep claims ... about what is important in the world ... [these] claims are usually held to be true, which means that they offer a better account of what really matters than the reasoning associated with the different norms and practices ..."³⁷⁹ of others. As a consequence:

"... it represents or claims to represent some repository of human wisdom as to the best way of doing things. As such it necessarily makes its reasoning available ... to understanding and assessment on the basis of, and in comparison with, what else there is in our society in the way of human wisdom and experience on questions such as those that the norm purports to address."³⁸⁰

Because there are many conflicting norms in a society that claim to offer the best solution to resolving what the common policy should be, and because there needs to be a common policy on many of the areas covering the lives of the citizens, "... a way has to be found ... to bring into deliberative relation with one another the views of all the individuals and all the groups in that vicinity ..."³⁸¹ Waldron's point is that each of these conflicting norms must not be regarded as "... a brute aspect of one's identity ... and therefore non-negotiable ..."³⁸² and requiring exemption, or separate status, or contradiction. Instead, the reasoning for such norms must be offered, there must be "... a mode of

³⁷⁶ Barry (2001: 253). He argued that appealing to culture steps outside of the discourse that must be based on reasons, "Suppose you are asked to defend some action that you have performed. Your response will normally be to explain why you did it by calling attention to features of the action that made it the right thing to do in the in the circumstances ... What you are saying is that your action was right for such-and-such reasons. Since you have offered reasons, the person who challenged you to justify yourself can argue with you about whether they are good reasons or not. You can attempt to rebut his objections, ... but what you cannot do ... is fall back on the claim that doing the action was part of your culture ... when you do so you have ceased to engage in the moral discourse and switched to the [descriptive] perspective of the anthropologist." Barry (2001: 253).

³⁷⁷ Waldron claims, "[The] opinion will be responded to in a civic debate on the basis of its content. Has he made a good argument? Are his facts right? Do the major premises of his account point to values that are of real importance? Could the important values he points to be secured by any other means? Having been put forward as a contribution to debate, his opinion must now take its chances in relation to the other opinions milling around in the market-place of ideas." Waldron (2000a: 163)

³⁷⁸ Waldron (2000a: 170)

³⁷⁹ Waldron (2000a: 170-1)

³⁸⁰ Waldron (2000a: 171)

³⁸¹ Waldron (2000a: 173)

³⁸² Waldron (2000a: 173)

engagement with the norms and practices of one's community or culture which ... [involves] engagement with them, and reasoning about them, as norms." Individual members must see their norms as a particular solution, among other possible solutions, all of which are contributing reasons towards what must necessarily be resolved as common policy. Waldron concludes:

"To treat a tradition or practice of one's culture as a norm means to treat it ... as a standard which does some work in the life of one's community ... a standard which does work which might, in principle or as a matter of at least logical possibility, have been performed by *other* norms, *alternative* standards, and which therefore cannot be understood except in terms of its association with an array of reasons explaining why it is in fact *this* norm rather than *that* norm ... which is the standard we uphold (emphasis original)."³⁸³

These reasons can then be presented in a process "... which includes bargaining, deliberation, compromise, authority and voting ..."³⁸⁴ that is part of our civic responsibility to come to a resolution about the common policy and legal framework.

2l) Williams' Objection:

Melissa S. Williams has raised two points of doubt with the general reason-based deliberative approach. The first concerns 'the status of reasons as reasons'³⁸⁵, she claims "... marginalized-group perspectives ... have to be *recognized* as reasonable by other participants."³⁸⁶ The second point is, "... there are good reasons for thinking that privileged groups will have a systematic tendency to reject marginalized group interpretations of social practices as unreasonable."³⁸⁷ She concludes "... models of deliberative democracy are imperfect ... so long as they continue to assume a sharp disjuncture between politics of interest and the politic of deliberation."³⁸⁸ She proposes biases in favour of minority groups in order to 'ameliorate structural injustice'.³⁸⁹

2m) Benhabib's Response:

Benhabib responds by distinguishing two aspects that make a public reason; the first following the 'syntactical structure' of a reason and the second is its 'semantic' content. The first means that "reasons would count as reasons because they can be defended as being in the best

³⁸³ Waldron (2000a: 174)

³⁸⁴ Waldron (2000a: 174)

³⁸⁵ Williams (2000: 132)

³⁸⁶ Williams (2000: 139). She argues, "Attention to the distinctive perspectives on political issues that follow the lines of social difference raises several doubts about deliberative theory's standard of 'reasonableness' and about how participants decide what counts as a reason for purposes of political deliberation ... The recognition of marginalised groups' reasons *as reasons (or acceptable to) other citizens* is a highly contingent matter." Williams (2000: 133-4) in Benhabib (2002: 140)

³⁸⁷ Williams (2000: 134). She goes on to say, "... there are strong incentives for privileged groups to withhold ... recognition, particularly where their own entrenched interests are at stake." Williams (2000: 139)

³⁸⁸ Williams (2000: 144)

³⁸⁹ She claims "... a spirit of impartial political discourse sometimes requires a sort of 'difference principle as applied to reasons'. By this I mean a willingness to regard the reasons offered by marginalized groups as the reasons that sustain a collective decision even when those reasons are not immediately available from within one's own social or cultural experience." Williams (2000: 145)

interests of all considered as equal moral and political beings.”³⁹⁰ It is justified if it can be established that it is in the best interests of all through a process “... of public deliberation in which all affected by these norms and policies took part as participants in a discourse.”³⁹¹ ‘X’ status as a reason is established if it can be defended as applicable to all, and is justified as a rule, if accepted through a process of deliberation with all affected.

The ‘semantic’ content of what could be seen as fulfilling the above structure could be broad. Benhabib claims, “... there is no way to know in advance which specific group claims and perspectives may or may not count as reasons.”³⁹² It has to fit the structure and then gain justification through sufficient acceptance from all affected. Benhabib, believes that Williams “... is right to point out that majorities are not always willing or open-minded enough to ... recognise them as reasons” but they may still be reasons, even justified reasons. Both Waldron and Benhabib argue that the majority has a responsibility to treat claims with ‘mutual respect’ and ‘open-mindedness’. Efforts by the minority may be needed to be made to gain the sympathy of others to “... come and see that the cause of the minority is just because it involves reasons that all can identify with.”³⁹³ These exist within cultural claims and they are translatable. They *do* make their reasons available, both necessarily to their membership, and potentially to the rest of the public. The acceptable content of these may be broad and there is a civic responsibility to engage; justification depends on their being publicly deliberated by all affected and resolved as legitimate policy for the common framework.

2n) Barry’s Established Rules:

The points made by Benhabib and Waldron contribute to what Brian Barry has said about rules³⁹⁴. He supports a framework approach in which “... minority cultural claims should be subject to democratic deliberation ...”³⁹⁵ in developing rules applicable to all. This resolves into law those things that must be settled and defines what options are available for individuals to choose from.³⁹⁶ Conflict exists³⁹⁷, but there must be reasoned debate about the policies and rules of the society.

³⁹⁰ Benhabib (2002: 140)

³⁹¹ Benhabib (2002: 140). The various participatory views emerge from civil society.

³⁹² Benhabib (2002: 141)

³⁹³ Benhabib (2002: 141).

³⁹⁴ Although Benhabib is critical of his dismissal of ‘multicultural considerations’ Benhabib (2002: 112-4) and I believe that the points that both have made about reasons and the need develop, and to justify existing, frameworks can contribute a greater degree of sensitivity to his approach, and even increase its ‘justness’ by highlighting legitimate cultural reasons which may have been unfairly dismissed by Barry.

³⁹⁵ Barry (2002: 213)

³⁹⁶ He claims, “The rules define a choice set, which is the same for everybody; within that choice set people pick a particular course of action by deciding what is best calculated to satisfy their underlying preferences for outcomes, given their beliefs about the way in which actions are connected to outcomes. From an egalitarian liberal standpoint, what matters are equal opportunities. If uniform rules create identical choice sets, then opportunities are equal. We may expect that people will make different choices from these identical choice sets, depending on their preferences for outcomes and their beliefs about the relation of actions to the satisfaction of their preferences. Some of these preferences and beliefs will be derived from aspects of culture shared with others; some will be idiosyncratic. But this has no significance: either way it is irrelevant to any claims based on justice, since justice is guaranteed by equal opportunities.” Barry (2001: 32)

³⁹⁷ He claims that “... citizens belong to a single society and share a common fate. Political disagreement ... stems from

Individuals contribute arguments about what is best for all, as they apply to all (given a qualifier about differentiation – equal response for equal situation³⁹⁸). It is important that exemption should not be made for rules applicable for necessary resolvable norms, as this would lead to the conflict discussed by Waldron; some would do things one way, while others another.³⁹⁹ Decisions may need to be made about ‘legitimate public goals’ and objectively good reasons need to be given to justify a law. Barry claims that no special status should be given to those with special interests in a particular law; they should not have a veto or be exempt⁴⁰⁰ (except in publicly justified situations).

All conclude that public reasoning is necessary in defending a position or objecting to an established rule and oppose Williams’ conclusion that special status needs to be given to certain claims; ‘structural injustice’, along with other objections to a rule, is rectified through the provision and acceptance of a justifiably established reason as to why the rule needs to be changed or (if not necessary) removed. This response is dependent on establishing the falseness of Williams’ point about majority bias. Barry says, “It would be absurd to suggest that majorities are incapable of oppression, and I have no intention of suggesting it.”⁴⁰¹ Elsewhere he has said, “this is not ... to say that no law can be unjust ... The great majority of people in the world live in countries in which there are ... onerous burdens placed on adherents of some religions ...”⁴⁰² but disproportionate burden is not always an indication of injustice. Barry points out the need, not just vote based decision making, but also for judicial, as this can be “... beyond the reach of ordinary decision-making procedures.”⁴⁰³ Benhabib has claimed the need for an ‘enlarged mentality’ of “... broadening of horizons through coming to see the perspective of others ...”⁴⁰⁴ and Waldron has claimed that “... coming to terms with one another ... is a matter in which we are morally required to take care.”⁴⁰⁵

2o) Conclusion:

All three philosophers’ theories come together in a way that should dissipate a tendency towards injustice, and although Barry may be faulted on the strict nature of acceptable reason giving, Waldron establishes that there *is* translatable reasoning within cultural groups, enabling the potential

differing ideals among citizens about the direction to be taken in future by their society. We may expect them to disagree on the policies that will most effectively further the common good and fairly distribute the benefits and burdens arising from the workings of their common institutions.” Barry (2001: 300)

³⁹⁸ He claims “... different people receive different treatment in accordance with their needs, but everybody with the same need receives the same treatment.” Barry (2001: 114)

³⁹⁹ This is only applicable where there is a rule, not, of course, when each is choosing amongst the range of available options.

⁴⁰⁰ He claims, “... those who wish, on the basis of minority religious beliefs or cultural norms, to engage in practices that would be illegal in the absence of a special exemption should be free to join in the public debate and do their best to convince as many of their fellow citizens as they can of the merits of their case ... they should not be regarded as having some kind of privileged status in relation to decision making on ‘their’ issues.” Barry (2001: 304)

⁴⁰¹ Barry (2001: 305)

⁴⁰² Barry (2002: 213)

⁴⁰³ Barry (2001: 305)

⁴⁰⁴ Benhabib (2002: 142)

⁴⁰⁵ Waldron (2000a: 173)

for negotiation with other competing norms of its nature. Benhabib's gives a broad formulation external legitimacy making the reason somewhat external to the recognition of it as such, despite possible majority bias against its legitimate status. Importantly, Barry argues that disproportionate effect is no basis for veto or immediate exemption, and neither is it automatically grounds for claims of injustice. Waldron and Barry make important points about the need for a common framework, in order for there to be a consistent system able to both manage the interactions of the various (and conflicting) groups in society and ensure that individuals are treated with equal respect and concern.

Establishing resolved norms and public policy that dictate how certain socially necessary practices should be done involves ruling out other norms, because there are better reasons for the recognition of one. The process of establishing this may have been unjust or have not taken into account a better reason for its omission. This should be reasonably appealed and listened to with an open-mind, even if the group is a substantial majority. This point returns to connect with the earlier argument for a 'Liberal Community' that is tolerant, particularly in terms of limitations on the imposition, or establishment in law, of the majority's morality or conception of the good. It must be tolerant, not just exhibiting the historical norms and moral biases of the historic community, otherwise it falls to the Communitarian critique of domination by sectarian doctrines and the local masquerading as the (culturally conservative) universal. The basis for tolerance should be a concern for the just treatment of individuals. This concern means that the extent of *group* toleration is balanced by a concern for ensuring individual rights, resources and opportunities through a comprehensive commitment in ensuring the conditions in which individuals can act autonomously. This means that the *comprehensive* framework will be more supportive of ensuring individual tolerance, and will be less supportive of group tolerance, if not interventionist, into group autonomy.⁴⁰⁶

⁴⁰⁶ The fact is that the above approach appeals to both ideas about a political community bound by a common conception of justice and also to an approach based on reasoned deliberation. This may not lead to my conclusion about the need for comprehensively ensuring conditions of autonomy given the possible variation in deliberated conclusions. The deliberative aspect is necessary for common agreement and legitimacy. It also necessary in order to guard against possible unjust domination of the majority's norms and practices over the minorities where there is no good reason for it being so. The deliberative aspect is needed to expose injustice. Having said this, I regard the Liberal claims in endorsement of a common conception of justice (in line with Dworkin) that supports the rights, resources and opportunities of individuals as being reasonably justifiable. Furthermore, individual toleration, equal access to education, substantive support to ensure the possibility of exit and an extensive interpretation of the 'harm' principle in protection of restriction on individual autonomy are reasonably justifiable. This is because they can be argued for as being in the best interests of all. Ensuring access to these ends should be the basis of the common framework, although deliberation is needed to overcome differences within the political society. Unequal treatment of individuals may be voluntarily consented to, but cannot be justified as in the best interest of all. What can be justified in the interest of all is ensuring the conditions required for individuals to revise their association, and an awareness of their options (education). This is partially idealistic; it may indeed be difficult to gain the reasoned and deliberated support for equality of resources as well as supports for broad-ranging policies of individual tolerance, given people's self-interest and biases, but the reasoning to justify such measures is strong.

Part 3) Substantive Intervention:

I have argued that developing a common framework governing multiple groups is possible and necessary. Cross-cultural comparison can determine where there are practices that are in violation of commonly applicable rules. Justly reasoned common policy means that the state *should* intervene so that all individuals are equally subject to the framework.

The framework determines both the individual *entitlements* (rights, resources and opportunities) that are commonly available to all, and matters of dispute about *conditions* that become the common policy and applicable to all. This latter aspect determines the settlement of norms and practices in practical areas (e.g. driving on the left), in controversial areas (e.g. monogamous marriage) and the methods of achieving access to individual entitlements (e.g. educational content and requirements). Where cross-cultural comparison reveals that individuals are being restricted from accessing their entitlements⁴⁰⁷ or are not conforming to the common policy⁴⁰⁸, there is a responsibility for the state to intervene to ensure access and conformity to the rule.

3a) Coverage and Enforcement:

I will now argue that there should be a *comprehensive* framework, in terms of *coverage* (i.e. areas that are subject to legal resolution on *conditions*) and *enforcement* (i.e. support for intervention). These two aspects are the factors of contrast with alternative accounts that support a minimalist *formal* framework. I support the former approach because I believe that it is required in order to ensure an individual's equal access to their rights, resources and opportunities, including the minimum conditions required to ensure that associations are voluntary (a necessary requirement for treating people equally). Broad coverage ensures 'informed' consent, by avoiding harms through neglect, and ensuring this is not possible under a minimal framework. Without enforcement of conformity to reasonably justified common policies, there would be informal (and unjust) acceptance of the contrary norm or practice. Importantly, a comprehensive framework must be limited by concern for individual tolerance. This sounds contradictory, as it is an argument against external interference into the affairs of an individual, but I will argue that the 'harm' principle justifies ensuring the necessary conditions for individual autonomy, but protects the individual from group restriction on that autonomy.

3b) Conditions of Autonomy:

I do not regard autonomy as an ideal, but I do support ensuring the necessary conditions for the capacity for autonomous choice and action. Barry has claimed that the ideal is "... a second-order

⁴⁰⁷ For example, individuals being restricted from attending school, choosing a marriage partner, or speaking rights.

⁴⁰⁸ For example, illegally practicing polygamous marriage or changing the curriculum.

conception of the good ...”⁴⁰⁹ that can be seen to require the departure from neutrality as it “... might plausibly adopt policies designed to undermine ...”⁴¹⁰ those associations or institutions that are “... devoted to the suppression of autonomy ...”⁴¹¹ The *ideal* of autonomy (even if claimed to be undertaken non-coercively) can be seen to be in opposition to the idea of individual toleration which supports freedom from coercion (apart from the justified requirements of the law). Individuals should be free to associate with autonomy suppressing institutions if they voluntarily choose to do so and have the substantive ability to exit. But, I regard equal access to the *conditions* necessary for autonomous action (education, removal of restrictions) as being necessary for voluntary chosen freedom of association, and the ability to exit. Consequently, ensuring these conditions (which may require some coercion) is a requirement of treating all people equally and is, therefore, justified as being part of the framework of the law.

