MAKING SPACE FOR ALTERNATIVE MODERNITIES WITHIN A CRITICAL DEMOCRATIC MULTICULTURALISM

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Abstract:

Insofar as the postcolonial project is one of the elaboration of "the plurality of modernity, and the agency multiplying its forms", my project is a contribution to this larger one in the form of a postcolonial theory of multiculturalism (Ashcroft, 2009, p. 85). Drawing from minority standpoints, arguments, and narratives, I focus on the lives and perspectives of a few broad groups in particular: indigenous peoples in Canada, Muslim women, and East Asian "immigrant" minorities. I take up a critical theory approach to framing multicultural theory and the questions it asks from the standpoints of minorities themselves, foregrounding the challenges and perspectives of racialized groups for whom their ethno-culture is morally salient and central to their own understanding of their identities and aims. This framework draws on the insights of feminist theorists of deliberative democracy but also departs from them in the crucial respect of affirming a conception of culture and identity that accepts some basic "communitarian" ideas of morality and culture, while conceiving these within a postcolonial project of cultural reclamation rather than a republican framework of the public sphere.

My project is organized into two parts: The first section systematically critiques the dominant liberal multiculturalist model based on Canadian multicultural policy and theorized by Kymlicka, which is oriented by the liberal state's perspective in its aims of integrating minorities. In the first chapter, I reject his universalist principle of liberal neutrality as the standard for justice in favour of a pluralist democratic standard that accommodates "thin" theories of the good. In the second and third chapters, I reformulate Kymlicka's categories of "national minorities" and "polyethnic minorities" respectively in order to take account of postcolonial indigenous sovereignty and the transnational scope of ethnic identity. The second section develops a pluralist account of agency in its descriptive (Chapter 4), normative (Chapter 5), and prescriptive (Chapter 6) aspects (Deveaux 2006 p. 179). This is developed as a constructive critique of liberal standards of autonomy, particularly feminist proposals for a standard of procedural autonomy, as unable to adequately describe and assess heteronomous agency.

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Introduction:

Making philosophical space for alternative modernities within the context of a critical democratic theory of multiculturalism

This project serves the larger aim of working out the foundations of legitimacy for a model of multiculturalism that is based on a moral pluralist grounding of justice. There are two main motivations that drive this aim. The first is to expand the scope of moral legitimacy in contemporary political philosophy by questioning liberal moral hegemony. The second is to decolonize and democratize multiculturalism by re-conceiving the framework of philosophical analysis from that defined by the interests of the liberal state to one that starts from the perspectives, values, and aims of marginalized cultural minorities. Guided by these motivations, I offer an analysis of the moral justifications for standards of evaluation and legitimacy of cultural practices, as well as of the cultural rights and emancipatory possibilities that accrue from these. I take a pluralist democratic approach to this analysis, focusing in particular on the perspectives and cases of racialized ethnocultural minorities. I hope thereby to contribute to the task of clearing space for the formulation and emergence of alternative modernities.

As Taylor (1999) has explained it, to affirm alternative modernities is to reject the "acultural" theories of modernity put forth by figures like Weber, Durkheim, and Marx that positioned the Western path to modernization as the inevitable, natural, and universal process of development for all human societies upon the discovery of scientific reason and industrialized production. This monological path to modernization became the paradigm for social science in the developmental theories of the 1950's, to such an extent that the world's nations were referred to in successive decades even in common parlance as belonging to the

categories of either ‘developed’ or ‘developing’ countries (Kaviraj, 2005, p. 498). This postwar period of modernizing development was conceived within the political climate of the time as an opening for the Western colonial powers to shift to a more progressive role on the world stage in the emerging era of postcolonial independence, and thereby retain their importance as instigators and guardians of civilizational development in the as yet “underdeveloped world” (Cooper, 2004, p. 10). Through the aim of generalizing the Western path to modernity to the development of the postcolonial world, this mindset remained significantly directed by the original Enlightenment justifications of colonial rule as a civilizing mission. In this sense, the project of alternative modernities has been intimately tied up with the postcolonial project of the cultural self-determination of peoples (Ashcroft, 2009, pp. 89-90).