3c) *Minimal account of ‘Harm’*:

Raz outlines the traditional account of harm whose original intent was to set “... a limit on the means allowed in pursuit of moral ideals.”⁴¹² Coercion is only legitimate in order to defend individuals from harm, “Mill’s harm principle states that the only justification for coercively interfering with a person is to prevent him from harming others.”⁴¹³ This is compatible with the earlier claim for internal tolerance and can be seen to justify a *formal* Liberal framework.

The formal account revolves around the connection between ‘harm’ and ‘consent’; this justifies the deference of respect for *individual* toleration to the respect for *group* toleration. This follows the line of argument that ensuring the individual’s ability to act in a way that is not contrary to their conscience means that the state should not intervene, or attempt to coerce them unless they are causing harm, or being harmed. Individuals are in a position to know if they are being harmed, and if they are, then they will exit the group. The group is able to claim that it has the consent of those members that do not exit, claim group toleration of its practices and norms because it has got the consent of the governed, and it is illegitimate for the state to intervene because the individuals are not being harmed. This has implications for the *coverage*, limited to a minimal common policy, and *enforcement*, the group should be tolerated through non-interference⁴¹⁴.

⁴⁰⁹ Barry (1995: 130)

⁴¹⁰ Barry (1995: 130)

⁴¹¹ Barry (1995: 131)

⁴¹² Raz (1986: 420)

⁴¹³ Raz (1986: 412). He goes on to say, “The harm principle is a principle of freedom. The common way of stating its point is to regard it as excluding considerations of private morality from politics. It restrains both individuals and the state from coercing people to refrain from certain activities or to undertake others on the ground that those activities are morally either repugnant or desirable.” Raz (1986: 413)

⁴¹⁴ Conflicts, in the form of unjustified interference, would be avoided by either restricting the framework to a minimum and letting the group informally resolve (define) those norms that are not subject to the general framework, or by not applying

William Galston claims, "... the state must safeguard the ability of individuals to shift allegiances and cross boundaries. But it should not seek to reconstruct practices *within* subcommunities in light of principles governing movement *among* subcommunities (my emphasis)."⁴¹⁵ There should be state support if there is exit, as this indicates harm,⁴¹⁶ but there should not be state intervention into the traditional affairs of the group. Individual autonomy is a principle of free movement across (or out of) groups, not a principle governing their internal practices. He goes on to say, "... liberalism is about the protection of diversity, not the vaporization of choice ..."⁴¹⁷ Conscience justifies exemptions for a common framework.⁴¹⁸ Respect for individual conscience combines with an account of consent based on a formal concept of harm; these result in group-specific exemptions. Galston's emphasis is on exempting *enforcement*, for Kukathas it is on minimal *coverage* as well as *enforcement*.

Kukathas thinks that Galston is too intrusive and still places too much power into the hands of government. He objects to Galston's claim that there is "... a principled path between intrusion and laissez-faire."⁴¹⁹ He rejects Galston's requirement for a "... vigorous system of civic education that teaches tolerance ..."⁴²⁰ and, similarly the need for a "... unitary public structure that both protects and circumscribes the enactments of diversity."⁴²¹ Kukathas thinks there need not be anything more added to the minimal common framework, other than what is necessary to "... recognize the freedom of individuals to associate as, and with whom, they wish."⁴²² Individuals associate, in accordance with their conscience, with authorities, and these "... authorities function under laws which are themselves beyond the reach of any singular power"⁴²³; this includes the political authority of the state. Non-exit is equivalent to consenting to the authority of that association. Harm may be defined by exit, but it

the framework to the group's practices where they are in conflict, i.e. exemptions, or by formally granting specific rights for the group to develop its own partial framework of jurisdictions.

⁴¹⁵ Galston (1995: 52)

⁴¹⁶ Daniel M. Weinstock précis Galston's interpretation of harm, he "... argues that an insistence upon exit rights can ensure that the harm principle is being satisfied without undue imposition of outsiders' values and conceptions of what harm involves. Indeed, if people do not abandon their group membership when exit is possible, this must mean that, *by their own lights*, they are not being harmed in a manner that would warrant ending their membership (emphasis original)." Weinstock (2005: 230) précis Galston's 'Liberal Pluralism' (2002).

⁴¹⁷ Galston (1995: 523) Galston supports an understanding of the "Diversity State" that is governed by "... public principles, institutions, and practices that afford maximum feasible space for the enactment of individual and group differences, constrained only by the requirements of liberal social unity." Galston (1995: 524)

⁴¹⁸ Elsewhere he claims, "A policy of accommodation does not mean that a democratic government cannot enact laws of broad application. It means only that certain considerations are enough to rebut the presumption that these laws will apply to a particular group." Galston (2005: 193)

⁴¹⁹ Galston (1995: 529) in Kukathas (2003: 37)

⁴²⁰ Galston (1995: 528) in Kukathas (2003: 37)

⁴²¹ Galston (1995: 528-9) in Kukathas (2003: 37)

⁴²² Kukathas (2003: 19). The function of the state is restricted. It should be a union of associations whose purpose is to adjudicate between associations in order to avoid a breakdown in which "... power will no longer be constrained and directed in controlled ways." Kukathas (2003: 38) Its "... role is to serve as an umpire ..." that adjudicates disputes "... over the application of a rule, or its interpretation – or over whether the rule exists at all" It "... attempts to preserve the order in which these groups can coexist" and "as umpire, ... it is responsible for determining when a society is in danger, and what is to be done ... it carries with it the right and the power to judge what action is needed." Kukathas (2003: 212 & 213)

⁴²³ Kukathas (2003: 22)

does not justify any intervention⁴²⁴. All that is required is that “There must be, *at least in principle*, the possibility of individual exit from illiberal communities or associations (my emphasis).”⁴²⁵ To ensure this there must be somewhere else for individuals to go; they require the “... liberty to reject the authority of one association in order to place themselves under the authority of another ...”⁴²⁶

3d) Reply:

Both make the move from individual to group toleration too quickly. They base their argument for non-intervention on the value of individual, but they apply tolerance to the groups. Their conclusions are supportive of tolerance and autonomy *between* groups. Conscience justifies non-intervention, but harm does not justify intervention.⁴²⁷ Individual conscience justifies freedom from intervention into the group, but this enables the group to harm the individual and limit their ability to exit, thus, forcing them to act in ways that may be contrary to their conscience. Deborah Hawkins claims that, for Kukathas, “... it appears that the fundamental unit of political society is the association, not the individual.”⁴²⁸

To return to the point made in Chapter 3 about objective and subjective definitions of oppression, ‘adaptive preference formation’ means that the subject may not see themselves as being harmed. For Kukathas, consent is the lack of exit. Where there is group tyranny (which can be seen as an objective harm) and no exit, there is still consent. But there may actually be harm (objectively defined), in the form of restricting exit through tyranny. For Galston, exit from the group subjectively defines harm. Applied to tyranny, we can say that there is no (subjective) harm if there is no exit. Galston prohibits “... coercion to prevent individuals from leaving ... groups”⁴²⁹, but coercion is only harm when this is subjectively defined as such by individuals exiting. If the group is successful at limiting its members from exiting (through whatever means), the state is unjustified in intervening to limit the use of those means; this creates a perverse incentive. This may be resolved if Galston

⁴²⁴ Those associations that do deny the right of exit must not be “... recognized by the legal and political institutions of the wider society.” Kukathas (2003: 25)

⁴²⁵ Kukathas (2003: 25)

⁴²⁶ Kukathas (2003: 25)

⁴²⁷ Kukathas claims, where there is oppression within the group, such as “... clear evidence of terrible practices ... ” intervention should be avoided, “... persuasion is always preferable to force ...” He goes on to say, “Now this may well leave within the wider society a number of cohesive but oppressive communities: islands of tyranny in a sea of indifference. Nonetheless, the decentralization of tyranny is to be preferred.” Kukathas (2003: 136 & 137)

⁴²⁸ Hawkins (2004: 596). She concludes, “Despite the claim of the individual being the most important unit in society and of freedom of exit being the individual’s most fundamental and inalienable right, Kukathas presents absolutely no state mechanism through which the right can be protected from the tyranny of the groups, communities and associations that are under the legal jurisdiction of the state. In fact, he questions the necessity of *any* overarching legal jurisdictions ... As much as he refutes the ideal of ... individual autonomy as an appropriate basis for political society, his non-interventionist stance functions to hold precious the autonomy of all the ... associations, regardless of their treatment of their members.” Hawkins (2004: 597)

⁴²⁹ Galston (1995: 528)

justifies state intervention where there is tyranny (objectively defined), but no exit (I will argue for this, and other forms of harm).⁴³⁰

3e) *Individual and Group Tolerance and Autonomy:*

Many 'Pluralists' regard individual toleration as related to group toleration, the sum of a number of individuals requiring toleration creates a group deserving of toleration. I am against this because individuals may cease to be tolerated by being part of a tolerated group. They may be restricted in their freedom by the group; this restriction will be tolerated by the state, out of a misguided respect for tolerating individuals that is equated with respecting or tolerating their group.⁴³¹ Group and individual interests do not necessarily correlate to enable the resolution of individual and group interests. This means that rights to group tolerance are always going to have the possibility to conflict with those of the individual. I wish to point out that *individual tolerance* is related to *individual autonomy*, while *group tolerance* is related to *group autonomy*, and the only way in which the two sets can be connected is by accepting some version of the *distinct* 'social forms' thesis of common interests. Individual rights *are* the basis of toleration and how they connect with a claim for group toleration is not easily established.

3f) *Kymlicka on Liberal Tolerance:*

Kymlicka offers an argument that shows that *individual* conscience, harm, tolerance and autonomy are all strongly connected. I will argue that it shows that a formal account of toleration does *not* show respect for the individual's conscience. Conscience is a basic right⁴³² and it is dependent on freedom to act, which can be seen to be protected by the 'harm' principle, as it defines the extent and limits of toleration. What is tolerable is not harmful, and what is harmful should not be tolerated. *Individual* conscience is the basis of liberal tolerance, because (using the example of religion) just having *group* tolerance would allow different forms of *collective* worship, without concern for individual freedom of conscience. Individual tolerance allows Liberal group tolerance of freedom of

⁴³⁰ It is worse under Kukathas' account - harm in whatever form (including tyranny) does not justify intervention, only persuasion, which can be ignored. It may attempt to encourage other groups to accept those that are able to exit a tyrannical group, but these other groups may not necessarily be better themselves. There is nothing at the state's disposal to enable it to make groups treat their member well. Once a person is a member of a group, i.e. supposedly consented in accordance to their conscience (although it is hard to see how children do this), they provide the association with a status that limits any intervention. The group may treat them any way it wishes and they are seen as consenting to it unless they exit. Tyranny (or other restrictions) may totally ban exit and Kukathas believes that this should not be allowed. Restrictions can be seen to be a matter of degree and so it would be interesting to see at which point a restriction becomes disallowed. But this does not really matter in the end, as groups may do as they like, and perhaps be criticised for it, but there is nothing that the state is able to do to stop them from behaving as they wish.

⁴³¹ Even the Communitarian Michael Walzer recognises these differences in his discussion of toleration, "... some people seek escape from the confines of their religious or ethnic membership ... whereas others want to be ... tolerated precisely as members of an organised community ... Strong-willed (or simply eccentric) individuals who have broken loose from their communal backgrounds coexist with committed (or simply settled) men and women who constitute the background and seek to bring it forward. The two projects seem competitive with one another ..." Walzer (1997: 86)

⁴³² Kymlicka claims a basic point of agreement; that individual toleration is historically based on "... the idea of individual freedom of conscience. It is now a basic individual right [in the West] to worship freely ... to restrict an individual's exercise of these liberties is seen as a violation of a fundamental human right." Kymlicka (2002: 230)

worship.⁴³³ The harm principle means that the group *has* to be Liberal. This is because the principle applies to all; individuals within the group *cannot* be restricted by the group or the state unless they are doing harm, if they are not and the group unjustly restricts them, then the group is doing harm and the state must intervene in order to protect the individual members. Kymlicka goes on to say, (as mentioned in Chapter 1, 2c) tolerance protects the individual right of dissent (in accordance with conscience),⁴³⁴ making it committed to personal autonomy.

3g) Kukathas' Response:

Kukathas cites Kymlicka's claim "If we wish to defend individual freedom of conscience, and not just group tolerance, we must reject the communitarian idea that people's ends are fixed and beyond rational revision. We must endorse the traditional liberal belief in personal autonomy."⁴³⁵ He responds "the conception of liberalism advanced in this work agrees that the liberty of conscience is fundamental to toleration and, so, to liberalism, but rejects the connection with autonomy. Indeed, the protection of autonomy can run counter to liberty of conscience, and in those circumstances, liberty of conscience should prevail."⁴³⁶ Accepting Kymlicka's claim would mean the state would have to *protect* autonomy, which would involve supporting the dissenters in acting in accordance with their conscience, and such support would be against the conscience of the others.

3h) Tolerance and Autonomy:

I do not think it is possible to separate revision from conscience and, therefore autonomy from tolerance. Although you can act in accordance with your conscience and not ever revise your choices, if your conscience forces you to revise, then acting on your conscience is dependent upon you acting on that revised belief. You must be autonomous to follow your conscience, and the state, not wanting those in your position to be forced to act against their conscience, should provide the conditions in which those who are wishing to act autonomously can do so. Providing the conditions for autonomy (substantive rights in support of exit, removing restrictions) does not harm, or contradict the conscience of those wishing to stay in illiberal groups, but withholding these *does* harm those who

⁴³³ As quoted previously 'Liberal tolerance protects the right of individuals to dissent from their group... It limits the power of the illiberal groups to restrict the liberty of their own members...' Kymlicka (2002: 231)

⁴³⁴ "... Liberals have historically seen autonomy and tolerance as two sides of the same coin. What distinguishes *liberal* tolerance is precisely its commitment to autonomy – i.e. the idea that individuals should be free to rationally assess and potentially revise their existing ends." Mendus (1989: 56) in Kymlicka (2002: 231-2)

⁴³⁵ Kymlicka (1995: 163) in Kukathas (2003: 36 n. 41). Later he argues, "If cultural communities are to be regarded as having the same basis as a liberal state ... then they must ... be made into, liberal communities ... This is because such a liberal state will only tolerate communities that embrace the liberal theory of justice." Kukathas (2003: 188-9)

⁴³⁶ Kukathas (2003: 36)

wish to revise their associations. The harm principle obliges the state to provide these conditions for being without them is causing harm to a person who is unable to act on their conscience.⁴³⁷

Kymlicka also makes the point that Liberal tolerance is incompatible with illiberal group tolerance of the type that is endorsed by the ‘Pluralist’ or Communitarian conception⁴³⁸. Freedom of conscience is cited as justification for both forms of tolerance. Kymlicka claims although “... both endorse a principle of tolerance between groups ...the two arguments do not support the same conclusion on issues of individual freedom of conscience – i.e. the freedom of individual members *within each group* to question and reject their inherited beliefs (emphasis original).”⁴³⁹ Acceptance of tolerance *between* illiberal groups that oppose, or deny the possibility, of individual revision, is incompatible with acceptance of a Liberal tolerance that requires the recognition that individuals have the right to revise their commitments⁴⁴⁰. Freedom of conscience, because it requires individual autonomy, does not justify internally illiberal group tolerance, either as the basis for *all* forms of tolerance or as *one* approach, which is compatible with the *other* approach based on Liberal individual tolerance. Autonomy is not something that can be chosen by those who can see their commitments as revisable, and not chosen by those who do not have to have it as a basis for their commitments. The *conditions* of individual autonomy, i.e. availability of the possibility to revise chosen options, are a *necessary* basis for freedom of conscience that cannot be excluded (but do not need to be exercised).

3i) Autonomy and Harm:

Joseph Raz argues tolerance is an important part of autonomy, but not the only part, it is the negative duty, there also exist further positive duties. There are “... many valuable but incompatible forms of life”⁴⁴¹ and because there are many people pursuing different options, this ‘generates conflicts,’ meaning that “... there is a need to curb peoples actions and their attitudes by principles of

⁴³⁷ Even if Kukathas does not agree with this, respect for the liberty of conscience requires the same thing. Acting in accordance with conscience involves not being restricted from doing so; to restrict conscience is to disrespect the person because they are not being given their right to be tolerated. They must have the right to toleration of their acting in accordance with their conscience, even if they do not choose to act autonomously, their right to take the option (or many options over time) that is in accordance with their conscience must be ensured. Even if they never choose to act autonomously, to not choose more than one option over their life, the state has an obligation to provide a broad range of options because, if that person did happen to revise their chosen option and wish to change it, the state would be restricting their conscience if it were not make all those options available.

⁴³⁸ That is, the idea that “... religious beliefs are ‘regarded as *given and firmly rooted*’ (emphasis Kymlicka)” Rawls (1982) in quotes in Kymlicka (2002: 232), but this criticism is equally applicable to Galston, etc. as their claim is that individual conscience supports toleration *between* groups, but not *within*.

⁴³⁹ Kymlicka (2002: 233), has argued, contrary to Rawls, there *is* a cost to the illiberal groups if they accept his political liberalism, which is “... it precludes any system of internal restrictions which limit the right of the individual within the group to revise their conception of the good.” Kymlicka (1995: 160-1)

⁴⁴⁰ He claims “... while it is true that a liberal state does not require or encourage people to engage in rational revisability in private life, it does *enable* revisability in ways that communitarian groups might oppose ... some ... would like to legally prohibit apostasy, heresy and proselytization, ... as undermining people’s constitutive ends. Rawls ... [gives] no reason why limiting these liberties should not be an option available to them. Moreover, these liberties do not remain merely formal rights ... The liberal state makes various efforts to ensure that these rights are in fact available to people.” Kymlicka (2002: 236-7)

⁴⁴¹ Raz (1986: 407)

toleration. The duty of toleration, and the wider doctrine of freedom of which it is a part, are an aspect of the duty of respect for autonomy.⁴⁴² There must be tolerance, or others will coercively limit people from choosing certain valuable options or ways of life. If these are limited, one's autonomy is limited and this freedom is "... central to leading a fully good life ..."⁴⁴³ (at least in "... the public culture of liberal societies"⁴⁴⁴).

This negative freedom from coercion is *one* of three duties. There is this duty of non-interference, as well as the duty to "... help in creating the inner capacities required for the conduct of an autonomous life", and the duty concerning "... the creation of an adequate range of options for ..." choosing from. These latter two make up the positive freedom of 'autonomy as a capacity.' Raz regards positive freedom as being far more important than just freedom from coercion, as "... autonomy and positive freedom bear directly on relatively pervasive goals and relationships ..." These may restrict some options "... only inasmuch as they affect one's ability to pursue the more pervasive ones."⁴⁴⁵ By this I mean that ensuring some important goals may mean that the negative freedom of non-interference may be impinged upon, but this may not diminish the extent of individual autonomy that is primarily concerned with pervasive goals.

Toleration yields the negative duties of freedom from coercion, but 'respect for autonomy'⁴⁴⁶ yields positive duties to ensure capacities. Intervention into aspects of this negative duty to tolerate may not diminish autonomy. It may contribute to the availability of valuable options.⁴⁴⁷

3j) *Harm's Connection to Positive Duties:*

Raz argues the connection between autonomy and harm conceived as the uncontroversial *negative freedom* from restrictions on autonomy.

"Respect for the autonomy of others largely consists in securing for them adequate options, i.e. opportunities and the ability to use them. Depriving a person of opportunities or the ability to use them is a way of causing harm ... Any harm to a person by denying him the use of the value of his property is a harm to him precisely because it diminishes his opportunities.

⁴⁴² Raz (1986: 407).

⁴⁴³ McCabe (2001: 494)

⁴⁴⁴ McCabe (2001: 495)

⁴⁴⁵ Raz (1986: 409)

⁴⁴⁶ Raz claims, "Autonomy is a constituent element of the good life. A person's life is autonomous if it is to a considerable extent his own creation. Naturally the autonomous person has the capacity to control and create his own life ... That capacity, which involves both the possession of certain mental and physical abilities and the availability of an adequate range of options, is sometimes referred to as positive freedom ... Positive freedom is intrinsically valuable because it is an essential ingredient and a necessary condition for the autonomous life." Raz (1986: 408-9)

⁴⁴⁷ Although the harm principle seems to rule out coercive interference, the state also has a positive duty to contribute to providing the conditions and capacities so that its citizens are able to act autonomously. The former seems to rule out the latter, as positive duties imply state interference, but they are compatible and *neglecting* these positive duties is part of what constitutes harm (along with coercion). Both of the positive and negative duties contribute to autonomy, and autonomy should not be harmed, so not harming involves both positive and negative duties, and as I have mentioned, positive duties may justifiably limit some unimportant aspects of the negative duties.

Similarly injury to the person ... [and] frustrating his pursuit of the projects and relationships he has set upon.”⁴⁴⁸

Even preventing harm based solely on *negative* duties of non-intervention requires more than the minimalist account would be supportive of, because it connects harm with limitations on autonomy, rather than equating it with the exercise of the formal right of exit. He then goes on to argue that limitation of harms is also compatible with the positive autonomy based duties that the state has, as “these extend beyond the duty to prevent loss of autonomy”.⁴⁴⁹ He claims, “It is a mistake to think that the harm principle recognizes only the duty of governments to prevent loss of autonomy. Sometimes failing to improve the situation of another is harming him.”⁴⁵⁰

Furthermore, positive duties⁴⁵¹ extend beyond particular individuals. This means that, although the state “... failing to impose a tax which it is its moral obligation to impose ...”⁴⁵² does not mean that it harms any particular person, but it *does* do harm to ‘unassignable individuals’. It can cause harm if it fails in its “... duty to a person or a class of person and that person or a member of that class suffers as a result.”⁴⁵³ He concludes, “... the harm principle allows full scope to autonomy based duties.”⁴⁵⁴

3k) Content of the Substantive Framework:

There is an obligation for the state to help create the inner *capacities* needed for an individual to be able to be autonomous.⁴⁵⁵ There are requirements that there be an adequate *range of options*.⁴⁵⁶ He concludes that:

⁴⁴⁸ Raz (1986: 413)

⁴⁴⁹ Raz (1986: 415)

⁴⁵⁰ Raz (1986: 415-6). Raz elaborates, “One can harm another by denying him what is due to him. This is obscured by the common misconception which confines harming a person to acting in a way the result of which is that the person is worse off after the action than he was before. While such actions do indeed harm, so do acts or omissions, the result of which is that the person is worse off after them than he should be. One harms another by failing in one’s duty to him, even though this is a duty to improve his situation and the failure does not leave him worse off than he was before.” Raz (1986: 416)

⁴⁵¹ Raz claims that autonomy must be *promoted*, it “... permits and even requires governments to create morally valuable opportunities, and to eliminate repugnant ones.” Raz (1986: 417) There are good arguments (Waldron 1989, McCabe 2001) that question the extent of ‘coercion’ and ‘manipulation’, and the justification for ‘elimination’, stemming from Raz’ perfectionism. I do not believe that this subtracts from the positive duties that are allowed under Raz’ interpretation of the harm principle. This is because they are duties of opportunity provision, rather than elimination. ‘Promotion of autonomy’, can be consistently substituted with ‘substantively ensuring the conditions of autonomy’ in accordance with the point made in, Chapter 4.

⁴⁵² Raz (1986: 416)

⁴⁵³ Raz (1986: 416)

⁴⁵⁴ Raz (1986: 417)

⁴⁵⁵ Raz describes their general nature, “Some of these concern cognitive capacities, such as the ability to absorb, remember and use information, reasoning abilities, and the like. Others concern one’s emotional and imaginative make-up. Still others concern health, and physical abilities and skills. Finally, there are character traits ... They include stability, loyalty and the ability to form personal attachments and maintain intimate relationships.” Raz (1986: 408)

⁴⁵⁶ This justifies engaging in policies of “... redistribution through taxation, and the provision of public goods out of public funds on a non-voluntary basis, as well as [the proscription of] such familiar schemes as a tax-financed educational and national health systems, the subsidization of public transport .etc.” Raz (1986: 415)

“It follows that a government whose responsibility is to promote the autonomy of its citizens is entitled to redistribute resources, to provide public goods and to engage in the provision of other services on a compulsory basis, provided its laws merely reflect and make concrete autonomy-based duties of its citizens.”⁴⁵⁷

Kymlicka supports intervention, “People must also know how they can enforce their rights if someone tries to prevent them - i.e. they must know how to access the police and courts”.⁴⁵⁸ There must be the enforcement and even applications of the laws, this is a consequential requirement to ensure that people are not informally denied access to their rights. Similarly to Raz, he supports positive duties for the state, particularly in terms of ensuring capacities.⁴⁵⁹ The arguments given support an extensive state system of education to ensure ‘informed consent’, and substantive supports for exit to ensure that the costs of doing so are not too great. Barry offers a clear account of the substantive conditional requirements needed in order for these to be guaranteed.

3l) *Substantively Ensuring Exit:*

The state must ensure that real exit options are available to people and this is to be achieved through education, compensation and intervention, where hindrances to exit exist. Education contributes to the capacity, but because of the involuntary nature of membership in some communities, it is necessary that the state must also be able intervene to protect children that are vulnerable to abuse. This is because there cannot be a real option of exit at that age. It is also important that the state provides the capacity through education to allow for the ability for possible exit, “... children must be brought up in a way that will eventually enable them to leave behind the groups into which they were born, if they so choose.”⁴⁶⁰ I have previously mentioned Barry’s insistence on ensuring education (Chapter 4, 3a and b) as a way of enabling reasonably good alternatives so as to ensure that associations are voluntary, but his does not rule out ‘the possibility of public intervention.’

“... it is a legitimate object of public policy to ensure as far as possible that members of associations have real exit options available to them. For this must surely reduce the need for

⁴⁵⁷ Raz (1986: 417)

⁴⁵⁸ Kymlicka (2002: 23)

⁴⁵⁹ He claims, “... the liberal state also takes actions to ensure that individuals actually have the personal capacity to exercise these rights. For example, a liberal state will want children to learn the cognitive and imaginative skills needed to evaluate different ways of life, and to survive outside their original community. This is one of the basic goals of education in a liberal society. Moreover, a liberal state will also want to ensure that the costs of exercising the right of revisability are not prohibitive. For example, it will want to ensure that communitarian religious groups do not place so many obstacles to exit that people have are *de facto* imprisoned in their group.” Kymlicka, (2002: 237)

⁴⁶⁰ Barry (2001: 149), claims the primary way to achieve this at a functional level is through “... the acquisition of literacy ... [which is] an important indicator of what is often nowadays called ‘human development’.” On top of this, children need to receive sufficient education to have the possibility of getting a job, dealing with bureaucracy and, what Barry calls ‘education as an end in itself’, or ‘cultural education’, which (though not necessary) is in the legitimate interest of the state to encourage Barry (2001: 212)

state intervention – which is only ever a second best – by giving group members a chance to act themselves so as to avoid oppression, exploitation and injury.”⁴⁶¹

Barry argues for a classification of the costs of exit, so as to be able to enable an individual to leave a group without excessive costs, but also enable the group to have “... the power to decide whom to admit and whom to exclude.”⁴⁶² This latter part is also important; without the ability to do something to members who leave, the group’s affairs would be ‘hopelessly compromised’. It distinguishes how legitimate intervention can occur without being oppressive to those that wish to maintain association. There are some costs that the state can compensate a person for and others that it cannot do so without intervening too deeply, and destructively, into the affairs of the group. The three categories are:

1. **Intrinsic costs:** Those costs that the state cannot, in the nature of things, take any steps to prevent or ameliorate.
2. **Associative costs:** Those costs that the state could try to do something about (even though its efforts might be clumsy and only slightly effective), but which come about as a result of people doing things that the liberal state should permit.
3. **External costs:** Those costs that the state both can and should do something about. If it cannot prevent them from occurring altogether, it should do whatever is possible at least to reduce their scale.⁴⁶³

Given the substantive role for the state in ensuring the equal access to various rights, resources and opportunities that citizens are entitled to, and its role in ensuring that individuals are not exposed to unjust harms, there must be a broad, commonly applicable legal framework governing the interactions of the various individuals and groups of individuals in society. This is a complicated and difficult duty that needs to be done well for the sake of equal concern for all of the members, particularly those who are in weak positions, as the state has an equal responsibility to them, although they can be seen as being more difficult to reach than other members in society. This cannot be further complicated by adding recognition of *groups* to the equation and, furthermore, this can be seen to be counterproductive to the original goal. In order to successfully fulfil its duties, cross-cultural comparison is necessary, where restriction on the ability to ensure equal access exists - these must be overridden and the required intervention and remedial policies must be enacted.

⁴⁶¹ Barry (2001: 149)

⁴⁶² Barry (2001: 150)

⁴⁶³ Barry (2001:150-1). Barry illustrates these three categories with examples of a Roman Catholic who has been excommunicated. They can suffer the intrinsic cost of no longer being in the church, which (depending on their beliefs) may mean not going to heaven; such a cost cannot be altered or compensated for by the state. If the state were to attempt to do so, it would be an example of the state interfering in the affairs of the groups in such a way as to ‘hopelessly compromise’ it, “... the Catholic Church would quickly cease to be the *Catholic* Church if it could not exclude those with conflicting beliefs.” An associative cost would be if the “... members of the congregation break off social relations with you as a consequence of your expulsion, this is something that they are free to do.” Finally, an illegitimate cost of the external type would be that your Roman Catholic employer “... fires you as a consequence of your being excommunicated.” They have no right to do this to you, and therefore the state can and has an obligation to rectify the situation. Barry believes that “... the absence of external costs is the criterion of voluntariness” Barry (2001: 151-2)

Chapter 6:

Societal Culture

In this chapter, I offer an argument that rejects Kymlicka's account of societal culture. Rather than being defined by a single cultural structure, I claim that an individual's context of meaning and choice is the product of cultural fragments from multiple sources.

In this final chapter, I will return to the subject of societal culture. In Chapter 4, I claimed that there were two aspects to Kymlicka's theory, support for group rights to autonomy (for societal cultures) and liberal support for comprehensively, and equally, ensuring the conditions of individual autonomy. I believe these to be in conflict, while Kymlicka claims that they are compatible.

Part 1) Kymlicka and Waldron:

1a) Summary of Kymlicka:

To summarise his position, group autonomy is justified by the combined interests of individuals, as access to their *own* societal culture is something that individuals are entitled to⁴⁶⁴. Access to a *stable* societal culture is a *primary good* as a societal culture is a precondition for individual autonomous choice. This is because it provides meaning to the various options and is necessary for self-respect. This value that the societal culture has to members provides the *instrumental* justification for group rights; they are not justified by any *intrinsic* value to culture. These group rights to autonomy are justified by the claim that the state is not neutral towards ethnicity; it 'unavoidably' promotes some, and disadvantages others. Many minority societal cultures were *involuntarily* incorporated into states (making them multinational states). This is an unchosen inequality that group rights to autonomy can contribute to rectifying, and is legitimate under the equality of *resources* scheme. This right to autonomy provides the justification for Kymlicka's response to the Feminists; intervention is unjustified *across* societal cultures, but legitimate *within* them. Intervention into immigrant groups, to ensure the conditions required for individual autonomy (Chapter 5, part 3), is legitimate because they *do not* have a societal culture of their own. Immigrants

⁴⁶⁴ Kymlicka, (2004: 125)

voluntarily chose to leave theirs in order to be incorporated (on fair terms) into another. Societal cultures *should not restrict* the autonomy of members through internal restriction, they should be internally tolerant (Chapter 5, part 1); but some do, and other societal cultures should protest this, but should not intervene because the culture's right to group autonomy is a right to external protection from intervention. All of this is dependent on the conception of societal culture as the precondition for an individual's freedom. I will dispute this.

Kymlicka's position (though logically sound) is dependent on the validity number of claims, 1) the existence of, and role played by, a distinct societal culture in providing meaning for options, 2) the national minority / immigrant distinction and 3) the external protections / internal restrictions distinction. I have cited criticism of the latter two claims and the validity of these critiques are well established,⁴⁶⁵ so I will not touch on these again. I will claim in this chapter that Kymlicka's argument does not provide sufficient reason for rejection of the common framework argued for in the previous chapter. He cannot justify extra rights and extra resources over and above (or different from) that which is the common entitlement to all individual that constitute the political community, regardless of cultural background. This is because his conception of 'societal culture' as a necessary background structure for individual freedom (even if there is dispute as to what groups possess it) is not reflective of the way in which people's meaningful options are formed.

1b) Waldron's Cosmopolitanism:

Jeremy Waldron⁴⁶⁶ offers an argument that is sceptical of Kymlicka's account of societal culture. He does not deny that our culture has a great effect on us as individuals, but believes that the accounts of the importance are overstated. Waldron's cosmopolitanism is in tension with "... views that locate the coherence and meaning of human life in each person's immersion in the culture and ethnicity of a particular community."⁴⁶⁷ The cosmopolitan view challenges the general claim that people are dependent on "... involvement in the substantive life of a particular community as a source of meaning, integrity and character."⁴⁶⁸ This critique can be applied to the conceptions of culture adopted by Kymlicka and Raz as a source that defines *meaning*. Waldron begins his argument by criticising the traditional liberal conception of each "... individual's adoption of a particular conception of the good (my emphasis)."⁴⁶⁹ These accounts possess a strong degree of rigidity that Waldron disagrees with; a better account of autonomy is one that makes grater allowances for more revision and change. He précis, with approval, Raz' account of autonomy as "... the freedom to make

⁴⁶⁵ For example, Alan Patten (who is sympathetic to Kymlicka's approach), refers to 'Kymlicka's consent-based theory' (which provides the basis for the immigrant/national minority distinction and the basis for consequential differentiation in the types of valid group rights claims) as, "This theory is almost universally regarded as flawed ..." Patten (2003: 179)

⁴⁶⁶ Waldron (1995)

⁴⁶⁷ Waldron (1995: 94)

⁴⁶⁸ Waldron (1995: 95)

⁴⁶⁹ Waldron (1995: 94)

a variety of choices, not just the freedom to choose just one out of a number of ethical conceptions.”⁴⁷⁰ Waldron believes that it is not the choice to adopt *one* particular ethical system, stemming from one particular societal culture, but to select from many. He claims, “The cosmopolitan may live all his life in one city and maintain the same citizenship throughout. But he refuses to think of himself as *defined* by his location or his ancestry or his citizenship or his language (emphasis original).”⁴⁷¹ He accepts Kymlicka and Raz’ general account of the importance of the conditions necessary for autonomy, but rejects their claim that single societal culture is needed. We are all dependent on societal structures, but the argument that Waldron wishes to make is that they are not one systematic whole that defines the scope of options available to us; we are able to pick from a number of fragments.