While no longer providing the dominant paradigm in social scientific scholarship today, the acultural account of the path to modernization is nevertheless retained to a significant extent in universalizing accounts of progressive politics in the contemporary era. This is found in persistent and widespread expectations that the democratization of the as-yet authoritarian regimes of the world should, and/or will inevitably, take a Western liberal form, namely, by moving progressively into normative and familiar forms of secular, capitalist, liberal, and individuated rationality as determinative of the character of all contemporary political and social life. In contraposition to this expectation, making space for alternative modernities is a scholarly aim I take up in the current project by affirming particularist accounts of the ways in which the universalization of human rights norms and democratization is understood from within culturally situated and marginalized postcolonial movements.

To affirm a cultural theory of modernity in place of an acultural one, as described in Taylor’s (1999) framework, is to circumscribe Western modernity to its proper cultural

context(s). To recognize the Western path of secularization, commercialization, and individuation as arising out of historically particular developments grounded in cultural particularity is to open up alternative possibilities of modernity and challenge the inevitability of a reductively homogenizing global convergence on Western models. While in many respects, the fact of global modernity has become an inescapable background that all cultures must confront and reconcile in seeking continued survival and relevance in the modern and postmodern era, to affirm alternative modernities is to recognize that this confrontation produces divergences rather than only convergences in the development of modern institutional forms. In the current project I am interested mainly in the alternative possibilities for the political and moral dimensions of modernization, specifically, in terms of the cultural retrieval and contemporary adaptation of "pre-modern" moral languages, traditions, values and relational models of the self and society by colonized and assimilated peoples, and recent experiments in the modernization of political institutional forms that draw on but also depart from secular liberal constitutionalism. These possibilities are pursued against the modern background of the international consensus on human rights, the global demand for democracy, and the increasing pressures of the global market economy on tribal societies and traditional cultures.

In relation to non-liberal nation states, my account of alternative paths to modernization in this dissertation means the forging of models of multicultural justice that meet the minimal universal requirements of justice and that are grounded in non-liberal (which does not equal *il*liberal) cultural traditions in whole or in combination with liberal institutional forms (Chapter One). In relation to national minorities, specifically, indigenous nations, this means decolonization of indigenous cultural and political institutions, and the reclaiming of traditional indigenous cultural, moral, and political forms, applied creatively to meet present circumstances and needs (Chapter Two). In relation to immigrant minority

groups, it means conceiving their aims more broadly than the aspiration to assimilative integration into the host society, and understanding these groups as aspiring to belonging both in the host society and in transnational diasporic communities (Chapter Three). In relation to this latter point, my project takes a step towards answering the challenge to multicultural theory raised by increasingly transnational realities.

The starting point for the current project is my concern that the dominant model of liberal multiculturalism, whose main proponent is Kymlicka, is too politically and morally narrow to serve as the basis for the full range of existent political models/regimes from various societies that are able or have the potential to manage pluralism according to internationally accepted principles of justice, namely, human rights, democracy and equality. In the same vein, Kymlicka's liberal multiculturalism provides a standard for the evaluation of cultural practices that unfairly excludes or reductively reconceives a range of non-liberal social arrangements and practices, as well as alternative modes of agency beyond autonomy

While a number of alternatives to Kymlickan liberal multiculturalism exist in the literature, proposals for non-liberal models of democratic multiculturalism that take moral pluralism seriously are missing. I divide established approaches to multicultural scholarship into four categories: Kymlicka's liberal multiculturalism, "communitarian" approaches to multiculturalism, deliberative democratic approaches to multiculturalism which attend to women's vulnerabilities in cultural groups, and critical race theory critics of multiculturalism. Below, I identify the limitations of each category of approach, and outline the distinctiveness of my own model.

Liberal multiculturalism takes a monistic rather than a pluralistic approach to the standard of justice; it affirms liberalism as the universal standard of morality. Within this liberal framework, it recognizes the legitimacy of cultural variation only in terms of the

specific forms of local institutions that uphold liberal democratic principles, and a basic right to one's own societal culture in the sense of a national history and language. Cultural identity is ultimately conceived as an individualized aspect of personal identity, so recognition of the significance of culture to the individual is limited to its instrumental value for autonomy.

While liberal multiculturalism goes some ways to providing for differentiated rights for minorities, it also sets up a toleration framework that entrenches an unequal power dynamic between the state and minority groups. This framework takes up a top-down juridical perspective where the questions and aims relevant to multicultural adjudication are framed by the interests and expectations of the liberal state, and the rights of cultural minorities are circumscribed by these interests and expectations.