Waldron is critical of accounts given about of the importance of culture; community is claimed as the source of a great many important aspects of the individual and a point of commonality of background meaning. He questions a lack of any clear definition of the “... *scope* and *scale* of the social entity that they have in mind (emphasis original).”⁴⁷² Although directed at Taylor, the points made in the appendix show that this is applicable more generally. For Kymlicka it is the sub-state cultural group, and for Michael Walzer (as noted in Chapter 5, 2e) it is the nation state. Brian Barry notes, Walzer’s “... project is ... ‘the Romance of the Nation-State’ ... Kymlicka is equally spell-bound by sub-state nationalities, and invests them in the same romantic spirit with a unique capacity to bring meaning to the lives of their members.”⁴⁷³ Waldron believes that only equivocal answers are provided as to the nature of size, and of those, they usually tend to depend “... on premises that evoke community on one scale (usually large) to support conclusions requiring allegiance to community on quite a different scale (usually small).”⁴⁷⁴

1c) Objection 1: ‘Need’ for Cultural Rootedness?

Just by its existence, the cosmopolitan alternative cuts out one argument for the importance of minority communal cultures. It is possible for people in modern society, according to Waldron, to live a life that is “... rich and creative, with no more unhappiness that one expects to find anywhere in human existence,”⁴⁷⁵ while living in a ‘kaleidoscope’ of cultures. Therefore, “It can no longer be said that all people *need* their rootedness in their particular culture in which they and their ancestors were reared in the way that they need food, clothing, and shelter.”⁴⁷⁶ People are still able to immerse

⁴⁷⁰ Waldron (1995: 115 n. 9) He discusses this in greater detail in Waldron (1989: esp. 1105-8)

⁴⁷¹ Waldron (1995: 95)

⁴⁷² Waldron (1995: 95)

⁴⁷³ Barry (2001: 137)

⁴⁷⁴ Waldron (1995: 96)

⁴⁷⁵ Waldron (1995: 100)

⁴⁷⁶ Waldron (1995: 100)

themselves in a single culture, but such a desire is not a necessity.⁴⁷⁷ While claiming this, Waldron points out that we are not entitled to destroy minority cultures either, they still have protection against discrimination, similar to those protections that religions have. However, any claim for group preservation based on some type of intrinsic worth, is severely undercut and therefore, any subsidising to make up for a decline in membership should not be expected⁴⁷⁸. We cannot escape the influences of other cultures, because of factors such as mass migration and the dispersion of many cultures; we cannot escape these pressures and cannot avoid some degree of cosmopolitanism in our lives. Waldron claims that our culture is of great importance to individuals but we must acknowledge all the influences and supports for individual cultures.⁴⁷⁹

1d) Objection 2: A Particular Cultural Structure?

Waldron concentrates his criticism on Kymlicka's clear-cut division of the world into distinct cultures, each one constituting a single community that provides the established range of options for its members. He questions the individual's requirement for just *one* of these cultural systems, which Waldron believes results in a fallacy of composition in Kymlicka's argument. "From the fact that each option must have a cultural meaning, it does not follow that there must be one cultural framework in which each available option is assigned a meaning."⁴⁸⁰ Waldron claims that meaningful options can be 'fragments' originating from many cultural sources. From the unobjectionable claim that options carry cultural significance, Kymlicka "... is not entitled to infer ... that there are things called 'cultural structures' whose integrity must be guaranteed in order for people to have meaningful choices."⁴⁸¹ The options that possess cultural value can be seen as those that constitute the cultural norm discussed in the previous chapter. Kymlicka has only argued for the need of 'cultural materials'; he has not justified the claim for 'a rich and secure cultural structure'.

We *do* need culture, but we do not necessarily need cultural integrity. If it were the case that all individual choice stems out of a single matrix that is available from our culture, then because of the

⁴⁷⁷ He goes on to criticise those that dispute multiple cultural influences, those that claim to be wholly traditional is actually *inauthentic*. Demands for immersion in a traditional way of life involve "... an artificial dislocation from what actually is going on in the world" and, worse still, "... such immersion often requires special subsidization and extraordinary provision by those who live in the real world, where cultures and practices are not so sealed off from one another." An analogy is drawn between the communitarian and a person who lives in Disneyland, and shows "... complete indifference towards, or even disdain for..." the outside world. This person demands money to live there and is convinced that "... what happens inside Disneyland is all there is to an adequate and fulfilling life." Waldron (1995: 100-1)

⁴⁷⁸ Although this criticism is directed at Taylor's claim of *intrinsic* value, I have included it because Kymlicka responds to it in his reply.

⁴⁷⁹ He claims, "We are not the self-made atoms of liberal fantasy, certainly, but neither are we exclusively products or artefacts of single national or ethnic communities. We are made by our languages, our literature, our culture, our science, our religions, our civilization – and these are human entities that go far beyond national boundaries and exist, if they exist anywhere, simply *in the world* ... particular cultures and national communities have an obligation to recognize their dependence on the wider social, political, international, and civilizational structures that sustain *them*." Waldron (1995: 103)

⁴⁸⁰ Waldron (1995: 106)

⁴⁸¹ Waldron (1995: 107)

incredibly vast array of cultural sources that are intelligible to us, this matrix would be very large.⁴⁸² Our single system would encompass so much that, Waldron believes, "... it would then be *logically* impossible for an individual to have access to more than one cultural framework."⁴⁸³ A better description of the nature of our cultural context would be a combination of cultural fragments. This account views cultural materials as being 'available from all corners of the world', and we just take what we hold to be significant.⁴⁸⁴ The integrity and homogeneity, which Kymlicka assumes exists, is not needed.

1e) Objection 3: Need to Preserve a Stable Cultural Structure?

The need for *security* of minority cultural frameworks is also questioned. Preservation of culture is required, according to Kymlicka, in order to make available genuine choice for individual members of that culture. Waldron disputes this; such preservation actually serves to insulate it from the factors that enable real choice. True evaluation requires the possibility for a culture to be '... vulnerable to challenge and comparison from the outside.'⁴⁸⁵ A culture needs this possibility of change, because otherwise, any critical evaluation by an individual will not have the possibility of effect. Individuals need to be able to make 'informed and sensible choices'; they therefore need to have a comparative perspective from outside, not just the perspective from within the culture. Meaningful choice requires options, it also require some degree of practical effect, and if it is to have this effect, then artificial protection of the culture in order to preserve stability will have to be abandoned for the sake of individual choice. This possibility for evaluation is important for a minority culture because it provides "... the mechanisms of adaptation and compromise ... with which all societies confront the outside world."⁴⁸⁶ Without which, they would cease to have the ability to exist in any dynamic sense.

If) Kymlicka's Reply:

Kymlicka's responds, arguing that the claims made in the Enlightenment by the Marquis de Condorcet that the emancipation of the individual would result in a cosmopolitan future, have been proved to be only partially correct. There has been some move away from cultural groups but the importance of such groups has continued to remain. The reason for this is the continuing relevance of

⁴⁸² In fact, he claims, it is possible to comprehend such a vast array of influences, such as a combination of Palestinian, German, and Chinese, that if they were all part of the one system open to us, it would 'trivialize the individuation of cultures'.

⁴⁸³ Waldron (1995: 107)

⁴⁸⁴ He goes on to say that, as a consequence, they may be "... misread and misinterpreted, wrenched from a wider context and juxtaposed to other fragments with which they have very little in common." Waldron (1995: 108)

⁴⁸⁵ Waldron (1995: 109). Kwame Anthony Appiah highlights the problems of a preservationist tendency, "We know that acts of recognition, and the civil apparatus of such recognition, can sometimes ossify the identities that are their object. Because here a gaze can turn to stone, we call this the Medusa Syndrome [...] because identities are constituted in part by social conception and by treatment-as, in the realm of identity there is no bright line between recognition and imposition." Appiah (2005: 110)

⁴⁸⁶ Waldron (1995: 110)

nationalism in the sense of culture and the nation state. This has served as a counterweight to the trend of cosmopolitanism, as people have tended to retain the importance of culture, especially expressed in regard to the maintenance of language use and self-governance, or the demands for the latter. Kymlicka claims that the tendency been for the endorsement of many of the Enlightenment ideas of universality, but doing so within the framework of the existing state or their own culture, with the emerging distinguishing feature of political division being a shared common language. Kymlicka gives two points in reply to Waldron; the first can be seen as a response to his first objection, while the second argues for a deeper level of cultural structure that opposes the latter two objections.

1g) Reply to Objection 1: Not 'Need' but Reasonable 'Entitlement':

Kymlicka calls into question the ease with which people are able to move between cultures, and highlights the difficulties facing individuals who leave their societal culture. Kymlicka's conception of culture is based on a two level distinction; a more superficial level that enables enjoyment of "... the opportunities provided by *the* diverse societal culture which characterizes the anglophone society of the United States (my emphasis)",⁴⁸⁷ and a deeper, more entrenched level of culture that provides a perspective on the world. This *particular* societal culture offers many opportunities, but in choosing them one "... is not moving between societal cultures."⁴⁸⁸ He believes that Waldron has 'seriously overstated the case' with regard to our ability to pick and choose cultural fragments.⁴⁸⁹ The ability to move and successfully integrate into another culture is difficult and there are any factors that contribute to this⁴⁹⁰.

Kymlicka takes issue with Waldron's claim that there is no *necessity* for minority cultures to receive any special support or assistance. There may not be an absolute need for emersion in one's own societal culture, but it is a reasonable entitlement. Kymlicka describes the situation of a person who leaves his or her own culture for another as being "... analogous to the choice to take a vow of perpetual poverty and enter a religious order."⁴⁹¹ This is possible, but it is a normal part of the liberal tradition for people to expect more than just subsistence level support as being something that they are entitled to. He claims "If not a "need" in the narrowest sense of the term, nonsubsistence resources are nonetheless a "*primary good*" in Rawls's sense (my emphasis)."⁴⁹² By emigrating, individuals are

⁴⁸⁷ Kymlicka (1995: 85)

⁴⁸⁸ Kymlicka (1995: 85)

⁴⁸⁹ He goes on to illustrate, just because a person is able to enjoy aspects of other cultures in the former sense, illustrated by eating Chinese food and reading *Grimm's Fairy-Tales*, it does not mean that they are able to 'genuinely' move between cultures with such ease, in the latter sense.

⁴⁹⁰ He claims, "In some cases, where the differences in social organization and technological development are vast, successful integration may be almost impossible for some members of the minority ... It is a costly process, and there is a legitimate question whether people should be required to pay those costs unless they voluntarily choose to do so. These costs vary, depending on the gradualness of the process, the age of the person, and the extent to which the two cultures are similar in language and history." Kymlicka (1995: 85)

⁴⁹¹ Kymlicka (1995: 86)

⁴⁹² Kymlicka (2004: 125)

making what Rawls calls a ‘grave step’⁴⁹³, consequently, they deserve our support, as such a move is not as easy as Waldron supposes. In outlining this response, I wish to highlight the role that ‘*access to one’s own societal culture as a primary good*’ plays in responding to the first of Waldron’s objections.

1h) Reply to Objection 2 and 3: Single Societal Culture with a Changing Character:

A second concern that Kymlicka has with Waldron is that while accepting that options have a cultural meaning, he denies that they must come from *the* particular culture of the individual involved. Kymlicka believes this view to be mistaken, the options available to us do come from a wide variety of sources, but their meaningfulness is another matter. According to Kymlicka, there are limitations on the ‘cultural materials’ that people are able to find meaning from. The requirement is that options are only “... available to us if they become part of shared vocabulary of social life – i.e. embodied in the social practices, based on a shared language, that we are all exposed to.”⁴⁹⁴ As a consequence, incorporation into a different culture requires the mastering subtle aspects of its social practices, along with the language.

Kymlicka disagrees with the connection drawn by Waldron’s third objection between the maintenance of a distinct societal culture and the isolation of that culture. There is a contrast drawn between this and the individual freedom of the members of the group who may wish to change aspects of the cultural group. Kymlicka believes that it does not necessarily follow that, just because a group wishes to maintain its distinct nature, it must embrace isolationism to preserve its purity and authenticity. It is conceded that some minority leaders may have an interest in doing this, but Kymlicka claims that most groups do not wish to pursue such a path. Instead, they wish to use any special rights and protections to enable them to “... interact with larger nations on a more equitable basis.”⁴⁹⁵ Minority groups do not wish to be preserved from change, thus, such groups should not have rights that enable them to restrict the actions of their members, but they do wish to have some freedom.⁴⁹⁶

⁴⁹³ This “... involves leaving the society and culture in which we have been raised, the society and culture whose language we use in speech and thought to express and understand ourselves, our aims, goals, and values; the society and culture whose history, customs, and conventions we depend on to find our place in the social world.” Rawls (1993: 222) in Kymlicka (1995: 86)

⁴⁹⁴ Kymlicka (1995: 103). He also claims that even having a common language is not sufficient for a common culture, but it is necessary. While different cultural groups may speak the same language, their distinctness from each other comes from a shared history and the rather vague embodiment of “... particular societal practices and institutions.” Kymlicka (1995: 218 n. 29)

⁴⁹⁵ Kymlicka (1995: 104)

⁴⁹⁶ He claims they want choice in “... when and how they will adopt the achievements of the larger world. It is one thing to learn from the larger world; it is another thing to be swamped by it...” Kymlicka (1995: 104) Protective rights are necessary to enable controlled interaction that is beneficial for the group, and Kymlicka contrasts this with the uncontrolled and unrestricted interaction that has occurred in the past and resulted in such negative consequences for minority groups. Examples of such situations can be seen with the introduction of alcohol to the Aboriginals of Australia or muskets to the New Zealand Maori.

Kymlicka draws a distinction between the existence of a culture and its ‘character’ at any one moment. What minority groups wish to do is protect the distinct nature of the underlying culture, but while doing this they may change dramatically its particular ‘character’. He is claiming is that there is no causal connection between protection of former and cultural stagnation resulting in a loss of freedom for the membership.⁴⁹⁷ The example he gives concerns the Quiet Revolution in Quebec, where the underlying nature of the culture remained in existence, while on a more external level the ‘character’ changed “... from a religious and rural society to a secular and urban one”⁴⁹⁸ in a short period of time. This change was made by the French Canadian people at their own choice rather than by the external majority and, therefore, serves as an illustration of the approach that Kymlicka is advocating.

Kymlicka is critical of those that cite cultural preservation as a reason for opposing change in ‘character’. He cites Dworkin’s criticism (cited in part 1 of the last chapter) of Lord Devlin’s argument against “... the liberalization of the laws against homosexuality in Britain”⁴⁹⁹ He claims “... it is wildly implausible to suppose that allowing individual freedom of religion or sexual practices would lead to the breakdown of that community, be it England or Iran.”⁵⁰⁰ Kymlicka points out that “liberalizing the homosexuality laws in England changed the character of the cultural structure, without jeopardizing its existence.”⁵⁰¹ Although he accepts the importance of the adoption of ideas and influences of other cultures, Kymlicka believes that this can only happen *within* the individual’s culture⁵⁰². His vision of culture, whose ‘character’ may change, is nether less, integral to its members because it provides the context that gives meaningfulness to the choices of it members. It is the product of ‘underlying commonalities’ that exist between its members. The basic binding factor for cultural groups seems to be a common language.⁵⁰³ This preference for culture to be defined by

⁴⁹⁷ He argues, “It is right and proper that the *character* of a culture change as a result of the choices of its members. This is indeed why systems of internal restrictions are illegitimate from a liberal standpoint. People should be able to decide what is best from within their own culture, and to integrate into their culture whatever they find admirable in other cultures.” Kymlicka (1995: 104-5)

⁴⁹⁸ Kymlicka (1995: 104)

⁴⁹⁹ Dworkin (1989: 487). Kymlicka also cites other examples, such as “... Islamic fundamentalists claim[s] that without restrictions on the freedom of speech, press, religion, sexual practices, etc. of its own members, their culture will disintegrate, thus undermining the self-respect individuals derive from cultural membership. Every society, it is said, has a public morality which is a seamless whole, respect for which is necessary to the very stability of society, so that deviation in religious and sexual matters simply can’t be tolerated without endangering the very structure of society.” Kymlicka (1989: 168)

⁵⁰⁰ Kymlicka (1989: 168). He goes on say, “the problem, as Dworkin notes, is that Devlin takes the preferences of those who dislike change as sufficient grounds for thinking that the survival of society is at stake.” Kymlicka (1989: 169)

⁵⁰¹ Kymlicka (1989: 169)

⁵⁰² “This distinction is required whether we are discussing a country with one cultural community or a culturally plural country. To reject the possibility of making this distinction is not simply to give up the possibility of defending minority rights within liberalism, it is to give up the possibility of defending liberalism itself. Liberal values require both individual freedom of choice and a secure cultural context from which individuals can make their choices. Thus liberalism requires that we can identify, protect and promote cultural membership, as a primary good, without accepting Devlin’s claim that this requires protecting the character of a given cultural community.” Kymlicka (1989: 169)

⁵⁰³ He claims, “... language has become an increasingly important determinant of the boundaries of political community ... There are good reasons to think that these ‘national’ linguistic / territorial political communities ... are the primary forums

language subsequently results in knowledge of the shared history and social practices that stem from it. This is why, Kymlicka believes, the cosmopolitan alternative is not enough to fully explain the importance and richness that culture provides for an individual. In outlining this response I wish to highlight Kymlicka's claim that the culture needed by an individual is a *single cultural structure as background, defined by common language and history, that must be stable, but which can change aspects of its character.*

Part 2) Criticism of Kymlicka:

2a) Waldron on Structure:

Waldron responds by highlighting what he sees as 'the truth in Kymlicka's critique', that is "... many cultures in the world have *already* something of a cosmopolitan aspect."⁵⁰⁴ This exists in urban centres like New York, but he also claims that this is the case with other, less mixed societies, the example he cites is Guatemala. He claims, the 'New York culture' is "... a culture of diversity ... is just *many fragments* that happen to be available at a given place and time and that does not amount to the existence of a *single* culture in any socially or philosophically interesting sense of 'singularity.'" From this, it follows that (to a lesser degree) that most other cultures possess a cosmopolitan dimension. "The pure culture, uncontaminated in its singularity, is ... an anomaly ... an exception usually explained by historical contingency and extraordinary geographical isolation."⁵⁰⁵ For individuals, distinctive aspects of cultures may be emphasised, but so too may the commonalities across cultures.⁵⁰⁶ That which is most distinct need not be that which is most important to individuals.

He connects this with the claims I discussed in Chapter 5 about the various cultural norms that provide a reason for doing things in that particular way. The various norms may be common or distinct, but there is a cosmopolitan aspect to nearly all cultures. Furthermore, an individual's participation in a culture can have 'a cosmopolitan dimension'⁵⁰⁷. His point is that a culture's 'essence' "... need not consist in its distinctiveness."⁵⁰⁸ *Together*, these aspects constitute a culture; "A culture just is what it is, and its practices and rituals are constitutive of it in virtue of their place in a shared way of life, not in virtue of their perceived peculiarity."⁵⁰⁹ He regards this emphasis on the distinctiveness as 'self-conscious posturing', "One keeps faith with the mores of one's community by just following them, not by announcing self-consciously that it is the mores of one's community that

for democratic participation in the modern world ... Put simply, democratic politics is politics in the vernacular. The average citizen only feels comfortable debating political issues in their own tongue." Kymlicka (2001: 213)

⁵⁰⁴ Waldron (2000b: 231)

⁵⁰⁵ Waldron (2000b: 232)

⁵⁰⁶ Waldron cites the shared beliefs of the Roman Catholic Church

⁵⁰⁷ The cosmopolitan nature of a religion may play a great role in many different cultures around the world.

⁵⁰⁸ Waldron (2000b: 233)

⁵⁰⁹ Waldron (2000b: 233)

one is following.”⁵¹⁰ This is important because this form of ‘identity-politics’ is “... a way of presenting oneself and one’s cultural preferences *non-negotiably to others* ...”⁵¹¹ He claims, “... it is evident that people do not need what the proponents of cultural identity politics claim they do need, claim in fact that they are entitled to as a matter of right, namely, immersion in the secure framework of a single culture to which, in some deep sense, they belong.”⁵¹² Cultures are made of many fragments, some distinct, some common, that are followed as cultural norms, but they cannot be non-negotiable and must be reasonably defended where there are conflicting norms and a need for resolution. The need for possible revision of accepted norms shows that they are not a *structure* requiring the non-negotiable right of protection, but meaningful fragments that act as a standard that ‘might, in principle or as a matter of at least logical possibility, have been performed by *other* norms.’⁵¹³

2b) Tomasi on Culture as a ‘Primary Good’:

John Tomasi states that Kymlicka begins by arguing for the primary good of a cultural context in order for there to be self-respect; he then shifts this to a *stable* cultural context⁵¹⁴. Tomasi argues that the former is uninteresting; if it is just taken in an existential sense then the rights that are argued for do not follow. “If it is the mere existence of “one’s own” cultural structure that is the good, then each individual person ... has that good, and each has it equally. Taken existentially, cultural membership is a primary good only in the same uninteresting sense as is, say, oxygen.”⁵¹⁵ Each person has only *a* cultural context, which may be stable or not, however Kymlicka does not justify the introduction of the importance of stability as a good.⁵¹⁶

2c) Stable Cultural Structure and Changing Character:

These points have implications for Kymlicka if he rejects the existential account of cultural structure. Tomasi argues that there are problems maintaining the distinction between claim for the

⁵¹⁰ Waldron (2000b: 234)

⁵¹¹ Waldron (2000b: 231)

⁵¹² Waldron (2000b: 228)

⁵¹³ Previously quoted in from, Waldron (2000a: 174)

⁵¹⁴ He argues, “Originally the good associated with cultural membership is presented simply as the good of their being a cultural structure, a context of choice ...[later] the character of the culture is [then] referred back to as a distinction between “the *stability* of a cultural community” and its character (emphasis Tomasi).” Kymlicka (1989: 169) in Tomasi (1995: 587)

⁵¹⁵ Tomasi (1995: 589)

⁵¹⁶ Tomasi claims that the example of an unstable culture given by Kymlicka, an “... Inuit girl ... who from age two to eighteen experienced the rapid and disorienting transition of her culture from Inuit to white ways” Tomasi (1995: 588), was a cultural structure. He claims, “... it would be strange indeed to say that she, as an individual, ... made her choices within no cultural structure. Of course she did ...” Tomasi (1995: 588) He goes on to say, “For her, a cultural context existed and that context, however unstable, was a context that was hers.” Tomasi (1995: 588) This is problematic for the claim that an individual’s own stable societal culture is needed for self-respect. Given an unstable environment, which he calls *transitional societies*, what is regarded by the community as a respectable “... life plan may be much more flexible than they would have in a community that is highly stable.” Tomasi (1995: 590). Tomasi argues that self-worth is a very complex psychological phenomenon and that this does not automatically follow from stability. Since living through such times is more difficult, and the individual recognises this, they may possibly have more self-respect because of this. Special group rights and stability may even prove to be counteractive to self-worth because of restrictions they place on the individual.

‘primary good’ of a stable cultural community and allowing change in its character. He says that, for Kymlicka, “... threats to the structure of a culture must be threats to the group’s language, history and culture.” In supposed contrast, “Changes in the character of the community ... are changes in the community’s ‘norms, values and attendant institutions.’” As a result “Kymlicka must say that changes in a group’s beliefs, values and institutions need not be changes - with respect to people’s beliefs about value – in the group’s history, language and culture.”⁵¹⁷ Tomasi claims that ‘this is implausible’. This opposes the distinction between character and structure, and as a consequence “... the stability interpretation [of the primary good of a cultural structure] ... has the unwanted, conservative result that valid claims to group rights spring up whenever the *character* of a community is threatened with change (emphasis original).”⁵¹⁸

James Johnson makes a similar point against Kymlicka’s separation, claiming that, without the character, there are problems in justifying claims in support of the structure. There is a problem maintaining a background that explains the strength of cultural attachments, while at the same time, enabling room for revision. “... Any such account also unavoidably entails incorporating symbolic action and its strategic implications as integral to the resulting conception of ‘culture’.”⁵¹⁹ But “... it is just the sort of cultural politics to which symbolic action gives rise that Kymlicka hopes to relegate to the ‘character’ of cultures.” Basically, the meaningful political content that would stop ‘cultural structure’ from being “... anything other than a theoretical afterthought...” needs to be included on the structural side so as to explain its “... option framing, identity-defining effects...” But, this also needs to be included on the ‘character’ side so as to enable “... agent to be sufficiently reflexive about ... attachments.”⁵²⁰ There is a conflict between the defining aspect and the variable aspect within his account of culture that is not resolved by the distinction. Greater substance must be part of the framing background in order to provide reason for protective rights, but this substance also needs to be part of the character that is capable of change in order for there to be liberal freedom to revise. He concludes that “Cultural attachments are not due respect because they afford conditions for autonomous choice. They are due respect just to the extent that ... they survive challenge by external critics or internal dissenters. This ... is not respect for culture in any direct sense ... [but] respect for the political processes that allow individuals to arrive at considered judgements.”⁵²¹

2d) Consequences:

The consequence of these criticisms means that Kymlicka’s distinction, requiring the protection of a stable cultural structure as a requirement for ensuring the primary good self-respect,

⁵¹⁷ Tomasi (1995: 592)

⁵¹⁸ Tomasi (1995: 593)

⁵¹⁹ Johnson (2000: 416)

⁵²⁰ Johnson (2000: 416).

⁵²¹ Johnson (2000: 417)

while also enabling cultural character change so as to enable individual freedom, cannot be maintained. ‘Structure’ and current ‘character’ collapse into each other, making the account of culture one dimensional, with similarities to Waldron’s account. To maintain Kymlicka’s account of the structure as a primary good, is to take a ‘snapshot’ requiring conservative preservation in line with what Appiah has called the ‘Medusa Syndrome.’⁵²² The existential account of culture is more appropriate, ‘culture just is what it is’, a series of common and distinct norms that people inhabit. Individuals place varying importance on the different features of their lives, placing great meaning on some practices. But, as claimed, norms are reasoned, and capable of possible replacement in order for all ‘to come to terms’ within the political society that they share with others. They must, in order for there to be freedom to choose.

2e) *Carens of Kymlicka:*

Joseph H. Carens claims that the problem with Kymlicka’s theory is his dependence on a single determinant, a societal culture, on providing the range of options for an individual to choose from. “The key problem is the way he links freedom and societal culture. Instead of claiming (as is plausible) that the language and national culture of the place where one lives will normally play an important role in shaping the sorts of choices one faces, Kymlicka presents societal culture as if it were the sole and comprehensive determinant of one’s context of choice. Societal culture is what makes freedom possible.”⁵²³ Such a singular background structure is needed because it can provide clear basis for the group rights that Kymlicka wishes to defend on grounds of equality. That is, creating the conditions of equality between various societal cultures.

Carens objects to this claim of a comprehensive commonality that is supposed to exist throughout the culture, as it has a homogenising tendency.⁵²⁴ Appiah elaborates on the negative aspects of this:

“... when multiculturalists like Kymlicka say that there are so many ‘cultures’ in this of that country, what drops out of the picture is that every ‘culture’ represents not only difference but the elimination of difference: the group represents a clump of relative homogeneity, and that homogeneity is perpetuated and enforced by regulative mechanisms designed to marginalize and silence dissent from its basic norms and mores.”⁵²⁵

Contrary to Kymlicka, Carens claims that there are multiple factors in ‘determining the context of choice for individuals’. As mentioned by Waldron, “... being raised in a religious tradition is (often) a

⁵²² Appiah (2005: 110)

⁵²³ Carens (2000: 69)

⁵²⁴ Carens claims, “All of the cultural differences *within* a society are rendered invisible and irrelevant to ‘the context of individual choice’... It is as though all those belonging to a societal culture have the same cultural options and possibilities. Moreover, the societal culture is what gives meaning to these options (emphasis original).” Carens (2000: 70)

⁵²⁵ Appiah (2005: 152). I discuss this in detail in the Appendix

major determinant of one's context of choice ..."⁵²⁶ Furthermore, an immigrant's context is *partially* determined by all of the contribution factors of their original culture, as well as their new one. "Immigrants bring with them from their cultures of origin various values, conceptions, and commitments that shape the meaningfulness of the options open to them..."⁵²⁷

He believes that the claims that Kymlicka makes about commonality are too constitutive of an individual's particular context of meaning. This follows the point made by Johnson that there is a need for this in order to achieve the substantive group rights consequences that Kymlicka wishes. There may be some *general* commonality across culture, but not enough to be a single determinate of an individual's range of choices, and, consequently, to draw the conclusion of unchosen disadvantage between smaller and larger cultural groupings. "It may be plausible to say that everyone (including immigrants) can belong to a societal culture in a thin sense (shared languages, and liberal rights) but it not plausible to characterize such a thin societal culture as providing people with the context that makes choices meaningful or that makes it possible for them to form and revise conceptions of the good."⁵²⁸ Individual possess culture and this provides *their* (unique) context of choice, but it comes from a multiplicity of sources.⁵²⁹ He concludes, "Kymlicka's concept of societal culture includes only one of the sources of culture as a context of choice, and so cannot help us to think about the multiplicity and variability that characterize the contexts of choice of people who live in a multicultural society."⁵³⁰

2f) *Further Contribution to an Account of Culture:*

This has the implication that conform (and add) to the alternative account of culture that has previously been portrayed as 'existential' by Tomasi and 'just is what it is' by Waldron. That is, factors (producing various fragments) contribute to an *individual's* context of choice. As Tomasi claims, an individual cannot *not* be without a cultural structure (no matter how disrupted their life is), or, as Appiah has phrased it, "... the problem with grand claims for the necessity of culture is that we can't readily imagine an alternative. It's like *form*: you can't not have it (emphasis original)."⁵³¹ The context is different for each individual, the factors, the norms (be they common or distinct to a particular location or culture), and the value placed on each, may be determinant in a weak sense, but

⁵²⁶ Carens (2000: 70). Carens claims that it is difficult to connect a cultural and a religious source, it makes little sense to talk about culture as a precondition that makes a particular religion a meaningful option. He asks, "... could anyone say that it is the societal culture of Quebec or Canada that makes Judaism or Islam (or even Christianity) 'meaningful to us?'" Carens (2000: 70)

⁵²⁷ Carens (2000: 71). Carens goes on to claim, "... Kymlicka does not really want to deny this, but... he could not maintain the fiction that the societal culture creates the context of choice for individuals (as opposed to the more modest claim that it helps to shape their context of choice)." Carens (2000: 71)

⁵²⁸ Carens (2000: 72)

⁵²⁹ He claims, "... it can be helpful to think of culture (broadly construed) as providing the context within which we choose, but culture, in this sense, has multiple sources and will not be the same even for people who live within the same state..." Carens (2000: 72)

⁵³⁰ Carens (2000: 72)

⁵³¹ Appiah (2005: 124)

are distinctly individual in their particular makeup and combination. This, then, does provide the context of meaning and value for various options, but it is a unique context. Furthermore, it is not strongly determinate, because individuals are capable of revision. The important fact is that they are just that particular combination; they are a single system that does not require a distinct cultural structure in the background. There may be many common factors in a particular area, but there is individual expression and individual variation. There are many background factors, but there is just the one particular structure, and it is the character of which, although possessing aspects that are deeply meaningful, is capable of change.

There are various sources that contribute to an individual's context; these include culture, location, religion, as well as, possibly, sexuality and career (to name a few). Each contributes what Waldron has referred to as 'cultural materials'. Furthermore, they each possess variability; a certain aspect of one may be of great importance to an individual, while another individual, who shares a similar combination of sources, may find meaning in a completely different aspect. There is no denying that in certain cultural groupings, conformity to the particular norms may be consistently followed by the majority, but there is still the *individual* basis for the meaningful context of choice. The 'structure' is in the individual, not in a common background. Although there may be broad following of the culturally distinct norms of that grouping, there will be variation. This could include in the variations in importance placed on those aspects that are distinct, as well as the more common norms, combined with differences in acceptance of various religious norms and those of other cultures. Further variation comes from temporal factors, as some come reject the particular reasoning of one, or many, of the various cultural norms, and come to deeply embrace others (from that cultural source, or another).

Part 3) Consequences for Equality

The above position can be summed up as 'the multiple sources, particular individual expression' account of cultural context of meaning. It refers to an individual's context of value being the product of various *fragments*⁵³² of cultural materials, without the necessity of a single background structure of culturally defined meaning. It is an argument that claims an individual's 'culture', although deeply meaningful, should be seen in the 'existential' sense, not being defined by a single source. It is an *ultimately individually based resolution of value* rather than an *ultimately group based resolution of background value*, which is then expressed in an individual.

3a) Kymlicka's 'Equality':

⁵³² Although it may be a seamless whole, the content comes from a number of sources.