Contrary to the liberal multiculturalist approach, I propose a pluralist democratic standard of justice based on various thin theories of the good and a more inclusive definition of agency that starts from the perspective of vulnerable minority individuals rather than the liberal state. I provide an account of agency and morality that affirms universal moral minimums on a pluralist basis that is open to a wider scope of variation, both in practices and in the content of moral justification.

Communitarianism (Taylor, 1994a; Sandel,1998; MacIntyre, 2007) recognizes the constitutive role that a culture of the common good plays in personal identity and agency. This communitarian account of the nature of culture and agency affirms moral pluralism. But while communitarianism (Taylor, 1994a, 1994b) affirms the centrality of the aim of cultural survival to the significance of culture for minorities, communitarians (Taylor, 1994, Sandel, 1998, MacIntyre 2007) fail to provide an analysis of power, namely, the unequal power dynamics that result in the disproportionate power of group elites to determine identity for the group over more vulnerable members. Moreover, the communitarian challenge is a critique

raised internally within the Western liberal tradition from a republican political stance. It is not primarily an advocating voice for racialized ethnocultural minority groups and does not draw on these perspectives.

Contrary to the communitarian approach, I start from perspectives outside of the Western liberal democratic tradition and foreground the concerns of vulnerable members of cultural minorities. I give the issue of unequal power dynamics a central place in my approach and analysis in order to suggest standards of assessment for consent and equality that take into account pluralist variations in theories of the good and agency.

Deliberative democrats who attend to women's empowerment, such as Seyla Benhabib (1992, 2002) and Iris Marion Young (1997, 2011) attempt to expand conceptions of equality and agency for women in cultural minorities beyond dominant liberal limitations. I endorse these deliberative democratic theorists' affirmation of the feminist principle that the personal is political. On the other hand, an ideal of liberal autonomy still plays a central formative role in these analyses to a significant extent that is conceptually and democratically limiting. Moreover, a radical anti-essentialism about identity runs through the most influential approaches from deliberative democratic theorists: Fraser (2003), Benhabib (2002), and Young (1997) all affirm an individualist ideal that that does not adequately appreciate the significance of cultural identity for the vulnerable members of minorities on behalf of whom they advocate.

Monique Deveaux (2006) is a deliberative democrat who is an exception to this group of deliberative democratic theorists attending to women's vulnerability in cultural groups. Her work is a constitutive influence on my project, though our basic aims fundamentally differ. While her approach focuses on concrete political ends, mine focuses on moral diversification and cultural reclamation as a means of cultural and political empowerment.

Eisenberg (2009) is another exception who is a constitutive influence on my work, though she does not herself describe her theory as a deliberative democratic theory, like the above thinkers. I employ her "identity" approach in Chapter Two. She also does not explicitly describe her moral theoretical commitments as a form of moral pluralism, though she does seem to describe her approach, at least implicitly, as a methodological pluralism. On one reading of her own statement of her views (Eisenberg, 2009), she seems to be a universalist. She explicitly describes her identity approach as a contextualist approach (Eisenberg, 2009).

Contrary to the deliberative democratic theorists on women's empowerment, I take up what I will refer to as a "perspectival" definition of agency, rather than a procedural liberal definition of agency (Chapter Five) and conceive cultural identity as having inherent (though not absolute) value, a value that is to be balanced against other priorities of justice in reasoned ways and that takes women's stakes in their cultural identity seriously. This argument is developed in Section II, Chapters Four to Six.

Contrary to the statist and universalist bent of many liberal multiculturalist and deliberative democratic approaches, I recognize minority communities as having their own intrinsic centres and diasporic links in addition to and independent from national and global public spheres, national centres of belonging, and aspirations to integration and equal standing in the larger society. This argument is made in Chapter Three.

Critical race theory critics of multiculturalism represent the fourth and final group of theorists on multiculturalism. On the one hand, these critical race theorists (Banerjee, 2000; Mills, 2007; Walcott, 2014) are rightly critical of colonial and racist states and their attempts to co-opt anti-racist demands through a disempowering cultural lens. They also provide extensive deconstructionist accounts of colonial and racist structures and histories. On the other hand, critical race theorists are suspicious of attempts to define culture and cultural

identity. Their conception of identity arises from histories of racial oppression. Culture in their view is a distraction from the real issues. The solution they advocate for is material redistribution and structural change. However, they undertheorize the role that culture plays in material redistribution and reform. In one sense, critical race theorists often do start from the real perspectives and concerns of racialized cultural minorities and seek to clear space for their empowerment, by recognizing the structural barriers that affect racialized groups. However, they miss what is important about multiculturalism to an anti-racist framework, and what is important about culture to racialized ethnocultural minorities themselves. Contrary to critical race theorists, I take multiculturalism to be an integral part of an anti-racist approach, and formulate my aims as the restoration of minority-led definitions of culture, identity, sovereignty and cultural rights in the place of the colonial and racist co-optations of culture by the state.