This has implications for Kymlicka's argument for supposed 'real equality' (i.e. equality *between* societal cultures) which argues that group rights are intended to provide greater *real* equality between all individuals in society through a more responsive system of differentiated entitlements that would mitigate the traditional disadvantages faced by those from minority groups. Carens objects to Kymlicka's support for this conception of equality "... Kymlicka suggests that the liberal ideal of a society of free and equal individuals should be interpreted as referring to arrangements within a nation, that it is freedom and equality within a *societal culture* that matters (my emphasis)."⁵³³ He goes on to say, "It is though the freedom and equality of *citizens* does not matter, as though the liberal state need not concern itself with questions about freedom and equality across cultural boundaries but only with freedom and equality within the bounds of each of the societal cultures that compose it."⁵³⁴ The justification for Kymlicka's claim is that different 'nations' have different orders of value and meaning, and what matters for particular individuals it that they are treated well by the standards of their particular societal culture. In doing this, there may be differences in individual outcomes *across* societal cultural groups, even though all are citizens of the same political state. Carens responds, "...it would be a radical departure to suppose that what matters morally from a liberal perspective is only what goes on within each societal culture in Canada... Comparisons across societal cultures and the possibilities of moving between them also count."⁵³⁵ Such an account, could limit, or even rule out, certain freedoms (including autonomy) if they are not part of the societal cultures values.

3b) Raz' Equality:

This has been noted by others, Waldron, in discussing Raz' *Morality of Freedom*, claims "Raz seems to argue ... that autonomy's value is contingent, rather than unconditional. Autonomy is valuable for us ... only because of the sort of society in which we live".⁵³⁶ Raz does claim its contingent value, David McCabe points out that "... Raz's argument ... defends liberalism by citing autonomy's special importance within the *public culture of liberal societies* (my emphasis)." He goes on to say, "... Raz has confirmed in a later essay explicitly repudiating the transcendent interpretation."⁵³⁷ This leads to the problem of a conflict between the perfectionism that requires the promotion of autonomy (in liberal Western societies)⁵³⁸ and the requirement that states should show

⁵³³ Carens (2000: 67)

⁵³⁴ Carens (2000: 67)

⁵³⁵ Carens (2000: 68)

⁵³⁶ Waldron (1989: 1121). He later says, "... Raz could strengthen his case immeasurably by coming out and saying with us moderns that autonomy is unconditionally a good thing. Waldron (1989: 1129)

⁵³⁷ McCabe (2001: 495)

⁵³⁸ As argued for in *The Morality of Freedom*. Raz claims that, in the case of 'communities whose culture does not support autonomy', there should be 'a test of viability'. It should not harm, not 'destroy the options' of nonmembers, and it should enable "... members of that society to have an adequate and satisfying life." Raz, (1986: 423) If it is "... at least as good as the dominant liberal one then clearly one should take whatever action is necessary to protect it." Raz (1986: 424) If it is 'inferior', then "The perfectionist principles espoused in this book suggest that people are justified in taking action to assimilate the minority group ..." Raz (1986: 424)

neutral tolerance towards ‘nonliberal communities’.⁵³⁹ The first requires ‘encompassing groups’ (societal cultures) to promote and “... create morally valuable opportunities, and to eliminate repugnant ones.”⁵⁴⁰ This could result in *active* suppression of small groups, even where there is support for common association, rather than a level of Liberal toleration by the state (as argued for in the previous chapter) that intervenes only where there is harm. The second defends equal support for, and *toleration of groups*. This is similar to Kymlicka’s position and argues against cross cultural imposition, creating a situation where individuals are treated differently, depending on which group they belong to.

3c) Consequences:

Once there is acceptance of the alternative account of cultural context, one that is based on a multiplicity of cultural materials combining in a unique way within *individuals*, and not based on the distinct background provided by *a group*, then the ‘equality’ mentioned above, becomes inequality. Kymlicka’s claim that group autonomy and individual autonomy are compatible is shown to be flawed. The multiple sources of value means that individuals from a particular group *do not* all possess the same background of common value (at least, in any substantial sense). A particular group’s conception of values (or rather, the generalisation made by those in authority) *cannot correlate* with those of its individual members. There will be similarities and differences within each individual. Consequently, if the group has authority to ‘sustain their own culture’, then this *will* conflict with some, or many, of the aspects that are different in any given individual. The group conception of a certain value will conflict with that of the individual. Here interests differ, and if the group conception has authority, then this is at the expense of the individual’s autonomy, as they are restrained from pursuing what *they* (but not the group) regard as valuable. The differentiation in rights, between groups, differently restricts the autonomy of individual from each group.

Kymlicka has claimed, “... It might be thought that these measures [group rights] violate Dworkin’s theory of equality of resources, since they involve subsidizing some people’s ‘chosen way of life’ at the expense of others...” He goes on to say, “... the measures I am referring to are not about promoting people’s *choices*. Rather they are directed to the prior question of the social environment best for people to *make choices*. Hence they fall under Dworkin’s ‘principle of authenticity,’ and the requirement to equalize circumstances (emphasis original).”⁵⁴¹ This claim depends 1) on the validity of the claim that *the* cultural structure that an individual inhabits determines the value and meaning of their context of choice, and that, by being in a minority, 2) they face unequal *circumstances* (unchosen

⁵³⁹ He argues this in *Multiculturalism*. Here he claims, where cultures “... are inferior without being oppressive, we have reason for supportive toleration.” Raz (1994a: 170) This group toleration leads to group autonomy in order to “... to encourage communities to sustain their own culture ...” Raz (1994a: 166)

⁵⁴⁰ Raz (1986: 417)

⁵⁴¹ Kymlicka (2004: 132)

factors beyond their control) because 3) the state is determined by the majority, which does not treat those in the minority in an equal way, which is (patently) not-neutral. I will look at these aspects of the argument.

3d) 'Real Equality':

Kymlicka's justification for 'real equality' through extra and differentiated group rights fails in its justification, and just become inequality. He requires a single variable factor (*a* societal culture) in order to justify these rights so that there is neutrality between the various cultures within a state. When it is recognised that there are *many* factors, then the claim falters. Carens argues, once "... one acknowledges that the cultural contexts of choice for people within the same society are multiple, variable, and overlapping, then it becomes less obvious that it is appropriate to provide public support for all the different contexts of choice and impossible to argue that such support is neutral between different conceptions of the good."⁵⁴² It is similar to the situation described by Waldron (Chapter 5, 2f) about the impossibility of accommodating multiple variables of groups and individuals interests, while maintaining a lack of contradiction in the law. There cannot be rights recognition for all of the sources of cultural materials (unless everyone has their own set), as they combine differently in each individual, and, as just mentioned, if they conflict with individual values then such group based support conflict with individual autonomy.

3e) Neutrality of Effect:

Kymlicka's opposition to commonly applicable rights, and consequently, his support for 'real equality', is based on a flawed notion of *neutrality of effect*. For example, Kymlicka claims that government services conducted in one language are not neutral, as they affect those who do not speak the language well, differently from those who do. Richard J. Anderson responds to Kymlicka's general claim that culture, unlike religion, cannot be separated from state. He claims that, in regard to a single language, "This may be good or bad, fair or unfair policy – that is not the issue. The stated policy on language does not aim to promote English so neutrality of aim is not violated. Even more clearly, the justifications for the policy do not appeal to any judgement of one ethnicity or culture or linguistic group in society as superior to any others, so neutrality of justification is not violated."⁵⁴³ Such a state can be neutral in justification on matters of ethnicity, even though the effects of a particular common policy may differ. This has implications for the common framework; it means that a justly deliberated, commonly applicable law can be fair, although it may make greater demands on some than on others. Ensuring the conditions of individual autonomy can be justified, although this will have a much greater effect on groups that wish to be illiberal. Such associations may be allowed,

⁵⁴² Carens (2000: 76-7)

⁵⁴³ Anderson (2003: 217 n. 7)

if voluntarily consented to, but consent must be informed, and as such must be able to be exited without unreasonable cost to the individual. This is in strong contrast with Raz' more recent account of equality between groups, through neutral toleration, supported by measures intended to support group flourishing (something closer to neutrality of effect).

I have argued for the priority of guaranteeing the conditions needed to ensure substantive access to individual autonomy, and claimed that this is not compatible with recognition of group autonomy. This is because I have argued that the nature of culture does not conform to the account of distinct societal cultures offered by Kymlicka. There exist many cultural, and other, sources which are mixed and overlapping. These provide 'cultural materials' that constitute individual contexts of choice, which are greatly, or subtly, different between individuals. I have argued that a common legal framework that ensures 'equal concern for all individuals' is the best means of ensuring that all individuals' interests are catered for. Such a framework, if the rule is justly and fairly deliberated, is able to legitimately justify unequal impact of effect. This has implications for Kymlicka's appeal to Dworkin's theory.

3f) Chosen Circumstances:

Individuals with attachments to cultural minority groups, who find that such associations mean that they must spend resources in order to maintain that attachment, are not subject to inequality of circumstances because of that cost. Given that there is an equal distribution of resources and opportunities, and that there is a system of rights that protect them from exclusion for the political and social community, then this is a legitimately chosen cost. Dworkin, responding to Kymlicka, claims that ensuring that that state is able "... to provide an adequately rich cultural background for a cultural minority ..." depends "... principally on the difficulties of opening the general national culture to the minority. If...it is in the long term advantage of members of the minority to become assimilated to that general culture, the sooner that process begins the better."⁵⁴⁴ This supports antidiscrimination efforts to enable integration. But Dworkin also recognises that there will be many individuals who hold deep connections with their minority group. He claims:

"We must recognize, of course, that many individual people prefer to retain a link with their own ancestral culture in spite of the fact that another at least equally rich culture is available to them, and a fair government will respect that ambition as it respects all others. It will permit individuals to use and pool their resources to that end, as they wish, so long as this is done within a system of liberty for all, including members of that same cultural minority who do not share that ambition."⁵⁴⁵

⁵⁴⁴ Dworkin (2004: 359)

⁵⁴⁵ Dworkin (2004: 359)

That is, it may be in the interests of ensuring an adequate environment for minority groups that the state assimilates them into the 'broader national culture'. Alternatively, resources may be combined to support a common association, but, importantly, there is not claim for *extra* resources. Such an association, while being subject to the common law, must be the choice of those individuals, and it cannot be claimed that it is unchosen circumstance if the broader culture is made available.

Conclusion:

The general conclusion that I hope to have argued in this Master's Thesis is that claims of culture cannot limit concern for ensuring equal and substantive access, for individuals, to the conditions of autonomy. Culture has an individual basis, and it is the equal concern for all individual that means that group rights claims to cultural autonomy, defined by 'societal cultures', should be rejected. Group autonomy and individual autonomy, despite Kymlicka's claims, are in conflict. A common Liberal framework can, and must, be developed in order to ensure that individuals are able to pursue their own interests and not be restricted in doing so by a group authority that can have conflicting interests and the ability to enforce them on members. Kymlicka and Raz' justified concern for individual autonomy ultimately comes into conflict with their conception of culture as a systematic whole, necessary for individual meaning and capable, and deserving, of self government for the good of the interests of its membership. I agree with Carens claim that "Kymlicka's conception of societal culture links politics and culture too tightly ..."⁵⁴⁶ Ensuring equal treatment and freedom for individual must be the priority for the state, rather than attempting to formally recognise the cultural grouping that inhabit it.

In chapter 5, I emphasised the importance of culture in providing meaningful norms to those who are part of it. Describing them as a history of social practices that provide solutions "... to the serious problems of human life in society."⁵⁴⁷ These norms are capable of being questioned, changed or rejected by those who are members. A culture's norms are the sanctioned, or endorsed, way of doing things; there may also be particular ways in which they are done. Some options will be commonly supported, and promoted, and others, not. In that chapter, I also claimed the need for members of such groups to resolve a commonly applicable legal framework with the other cultures that share the same society. In doing so, I emphasised the need, and ability, for cultures to change and adapt into a common system. That is, despite sharing many meaningful commonalities as a group, certain *aspects* of the cultural tradition may need to be changed. This part of my argument depicted interactions between representatives of various cultural groups, or interests, contributing to deliberations on the common framework. In chapter 6, my intent was to be critical of Kymlicka's account of distinct societal cultures; here I highlighted the multiple cultural sources which provide fragments, which then contribute to the individual's meaningful context. The emphasis was on the unique combinations that individual express.

Both chapters' areas of emphasis are complimentary; representatives of common culture can reasonably contribute to the deliberation by defending the common norms and practices that are

⁵⁴⁶ Carens (2000: 67)

⁵⁴⁷ Waldron (2000a: 161)

supported by that culture, but individual members need not exemplify all of the factors that are common to that culture. It may be a dominant contributor to their values and beliefs, or it may be only one of many. The sources of cultural materials that contribute to the individual's context may be many or few (or, rarely, one). A cultural representative may claim to reflect the interests of the individual's who partially, or deeply, identify with the culture. A culture can be seen as a generalisation about endorsed norms. I have argued that the interests and values of a particular individual *cannot* be equated with this claim of the group as there will be other sources of meaning for them. Furthermore, and most importantly, the norms, values and endorsed options of a particular culture, or even the combination of cultural fragments that contribute to an individual context of meaning, *can be revised or rejected*. Those options that are meaningful to an individual, like the particular norms of a culture, are capable of being revised. The cultural sources that influence an individual are not destiny. This is why ensuring the conditions of individual autonomy are vitally important.

Raz' and Kymlicka's defence of the concern for ensuring individual autonomy is correct. It is part of respect for individual conscience and, generally, a part of the Liberal respect for toleration. This means that the argument made (chapter 5, part 1) for internal tolerance within the political community is dependent upon substantively ensuring the necessary conditions for individual autonomy are made available to all individuals within the state. The exercise of Liberal tolerance requires the conditions of autonomy in order to be actually realised. Rather than entailing non-interference and, consequently, a minimalist interpretation of the requirement for a common framework it entails a substantive response. A formal account of toleration does not offer an accurate account of conditions in which harm can occur, and does not ensure the conditions of individual autonomy, which is a necessary aspect of the protection of freedom of conscience. An encompassing account of harm, that reflects autonomy based duties, is required. This requires broad *coverage* and *enforcement*. Coverage because omission of positive duties is a form of harm, and enforcement because, by not acting the duties that a state has to its citizens, has the consequence of them not receiving what is their entitlement, thus, they are not treated as equals. Ensuring that people receive all of the rights, resources and opportunities that they are *entitled* to (as the state has a duty to do), and resolving⁵⁴⁸ the common policy in practical areas, controversial areas, and, especially, the areas related to the methods of achieving access to the broad range of entitlements, will require a comprehensive framework covering the many areas required to ensure the appropriate level of *conditions* required in order to show respect for individual autonomy.

Substantive positive duties require that the state to take a commonly applicable policy position in many areas, and give the assurance that enforcement will apply equally. This requires a

⁵⁴⁸ If there is no resolution the state cannot ensure commonality or access, therefore it is neglecting its obligation in ensuring an aspect of the conditions required for the capacity for autonomy, and probably limiting the range of options available for some.

substantive common framework in which the state is maximally concerned with its duties to its citizens. This leaves little room for recognising cultural groups as anything other than as associations of citizens and subjecting them to the same scrutiny as the other voluntary associations in society. As such, they are collections of individuals who are capable of causing harm to other. This can occur through either restricting the freedom, or withholding or failing in their duties to another person; meaning that they may suffer harm as a result. The state, therefore, has a duty to protect all persons from such harm and must intervene. The fact that harm is coming from members of one's own cultural group does not affect the fact that they are causing harm, that are failing in their duties to others and, consequently, may need to be limited from doing so. As Dworkin claimed, individuals should be free to associate, 'so long as this is done within a system of liberty for all.' The cultural group should not be protected, by the barrier of group rights, from having to act in accordance to their duties to individual equality and personal freedom. The common, and substantial, rights of individuals must take precedence over the claims for cultural autonomy.

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Appendix:

The Problem:

If it really was impossible to conceive of the world without the comprehensive horizon of meaning *and* this really did lead to a chaotic situation for the exiting individual, this would mean that a common settlement could not be reached. If it were the case that “without these [cultural] frameworks, we would plunge into a kind of abyss, described by Taylor [as] ... “a kind of vertigo,” “terrifying emptiness,” anomie, lack of purpose, and the like”⁵⁴⁹, or as David Miller has put it, “... cut off from the relevant community, a person’s life would lose an important part of its meaning”⁵⁵⁰ then exit would not be a real option and external evaluation whether members have access to the conditions of autonomy would be impossible. Furthermore, it would mean that the process of deliberation on a common framework would, as a possibility, not be able to occur. But, the Liberals reject this “... claim about phenomenological possibility...”⁵⁵¹; and so too do most of the Communitarians, when pushed, given the cross-cultural qualifiers that have been previously mentioned in chapter 2. I will defend my position against this objection.

The Key difference between the Liberal and Strong Multiculturalist positions (and, to a weaker extent, the Value Pluralist) is the association between culture and reasons. The Liberal recognises that culture is of great importance, but maintains that it does not define a different set of values, morality and meaning that then have bearing on the possibility of providing reasons across culture. As a consequence, it is possible to come to a just, common legal framework, despite it covering a number of different cultural groups. Such a common system would justify, it can be argued, individual rights, such as the right of rational revision, along with other values, such as “... equality of concern and respect, or freedom of expression.”⁵⁵² This may place some groups at a disadvantage, and so the Strong Multiculturalist claims that this is unfair and that the framework is biased against some cultures. But, if the effects are particularly burdensome, such a consequence is acceptable if they have been voluntarily incurred under an impartial framework that *does* treat people with equal concern.

The point of dispute is that, for Strong Multiculturalists, meaning and reasons are culturally specific (or at least partially so) and that the framework is reflective of the dominant Liberal culture. Cultural groups that have a different system of meaning are at an unfair disadvantage; their culturally imbedded reasons reflect their particular ordering, and expression, of values. This means that knowledge of the value system is required in order to appreciate the reason, or at least, lack of cultural knowledge means that some of the content of the reason is unknown. This also has implications for

⁵⁴⁹ Taylor (1989) quoted and précised in Elshtain (2004: 128)

⁵⁵⁰ Miller (1989: 234) in Kukathas (2003: 168)

⁵⁵¹ Dworkin (1989: 489)

⁵⁵² Kelly (2005: 115)

support for certain options, if their value is culturally specific, then a common framework will be neglectful in recognising them, and be unfairly biased against them. Certain culturally important goods would not receive the appropriate concern within a Liberal framework because of the limitations on the translation of their reasons into the public discourse. The Liberal must be able to respond that reasons are culturally transferable and, as such, various groups can contribute to creating or developing the framework by offering reasons for their norms (as argued by Waldron). For the Liberal, cultures are systems of practices that *can* provide external reasons (both good and bad), for the Strong Multiculturalist, reasons are internal to *their* culture. External reasons are necessary because they contribute to the deliberation in deciding upon a common framework that defines the rights and entitlement that are available to all, but if they are unable to be exported, then that limits the applicability of the conclusions reached by the deliberation to a single cultural context.

The criticism of their being a possible Liberal framework can be termed in two related ways, either by claiming a form of cultural relativism or the weaker claim of value pluralism (some say that the latter collapses into the former while others claim that it is of insufficient strength to deny the validity of the common framework). I will argue that the first is flawed and the second, while a better position, is not as problematic as it is claimed, which means that a just framework can be met through reasoned deliberation.

Relativism:

Jacob T. Levy, in discussing those who link cultural pluralism with moral pluralism, warns against equating the two.⁵⁵³ He claims, “the moral diversity within cultures far exceeds the moral gaps between them.”⁵⁵⁴ Waldron makes a similar point, “people often organise themselves politically in ways that do not correspond exactly with their interests.”⁵⁵⁵ Levy claims that philosophers do maintain that connection, and this is where the relativism comes in.⁵⁵⁶ It is claimed that cultural difference is the source of conflict as incompressible systems of meaning come into contact, but he points out that this is not reflective of the actual reality of the inter-cultural conflicts that occur in the world. In such cases, although there “... is a genuine and enduring gap ... this gap is not one in which *each culture* has a moral understanding incomparable with those of its neighbours (emphasis

⁵⁵³ “There is something tempting about this linkage; but it is too tempting. Whatever the truth of moral pluralism, cultural diversity is not its match through the world; and viewing the various social and moral conflicts to which cultural pluralism gives through the lens of moral pluralism confuses rather than clarifying. The identification of moral and cultural pluralism misunderstands both; the identification of moral and political conflict does so to an even greater degree.” Levy (2000: 99)

⁵⁵⁴ Levy (2000: 102)

⁵⁵⁵ Waldron (2000a: 165). He illustrates this with the example of “affirmative action [which] in the United States is opposed by some of those whose interests it is intended to advance, and supported by many of those whose unfair advantages it is intended to offset or remedy.” Waldron (2000a: 165 n. 13)

⁵⁵⁶ Levy claims, “For cultural pluralism to be importantly related to moral pluralism ... incompatible excellences would have to be deeply tied up with moral systems. Alasdair MacIntyre suggests that this is true – that, for example, the ancient Greek philosophical system was tied up with martial virtue, and is now incomprehensible to those of us who do not understand ancient heroism. There are rival moral universes, made up of practices and habits, values and virtues, which are only made sense of as wholes.” Levy (2000: 103)

original).⁵⁵⁷ The source of the conflict stems from the "... reoccurring moral understanding of land common to many indigenous cultures, and present in milder form in many forms of nationalism ..."⁵⁵⁸ This form of attachment, in its various cultural instances, is common across cultures.

Consequences:

Furthermore, Levy makes a similar point to the one I have made about the redundancy of any form of 'cross-cultural moral criticism' if differences in understandings are really incomparable.⁵⁵⁹ If we accept the extreme view that, as Alan Gewirth has put it, "... the fact of cultural pluralism disproves the existence of moral knowledge"⁵⁶⁰ then we come to unacceptable conclusions. Levy cites John Gray as claiming "when rivalrous values are embodied in mutually exclusive cultures, their incompatibility cannot be other than agnostic".⁵⁶¹ If this is the case then the larger group will probably "... try to force rapid assimilation"⁵⁶² in order to rectify the incompatibility, as there is no possibility of any meaningful cross-cultural exchange. "The agnostic view ... renders much cross-cultural moral criticism impossible or nonsensical."⁵⁶³ Gewirth describes that as a kind "... of ethical relativism which holds that moral requirements, if valid at all, can be so only in a partial and restricted way, by derivation from various particular cultural or other groups that accept them."⁵⁶⁴ Acceptance of this view means that "... disagreement would reflect only our own "convention" ... there is no way to get beyond the relativism of some group's "convention or agreement"⁵⁶⁵.

Reply 1:

Gewirth objects to what is entailed by the argument:

"What is especially damaging about this view, then, is not only that it would sanction the most monstrous violations of human rights, but also, more generally, that it makes it impossible to present rationally grounded moral criticisms, in a non-question-begging way, of the positive moralities of other cultures of societies. The inability of such relativism to ground criticism not only goes against the categorical obligatoriness of moral requirements, but also ignores the necessary and universality that can be achieved by rational argument as applied to the context of action and morality."⁵⁶⁶

⁵⁵⁷ Levy (2000: 104)

⁵⁵⁸ Levy (2000: 104)

⁵⁵⁹ Although Levy is wary about externally imposing liberalising reforms on illiberal cultures and believes that "the possibility of internal reform and change of cultural values should always be recognised." He goes on to say that we should "... be reluctant to characterize any culture as intrinsically liberal, illiberal, patriarchal, traditionalistic, hierarchical, and so on." Levy (2000:105)

⁵⁶⁰ Gewirth (1994: 22)

⁵⁶¹ Grey in Levy (2000:105)

⁵⁶² Levy (2000:105)

⁵⁶³ Levy (2000:105)

⁵⁶⁴ Gewirth (1994: 29)

⁵⁶⁵ Gewirth (1994: 29)

⁵⁶⁶ Gewirth (1994: 29)

While the consequences of a relativistic account would be unacceptable, the response from Liberals is that it is not reflective of the reality of the situation. The possibility of the meaningful exchange of reasons across cultures shows that moral relativism is false. Furthermore, and as is eluded to by Gewirth, the reasoning can produce justified and acceptable solutions to areas of moral conflict, rather than the consequences of relativistic resolutions of conflict requiring agnosticism, assimilation or, even, the *elimination* of moral differences. This may even mean that claim of ‘moral progress’ may even be justified.⁵⁶⁷ Ronald Dworkin has claimed “we do have reasons for thinking that slavery is wrong and that the Greeks were therefore in error: we have the moral reasons we would cite in a moral debate about the matter.”⁵⁶⁸ Moral progress can “... be explained as the result of the gradual elimination of ignorance or other impediments to the functioning of the human intellect.”⁵⁶⁹ I may even be possible for other historical examples to “... be found to allow us the much more ambitious claim that moral opinion has improved broadly on all fronts.”⁵⁷⁰

Parekh’s Asian Values:

Another example of the unsatisfactory consequences of the relativist account is the rejection of the universal validity of human rights. Although not as extreme as the other examples, it provides a more practical case, providing a clear contrast in positions, and serves to support the intuitive appeal of Dworkin’s point. Gewirth outlines the communal relativist objection to the ascription of human rights to individuals. Following:

“... the proper conception of the self [that] is provided by the communitarian thesis ... if rights are to be invoked at all, it is groups or communities, rather than the individuals of traditional rights theories, who can properly be said to have rights. Thus, the cultural-pluralist contextual contentual objection against ... rational moral knowledge ... is that, far from having universal validity, it is ethnocentric in extrapolating from a specifically Western cultural conception to a doctrine of human rights as belonging to all individuals regardless of their different cultural contexts.”⁵⁷¹

Bhikhu Parekh offers a qualified (i.e. a very thin account of universal human nature⁵⁷²) version of this objection in defence of the ‘Asian values’ thesis which “... leaders of almost all East Asian countries ... insist that some of the rights included in the ... declarations of human rights are incompatible with

⁵⁶⁷ Dworkin has argued that we have reason to think “... an explanation would give us added confidence that the changes were indeed progress ... we can have more confidence in our opinions if we can explain why those who disagree with it come to hold a mistaken view. In fact we might well be able to explain much of what we regard as moral progress in this way.” Dworkin (1996: 121)

⁵⁶⁸ Dworkin (1996: 122)

⁵⁶⁹ Dworkin (1996: 120)

⁵⁷⁰ Dworkin (1996: 120)

⁵⁷¹ Gewirth (1994: 33)

⁵⁷² See, Parekh (2000: 114-23)

their values, traditions and self-understanding ...”⁵⁷³ The reason for rejection vary, some object to aspects of human rights because of conflict with community,⁵⁷⁴ while others object in support of greater authority.⁵⁷⁵ In relation to the validity of universal human rights claims, Parekh concludes:

“Given the differences in their history, traditions and moral culture, it is both inevitable and desirable that different societies should differently interpret, prioritise and realise great moral values and integrate them with their own suitably revised thick and complex moral structures.”⁵⁷⁶

Reply 2:

Gewirth, who has previously argued “... that rights are necessary for humans to be able to function as moral agents, displaying autonomy in the exercise of choice”⁵⁷⁷, has responded to claims similar to the above, with three points that roughly correlate with Parekh’s argument. The first is that “... the idea of human rights is a normative, not a positive or empirically descriptive conception”. This means that the fact that some countries or groups, such as Singapore, have not accepted some, or all, of them does not affect their applicability. The system of human rights “... provides a rationally grounded moral model for how persons and groups ought to be regarded and treated even if existing systems of interpersonal and political relations depart from it.”⁵⁷⁸ The desire to suspend the right to a fair trial for the good of social cohesion does not mean that this *ought* to be accepted. The second point turns around Parekh’s claim about the West’s historical acceptance of similar accounts and claims “... it is false that the idea of human rights is exclusively a modern Western conception ... the *idea* of right can be found in ancient and medieval sources as well as in non-Western cultures.”⁵⁷⁹ Although “... this does not mean ... that the idea of human rights ... had the same degree of positive support in all areas or climes; historical and nonrational factors strongly influenced the ideas acceptance”⁵⁸⁰ but it does refute the assumption that a variant on the Asian values is the historical default position, and furthermore, implies support for Dworkin’s idea of general moral progress, with the modern authoritarian countries being the exemption from the general developing norm. Finally,

⁵⁷³ Parekh (2000: 136). He cites claims made by “the Singapore delegation to the 1995 Vienna conference [who] challenged the very universality of some of these rights” in which they “... asked it to take a ‘more modest approach’ ...” Parekh (2000: 136). He goes on to say that “... Asian values are not unique to Asian countries ...” and that their leaders claim “... that the West, too, should, and indeed once did, share them and is wrong to allow them to be overridden by the liberal individualist ethos.” Parekh (2000: 137)

⁵⁷⁴ “... the liberal stress on rights ... has its limitations, including its well-known inability to nurture the spirit of community and social responsibility vital for regulating the excesses of the culture of rights.” Parekh (2000: 138)

⁵⁷⁵ “... East Asian societies share a broad consensus on the nature of the good life, and think that they have a right and even a duty to enforce it ...” this means that sometimes “... the process of trial ... increases tensions, making it unwise to conduct it in the normal western manner. Evidence, too, may sometimes have to be gathered by covert operation, and cannot be submitted to open courts or expected to meet the normal standards of criminal law.” Parekh (2000: 139)

⁵⁷⁶ Parekh (2000: 143)

⁵⁷⁷ Gewirth in Almond (2002: 265)

⁵⁷⁸ Gewirth (1994: 33)

⁵⁷⁹ Gewirth (1994: 34)

⁵⁸⁰ Gewirth (1994: 34). Almond also traces the historical development of rights, “Whilst of comparatively recent vintage linguistically, rights belong to a tradition of ethical reasoning which goes back to antiquity.” Almond (2002: 259-60)

Gewirth responds to the claim that the ‘individualism’ of such rights is harmful to community. This is flawed, both because such rights are intrinsically reducible to individual bearers⁵⁸¹ and because:

“... the normative emphasis [is] that the primary point of human rights is to protect individuals from unjustified threats to their freedom and well-being on the part of communities or cultures to which they belong ... whether or not the demands or obligations deriving from one’s enviring communities ought to be fulfilled depends upon their impact on the rationally grounded moral rights of individuals.”⁵⁸²

Example 1:

Paul Kelly provides the first of two generalised examples that dispute the claims made by the relativists. He argues:

“... Liberalism’s universal reasons are not simply plucked from a realm beyond context – they are not a priori ... - but instead are constructed from reasons, beliefs and values that are situated in social and historical contexts, yet have a reach or scope that goes beyond these contexts. In so far as they have this scope, their truth or validity is not context dependent in the relevant sense ...”⁵⁸³

Reasons that have universally applicable scope all come from a cultural or historical context, but this does not affect their applicability. What does, though, are other reasons that are better and succeed in challenging the earlier reason. The first set of examples that Kelly cites is Euclidean geometry’s connection with the ancient Greek polis, and arithmetic’s connection with the ancient Indian and Arabic cultures. These have been developed, and aspects challenged over the centuries to the point where we have the modern form of mathematics, but there has been a traceable and justifiable transitional process. Their reasoning is distinct from their original context, but is just as available now as it was then, and to be able to be judged on its reasoned merits in light of other conflicting (and contributing) reasons. To refer back to MacIntyre’s claim about the ‘incomprehensible’ nature of historical ‘moral universes’, the burden of proof is to show that such a transition is impossible.⁵⁸⁴

Example 2:

⁵⁸¹ He claims, “... most moral and other practical precepts are addressed, directly or indirectly, to individuals. Since the argument for human rights proceeds in part from the assumptions common to all practical precepts, regardless of their divergent contents in different cultures, the fact that precepts are addressed to individuals disproves the contention that the “individualism” of human rights is an ethnocentric limitation ... even if it is recognized that individuals are ... constituted to some degree by their communities ... this does not alter the fact that the precepts require actions and that, in the final analysis, it is individuals who act.” Gewirth (1994: 34)

⁵⁸² Gewirth (1994: 35)

⁵⁸³ Kelly (2005: 121)

⁵⁸⁴ Kelly refers to Donald Davidson’s argument, “... is either non-proven or problematic. To show that the idea of distinct conceptual schemes makes sense, one would need to show that there are concepts or beliefs in one scheme that cannot be translated into another scheme ... this is a deeply paradoxical claim as it presupposes that we can identify the difference and irreducibility between the two concepts, which does seem to suggest that we can translate and therefore understand the same concepts. If we can understand across conceptual schemes then we have a problem with identifying their boundaries, or what it is that distinguishes one scheme from another.” Kelly (2005: 121-2)

Kelly has indicated the actual possibility of meaningful conceptual understanding of reasoning across historical separation without the substantive loss of content. His second example supports the possibility of reasoning being translated across cultural separations, even including those that are defined by linguistic differences. This provides a useful point of connection between the rejection of cultural relativism and the introduction of the value pluralist account. The Strong Multiculturalist (and Liberals) may be able to argue that Value Pluralism offers a more accurate account because it claims a combination of universally compatible and culturally specific incompatible values, so as to avoid the negative consequences of moral relativism. Kelly illustrates his point against the validity of claims that emphasise the importance of ‘conceptual boundaries’ by claiming that translation is possible. He claims “the best analogy we have for what seems to underlie the idea of a distinct conceptual scheme is the idea of natural language.”⁵⁸⁵ Kelly’s point in response to this general claim is to argue that translation is possible, and not just in basic, but complex, concepts. “It would seem that complex concepts from one language can be translated into the other, just as complex systems of thought like Confucianism can be translated into English.”⁵⁸⁶ The response to this point, that Kelly anticipates, is that aspects of such concepts are lost and distorted in the process of the translation. He replies, “... in order to be able to state or describe what is lost, we need to be able to obtain a high degree of translatability across natural language.”⁵⁸⁷ This need to be able to identify what is lost must also apply to the argument against the possibility of interaction between conceptual schemes. The extent to which intercultural communication is possible is greater than is claimed.