There are some critical race analyses of multiculturalism which do not fall into this trap of endorsing a position that rejects all value in multicultural policy. These include Eve Haque (2012), who affirms the value of "immigrant" languages as an essential component of culture to Polish, Ukrainians, and other minority language groups in Canada and so might endorse a language policy like the one I propose in Chapter Three. Another exception might be Glen Coulthard (2014a, 2014b), whose work is substantively influential for my project. He critiques the colonial politics of recognition as employed by the Canadian state, and as philosophically endorsed by Charles Taylor (1994a). Insofar as the politics of recognition is constitutive of multicultural theory and policy[1], he would reject it. However, recognition of

[1] Kymlicka affirms the topic of indigenous rights as part of multicultural theory in *Multicultural Citizenship* (1995), but where discussing multicultural policy as a construction of the Canadian state, he distinguishes the indigenous sovereignty issue from multicultural policy (Kymlicka 2015).

the anti-racist potential of culture is essential to his own argument for an indigenous-led path to sovereignty for the Dene people.

Scholarly accounts that take one minority perspective as a starting point are instructive for my project and I substantively incorporate the insights of several of these. However, my larger aim is not tied exclusively to the aims of any one group, though I do focus on analyses of three broad groups in the current project: indigenous peoples in Canada, Muslim women, and East Asian "immigrant" minorities. I draw on these focused projects to identify some categories of alternatives to the dominant model of liberal multiculturalism defined by Kymlicka (1995).

What is critical democratic multiculturalism?

Kymlicka's liberal multiculturalism, an idealized form of Canadian multicultural policy, is the dominant model of multiculturalism in political philosophy. Insofar as this model has been held up as a political ideal to emulate in pluralist states around the world, this has also been the morally dominant model in practice in the sense that it has set the international standard for the just management of ethnocultural and religious pluralism in modern states.

This project is the first step in developing an alternate approach to multicultural theory, which I refer to as critical democratic multiculturalism. This alternate model is needed, in the first place because, as I will argue, liberal multiculturalism is not able to claim universal moral legitimacy, and in the second place, in order to promote or facilitate or document the critical democratic emergence of alternative modernities. What is critical democratic multiculturalism?

In one sense it is an approach to multicultural theory with the following broad guiding principles:

- It flips the framing questions of liberal multiculturalism from those that take the liberal state's aim of managing and integrating cultural minorities, to one which starts from the perspective of cultural minorities themselves. It uses these as the starting point for critical moral inquiry and reform of existing pluralist regimes.
- Secondly, it is committed to upholding and promoting human rights, where civil and socioeconomic rights are regarded as having equal priority, in contraposition to liberalism, which prioritizes civil rights, either politically, in terms of philosophical attention, or by using the values underlying civil rights (i.e. autonomy and freedom) to define the schedule of priorities of human rights, as well as the schedule for reform.
- It is committed to democracy, both in the personal and political sphere, and favours bottom-up approaches to democratic empowerment over top-down approaches of the state and international authorities. It affirms the feminist principle that "the personal is political", meaning that it does not only deal with the context of states, legislators, and formal claims for cultural rights, but also social and everyday life.
- It is committed to multicultural equality, both between individuals and between groups. It is committed to the cultural rights of minority groups and individuals, and to the indigenous rights of indigenous peoples.
- It presumes that all ethnocultures are inherently but not absolutely valuable. By ethnocultures I mean existing ethnocultures (ethnic and/or religious cultures) that have stood the test of generations. The definition of culture here is not static or essentialist, but refers to a tradition containing both formal and informal elements, and understands culture as capable of evolving and

adapting. On the basis of this definition, ethnocultures all have a *prima facie* right to survive.[2]

- It promotes the agency and empowerment of cultural minorities and vulnerable members within these minorities. I define agency as perspectival agency, which is conceptually broader than liberal autonomy and affirms the moral languages of agents.[3]

Critical democratic multiculturalism is a theoretical approach that does not strictly serve as a model for developing multicultural policy, at least not in a comprehensive sense, for the following reasons: because the specifics will have to be democratically determined, because its manifestation in any particular context must be contextually grounded, and because it is open-ended. It is open-ended because each culture is open-ended rather than static and unchanging, and because it is unfinished, perhaps inherently, since no one theorist (i.e. me) or even a group of theorists can know and understand every ethnoculture that exists that could morally modify and correct this model.

Critical democratic multiculturalism is also an incomplete model in the sense that some of the above principles are vaguely stated due to the fact that the scope of my project is limited in terms of the perspectives, cultures, and topics I have covered. Incorporating analyses of other perspectives, cultures, and topics within multicultural theory could prompt modifications of the above principles, or their more precise specification.

In another sense, critical democratic multiculturalism is not a model at all, but a critical theory approach to analyzing political multiculturalism that does not necessarily aim to construct a fully comprehensive and systematic model from which one can derive a full

[2] Where I refer to culture in this work, I mean ethnoculture, unless otherwise specified. For example, in Chapter Five, I make a distinction between culture *qua* ethnoculture and cultures of abuse like rape culture.
[3] Perspectival agency is defined in Chapter Five and explained throughout Section II in relation to women's agency from non-liberal and hybrid perspectives.

multicultural policy or set of best practices for all regimes. On my understanding, critical theory aims to further social justice aims through critique. Deliberative democratic theorists take a critical theory approach to democracy as opposed to a liberal constitutionalist approach (Dryzek 2002). On these two definitions, i.e. of what it means to be a critical theorist and what it means to be a deliberative democratic theorist, critical democratic multiculturalism aims to:

- identify and critique problems with the dominant multicultural model(s).
- democratize political multicultural theory
- prioritize or draw attention to marginalized perspectives in multicultural theory and their relevance
- decolonize multicultural theory
- pluralize standards of moral legitimacy in multiculturalism by presenting non-liberal and/or non-Western alternatives to the dominant political approaches to multicultural justice
- promote and demonstrate the relevance of non-Western moral traditions and perspectives to contemporary political questions within multicultural theory, thereby contributing to making space for the development of alternative modernities and the political recognition of their worth

Democratic equality

The standard, moral ideal of, and path to democratic equality on my theory of critical democratic multiculturalism can be parsed as equal responsivity of the polis to each citizen's (or group member's) needs and concerns based on a principle of equal worth of all citizens. This definition de-particularizes the language of democracy from that found in liberal accounts and transforms it into a universal standard, since not all individual agents are

empowered by possessing autonomous decision-making powers (Section II of the current work). In concrete terms, this means simply that democracy could be conventionally liberal democratic constitutionalist, or liberal-republican constitutionalist.[4]

Or, it could consist, for example, of some morally equivalent alternative to the model that I will describe below. My neo-Confucian example of this third model of democratic equality is a political evaluative standard of democratic legitimacy as guided by Eisenberg's (2009) conception of democratic validation[5]. The neo-Confucian iteration would consist of *both* of the following components, as based on my reading of Daniel Bell's (2015) moral standard of Chinese or Confucian neo-communitarian democracy. By neo-communitarian democracy, I mean what I will term the 'third-generation critical-democratic models of communitarianism'[6] proposed in academic scholarship by seminal political philosophers of classical Confucianism like Joseph Chan (2014, as cited in Bell 2001/2022; 1999), and groundbreaking political theorists like Daniel Bell (2015), who were inspired by the real world "Asian values" debate between Asian communitarian states[7], and liberal universalists in the 1990's over the universal legitimacy of international standards of human rights (Chan, 1999; Bell, 2001/2022):

Component One is morally equivalent to a universally minimalistic rather than a liberal democratic constitutionalist right to representative democracy as an individualized, equal, and formally legal right for every citizen to vote in standard periodic elections. The