Value Pluralism:

Levy, points out that moral pluralism cannot be moral relativism because “... for the pluralist thesis to be coherent, it must rest on moral realism.”⁵⁸⁸ The idea behind moral pluralism is that there are many great goods that are said to be “... unrankable, incommensurable, and often incompatible,”⁵⁸⁹ but, the point is that they *are* goods and are able to be contrasted with those things that are not. The illustration given by Levy is that “liberty and equality may be incommensurable, but

⁵⁸⁵ Kelly (2005: 122). This seems to be a reasonable claim as Taylor has appealed to Wittgenstein’s connection of language and meaning, arguing against the possibility of a private language and the impossibility of certain thoughts when the background “... conditions of possible validity ... is missing.” He argues, “A given Linguistic item only has the meaning it has against the background of a whole language.” Taylor (1995: 132) Levy has commented on the “Common attempts to link languages with underlying values ...” Levy (2000: 104)

⁵⁸⁶ Kelly (2005: 122)

⁵⁸⁷ Kelly (2005: 122). Waldron explains this tendency as being ‘... over-influenced by the Wittgensteinian idea that effective communication presupposes some sort of agreement in judgements ...’ Waldron (2000a: 163)

⁵⁸⁸ Levy (2000: 100). For example, Joseph Raz rejects relativism and claims that cross-cultural communication is possible and that there exists a degree of commonality. “Some moral philosophers regard ethics as limited by tradition, with the conversation of the deaf being conducted across the boundaries of traditions. If so, and if the different cultures in a multicultural society stand for different traditions, then multiculturalism imports the existence of a moral chasm between the different traditions ... this thought is incompatible with an understanding of the nature of morality. Multiculturalism gives rise to problems of communication and comprehension. But there is something to communicate and something to comprehend. There is a morality which applies to all the traditions ... which bridges the divide between them.” Raz (1994b: 158)

⁵⁸⁹ Levy (2000: 10)

liberty and slavery are not.”⁵⁹⁰ The supposed difficulty posed by the idea of moral pluralism is that there is a “... lack of any single metric by which to measure ...” these goods, but this is combined with the fact that they come into conflict with one another requiring some judgement of ordering. Groups are believed to represent a system of meaning that provides an answer to the inability to come up with a metric. Furthermore, the group’s practices provide the particular form through which goods are instanced in a culturally specific way. For the value pluralist critique to have force, it has to show a form of unfair disadvantage for groups. This will, basically, take the form of a claim that group’s posses a system of ordered values that conflict with other cultures. That is, the group provides a particular system of values; an ordering of the great goods. It can claim that there are universal values, but argue that their particular ordering is distinct to the group and the way in which they are expressed is also culturally distinct. Therefore, they can claim that there exist two (or more) systems that are equally good, but different. There is a limit to the extent that cross-cultural comparison and interaction are possible and consequently, they can claim that a degree of independence is needed so as to not be forced into an unfair situation where their value system is governed by a state system that is reflective of different ordering and which recognises it *own* expressions of those values. The conflict occurs between one cultural group’s distinct prioritisation of, and the particular expression of, certain great goods, coming into contact with the particular system of another culture. There is not so much of a conflict within the groups system as this has been largely resolved; it is just problematic because of the need to interact with the others.

In response, the Liberal does not deny a degree of plurality, but claims that the legal system as a whole framework can accommodate group difference because it is not as distinct, the differences not as great as is claimed and, also, the level at which pluralism occurs limits the degree to which it is problematic. That is, there is a possibility for some moral objectivity, a process of reasoning can discover this, and the resulting position can be incorporated into the legal framework, applicable to all. All individuals from groups in the state can contribute to this, and consequently, the system that is devised is justifiably not unfair to the various groups and associations that exist within the state.

There are the three factors of variation that blur the rigidity of the relativist moral position, the variability within and across cultural groups, and the variability between a particular morality and a particular culture. Value Pluralism tends to assume a degree of connection to these three factors, that there is commonality *within* a culture, there are distinctions *between* cultures and there is some *connection* between culture and morality. That this is the case, to a certain degree, is not disputed by Liberals, but the extent to which it is a factor in unfair inequality is.

Value Pluralism is not National:

⁵⁹⁰ Levy (2000: 10)

I am now going to show that the level at which incommensurability occurs means that it does not have the moral force to significantly conflict with the Liberal argument for the requirement of a common legal framework. The key to this argument is distinguishing which level value pluralism is supposed to provide a resolution in the form of a moral system, and also involves justifying the common system of law. Value Pluralists claim that the conflict between goods is settled within the context of a communal framework, at which point of social organization this occurs is where I now turn. But the key point of the pluralist claim is that there exists a point of ‘shared understanding’ or commonality in conception that means, above which, there is conflict between value systems, and below which, there is agreement. The extent of the encompassment of this agreement (the amount of internal variation and tolerance) may be disputed (some claiming a range of culturally acceptable options), but the claim is that this ‘resolution’ point is the appropriate level for political governance that would reflect what is held in agreement, or at least, if at a sub-state level, the maximum level of state tolerance for such internal groups. That is, there should be a connection between the supposed ‘cultural’ point of resolution and political authority.

I wish now to claim that the conflict of the pluralism of values is not ‘resolved’ at, and consequently, also limited to, the level of the *nation* state. By this I mean that it is implied in pluralist theories that at a certain level a consensus is reached that orders and prioritises goods. I have concerns with the association of (national) culture in the particular ordering of values and also the extent of this ordering, supported by the political authority of the state.

Benhabib on Walzer:

Michael Walzer offers an account that roots plurality of value at a national level, the incommensurability of goods are resolved there, but does this mean that any form of criticism external to this shared understanding of justice is illegitimate? Benhabib makes the claim “Walzer is not a relativist, though at times it is hard to see how he can avoid relativism.”⁵⁹¹ This is because he supports what Benhabib calls ‘strong contextualism’, “... all meaning must first be interpreted and understood from the standpoint of its producers.”⁵⁹² This is the connection of morality and culture that ties individuals to their national political community, and once applied to the system of complex equality and shared understandings, the national interpretation that results seems to be immune from another nations (with its own particular interpretation) critical assessment. Contextualism, as a general approach, links *individual* assessments of the ordering of goods to the *political* community of the state. There is a national balance of ordered goods, “... which range from attitudes to health care to

⁵⁹¹ Benhabib (2002: 39)

⁵⁹² Benhabib (2002: 39). She goes on to quote Walzer, “One characteristic above all is central to my arguments. We are (all of us) culture producing creatures; we make and inhabit meaningful worlds. Since there is no way to rank and order these worlds with respect to their understanding of social goods, we do justice to men and women by respecting their particular creations.” Walzer (1983: 314) in Benhabib (2002: 39-40)

attitudes to the family and non-citizens, [these] are composites bundled together through strands of moral, ethical, and evaluative stances and argumentations⁵⁹³ that reflect its populations shared understanding.⁵⁹⁴

To be morally critical from the outside is to disrespect them as people, as the political community is the product of their particular conceptions of the good. But Benhabib argues that a separation is possible and parts of the whole may and must be criticised. It does not need to be a stark choice between accepting or rejecting ‘their particular creation’, the nation as a whole. “It does not follow that if we respect human beings as culture-creating beings that we must either “rank or order” their worlds as a *whole* ... (emphasis original)”, which is something that, given no universal metric, must be respected as ‘their particular creation, “or disrespect them by dismissing their life-worlds altogether.”⁵⁹⁵ This comes back to the points made about human rights and, similarly, Benhabib also cites the existence “... of a universalist moral language, which is context independent ...”⁵⁹⁶ Despite many practical limitations, cross-national criticism is occurring, and it can be legitimately argued that such claims do have validity.

Carens on Walzer:

Joseph H. Carens, though sympathetic to Walzer’s contextual approach, is critical of limitations on cross-cultural judgements. His national political communities are bound by common understandings that provide the “... appropriate setting for distinguishing meaning and marking out distributive spheres”⁵⁹⁷. They *order* and *distribute* a very broad range of goods, and how this is done is decided by the particular understanding. Anything that could be regarded as having universal applicability will be translated through a ‘thick’ process of cultural ordering and distribution. The difference between the very low ordering of a particular good and the non-existence of that good within a society seems to me to be of very minimal importance, so too if the process of distribution restricts the access to such a good to only a few members. In each case, such a good could in fact be universally valuable, but the extent of the contextual layer of culture is so thick that it can be such that the distortions makes it unrecognisable or inapplicable, and for all useful purposes, unavailable.

Carens argues against the self contained nature of Walzer’s conception of political (and moral) community. A certain good (perhaps universally applicable⁵⁹⁸) may not be expressed or distributed fairly within a political community. People from outside of this community should be able

⁵⁹³ Benhabib (2002: 40)

⁵⁹⁴ Kymlicka quotes the justification for this connection taken from Walzer’s *Spheres of Justice*. “The political community is probably the closest we can come to a world of common meanings. Language, history, and culture come together (come more closely together than anywhere else) to produce a collective consciousness ... the sharing of sensibilities and intuitions among the members of a historical community is a fact of life.” Walzer, (1983: 28) in Kymlicka (1989: 222)

⁵⁹⁵ Benhabib (2002: 40-41)

⁵⁹⁶ Benhabib (2002: 40)

⁵⁹⁷ Kymlicka (1989: 222)

⁵⁹⁸ Carens regards as plausible “Walzer’s view that such universal standards as exists (if any) are rooted in and abstracted from thick, particularistic moralities ...” Carens (2000: 47)

to be critical of the lack of that good, either as a whole, or to a section of that society. Walzer says that we can only be critical, not of general minimum moral standards, but of the points where our cultures minimum moral standards (derived from out thick moralities) come into overlap with their own minimal standards. The example that Walzer and Carens debate is Iranian society, and the goods of *reciprocity* (“... the full autonomy of all religious communities”, I am not sure if this is *just* group autonomy i.e. Millet System) and *democracy*, both of which, they believe, it is lacking. Walzer claims that the former’s lack should be criticised as there is a historical precedent of its “... accept[ance] by Muslim states in the past”⁵⁹⁹, but the latter’s should not, as “... democracy is not”⁶⁰⁰ internal to Muslim culture. Carens claims that the lack of both is to be lamented.⁶⁰¹ Where a good is lacking, to take his example of Democracy in China, even within a cultural contextual approach, we have grounds for judging this deficiency. “I would want to insist that Chinese democracy must not only be Chinese, it must also be *democratic*.”⁶⁰² As Dworkin has argued, there exists a degree of objectivity and possibility for progress in terms of moral (and other) goods. To follow Walzer’s account seems to succumb to what Levy warned *against*, “... be reluctant to characterize any culture as intrinsically liberal, illiberal, patriarchal, traditionalistic, hierarchical, and so on.”⁶⁰³ Only goods that have been part of the shared understanding can be externally encouraged and, as such, this greatly limits any form of cross-cultural comparison and pretensions to universals, even the possibility of internal change.

National and Sub-National Conflict:

The whole basis of the Multicultural critique is to claim that there are many, sometimes conflicting, conceptions of the good within a state. These, of course, tend to be associated with cultural groups, but even if we do not accept this direct connection, there is still great variation. The points made by Dworkin and Kymlicka (chapter 5, part1) speak against the idea of a state governing a society to the dictates of the majority’s conception of the good. Both philosophers are supportive of liberalisation, toleration and the ability for an individual to hold individual rights, as they serve as a form of protection for the minority (with differing conceptions) to hold against the majority. This goes against the idea of directly connecting national culture with national politics. Levy is in agreement with this, “the level of value pluralism concerned with excellences seems better suited to a link with cultural pluralism than does that concerned with political ideals.”⁶⁰⁴

⁵⁹⁹ Walzer (1995: 289) in Carens (2000: 48)

⁶⁰⁰ Carens (2000: 48)

⁶⁰¹ This is because he believes that we “... cannot rightly deny ... [the] basic human rights” of people from different religious communities who live there and we should condemn “... political authorities ... [who] are not chosen through elections that are, broadly speaking, fair and open.” Carens (2000: 50)

⁶⁰² Carens (2000: 50-1)

⁶⁰³ Levy (2000: 105)

⁶⁰⁴ Levy (2000: 102)

The value pluralists are not in agreement as to the acceptability of internal variation, there is a conflict between the ideas of a national and a sub-national basis for commonality.⁶⁰⁵ There is a conflict between two levels of ‘nation building’, or at least, ‘nation building’ at a cultural level in response to the nation. Kymlicka is critical of Walzer for what he sees as his national bias.⁶⁰⁶ This conflict creates the situation where there is a degree of relativism to what is considered just. This ‘shared conception’ then decides how the conflict between the ‘nation building’ of the state and sub-state should be resolved. The general criticism of Walzer’s position can be used to dispute what the reliance on context to distinguish what may or may not be allowable.⁶⁰⁷ This is not a problem when the state is not engaged in ‘nation building’ but governed by a Procedural framework, that separates (or at least, not equate) the ‘political community’ with the ‘national identity’. The critique of Walzer’s national level morality can also be applied at a sub-state level.

Sub-State Pluralism:

At this level a similar account emerges. It is here that pluralism is said to be resolved, so the state must allow group autonomy in order for it to govern in accordance to its ‘shared understanding’.⁶⁰⁸ The Liberal response is to highlight the negative consequences for such accounts in terms of assimilation, and elimination of different values, an inability to show what is lost in the translation or transition across the various groups that exist within a state, and the actual examples that conflict with the relativist position. To accept this position is to restrict the group to an ‘essential’ identity that is incapable of “... internal reform or change ...”⁶⁰⁹ Cross-cultural comparison and judgement is possible where aspects of the culture are worthy of critique, or where certain whole goods are restricted or absent. Furthermore, pluralism is not ‘resolved’ because, like the nation state, there also exist dissenting views, and actual conflicting views on the ordering of goods. There is internal variation, indeterminate boundaries and even competing conceptions of the good within the group. Reasoned judgements can be made against certain aspects of a culture’s practices, the barrier to

⁶⁰⁵ Levy claims, “Raz, Taylor, and Walzer all defend both multiculturalism (of a sort) and nationalism (of a sort). [Isaiah] Berlin thought that the two differed in important ways, and he was dubious about multiculturalism. He suggested that assimilation within a state or separation into different are required, that pluralism can only be safely manifest at the national level.” Levy (2000: 105-6) Berlin’s differing position stems from his support of ‘negative’ freedom, while this contrasts with Taylor’s support for a combination of both ‘positive’ and ‘negative’ freedom (with the ‘positive’ from of freedom being conducive to ‘nation building’ process of promoting certain ‘worthier’ choices). See Abbey (2000: 109-14) for an elaboration of the differences between the positions of Taylor and Berlin.

⁶⁰⁶ “... Walzer says that the question of national rights within a multinational state ‘must itself be worked out politically, and its precise character will depend upon understandings shared among the citizens about the value of cultural diversity, local autonomy, and so on. It is to these understandings that we must appeal when we make our arguments’” Walzer (1983: 29) in Kymlicka (1995: 65)

⁶⁰⁷ Kukathas offers a good generalisation of the conflicting political interests of national and sub-national communities, “... by emphasizing the importance of the political community and national identity. The effect of this is to weaken communities within the political society insofar as efforts are made to strengthen the of the *political* community on the individual’s identity ... Yet social unity of this kind can only be increased by suppressing diversity ... Giving political community greater importance must mean weakening other communal ties.” Kukathas (2003: 177)

⁶⁰⁸ Kwame Anthony Appiah has called this ‘Millet Multiculturalism’ where pluralist “... theorists have sought to honour the sovereignty of the group, and to minimize outside interference with its affairs, in a way that has sometimes called to mind the millet system of the Ottoman Empire.” Appiah (2005: 74)

⁶⁰⁹ Levy (2000: 105)

such judgements are the claims made by the ‘Strong’ or ‘Millet’ Multiculturalists for group autonomy, or internal tolerance from the state. But this internal group freedom is, at least partially, open to the discretion of the state, and I argue that this should be rejected out of equal concern for individuals. A better response to diversity is an impartial or, procedurally Liberal state, which is influenced by a process of reasoned deliberation and governed by a just framework of law and policy. The state need not just be limited to the extremely basic appeals to the validity of human rights; claims about *aspects* of the group and even criticism about the lack of *whole* goods are valid, if not required, because of the obligation for the state to treat citizens with equal concern and to limit ‘harm’.

The need for this type of criticism is also greater in the case of sub-state groupings, than it is for national groups (other states), because of the fact that all such citizens are living side-by-side within the state. This is especially true for those groups that do not have a strong territorial connection (such as immigrant and religious groups), but it is also true for others because of the ‘climatic’ nature of cultural boundaries, that there is no clear-cut distinction between groups.⁶¹⁰ In either type of situation a common legal framework is necessary in order to limit legal contradiction, to adjudicate between competing claims and to ensure access to individual equality and freedom. The fact that there is an external factor of variation between boundaries of groups means that they are they are not the ‘millets’ of ordered goods that the value pluralists claim that they are. Like the criticism of Walzer, the Liberal state is justified in criticising aspects of the group, but also has greater ability to impose reforming measures. Sub-state groups are not distinctly separated from one another by incommensurable systems of value. There exists a degree of cross-cultural commonality, and like the cross-cultural comparison that is justified between national groupings, so too is the cross-cultural comparison *within* the state, but with a greater obligation for intervention to ensure equal status of all citizens.

⁶¹⁰ This is from Mary Midgley’s much quoted comparison, “... when we begin to ask where the borderline of these genuine outsiders should be drawn and where people who are in some sense members of our society begin, we see how unrealistic the whole picture of isolated, watertight cultures has been. Cultures do differ, but they differ in a way which is much more like that of climatic regions or ecosystems than it is like the frontiers drawn with a pen between nation states. They shade into one another. And in our own day there is such continuous and all-pervading cultural interchange that the idea of separateness holds no water at all.” Midgley (1991: 84)