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[4] liberalism *qua* Kymlickan liberalism and liberal-republicanism *qua* Taylorian political communitarianism are explained under the fifth heading of Chapter 1 of the current work.
[5] Eisenberg's standard of democratic validation is explained in Chapter Two.
[6] First generation = MacIntyre, Sandel, Taylor (liberal or liberal-republican communitarians in the original liberal-communitarian debate with Rawls); Second generation = Amitai Etzioni and others (decentralized social democratic republican or other communitarian theories stemming from the western political philosophy tradition, respectively); Third generation = Bell, Chan, my critical democratic multicultural theory of communitarianism (Chinese-Confucian and other political models of neo-Confucianism informed by real world models and ethnocultural sources of philosophical texts).
[7] i.e. represented by the main neo-communitarian interlocutor Lee Kuan Yew, former prime minister and "founding father" (i.e. social-political engineer) of the reasonably well-functioning and robustly humane non-liberal *polis* of Singapore.

purpose of elections in this neo-communitarian model is to speak to the legitimacy of the ruling political regime by evaluating it, in the first place, according to a minimally democratic standard of popular or majoritarian endorsement. Note that this minimal standard is only a *starting point* for assessing the moral legitimacy of a regime (Eisenberg, 2009). Component One at the same time includes an aspirational moral ideal of the morally optimal version of the political regime that the relevant political society is already and always should be working towards through formal and informal democratic activity (Deveaux, 2006). The standard set by the aspirational ideal is qualified by the real world conditions that are actually possible; in other words, it is a real theory conception rather than an ideal theory conception of an aspirational ideal that every polis should always be, and is already, working towards (Mills, 2008; Eisenberg, 2009; Deveaux, 2006).

Component Two is an elite set of publicly-minded governing ministers of the legislative and executive spheres of the ruling regime (Bell, 2015). They are chosen through a fully meritocratic system of public service examinations (Bell, 2015). This system is historically an ancient Chinese and Confucian governance system that exists in some contemporary dysfunctional form in the current authoritarian and oppressive Chinese state. However, one might, as I do, think of the Canadian public service as a contemporary form of this system. The blind hire and affirmative action policies of the Canadian public service, and the rigorous series of civil service tests and interviews are its democratic (fair and impartial) appointment process in a neo-Confucian sense. Together these comprise a political appointment process of the executive branch of government that is conceived in real theory terms to have the reasonable plausibility of functioning in actual political regimes to produce egalitarian outcomes for citizens.

As a minimal threshold, this governance form is present to some limited moral extent in actually existent political regimes, *and* does function to fairly meet the needs of every

citizen to some minimal extent in actual terms. In the aspirational ideal of a validation test of genuinely moral egalitarian rule, I mean governance that is reasonably and consistently responsive to the needs of every citizen to an equal extent, as far as is realistically possible. As in component one, the assessment standard of component two is gradated in Eisenberg's (2009) sense of democratic validation in the third dimension of her identity approach (explained in Chapter Two). To take real world examples of political regimes, China, Singapore, and Canada are all somewhere along the continuum of moral and political legitimacy between the minimal threshold and the aspirational ideal, with China being a highly restrictive communitarian-democratic regime significantly lower than the middle point of the continuum, and Singapore and Canada being much closer to the aspirational ideal than China, and somewhere along the continuum between the moral median on the one side, and the aspirational ideal on the other. In plainer language, this means that both Singapore and Canada fall somewhere in the range of what the morally reasonable person would judge, on reflective consideration, to be a just regime with significant flaws and room for improvement.

I conceive this democratic approach as following Benhabib's (2002) and Young's (2011) liberal-critical theory models of deliberative democracy, while stressing the ontologically communitarian nature of at least some manifestations of democratic deliberation. That is, I modify Young's conception of democratic responsivity as a reciprocal egalitarian response to needs rather than interests. I do this by theoretically foregrounding, in my critical democratic multicultural theory of democratization, a politically neo-communitarian (Bell 2015) egalitarian democratic responsivity to individual needs rather than, as liberal theorists and liberal republican theorists do (Taylor, 1995), conceptually foregrounding individual choice or self-rule.

But beyond formal definitions of democracy, there are also informal forms of 'democratic activity' (Deveaux, 2006). I take up Monique Deveaux's (2006) conception of

democratic agency, a conception based on the democratic feminist idea that the political is personal. That is to say, this concept of agency stresses the idea that questions of agency concern more than the formal political realm of the public sphere and individual rights, to analyze the more nuanced and everyday realm of the lives, activities, and constraints of women and other marginalized individuals. I discuss the empowering and prescriptive potential of democratic agency in Section II, Chapter Six, where I pluralize Deveaux's conception of democratic agency by identifying Confucian modes of embodied and implicit reflective activity. I also elaborate on democratic agency as empowerment by drawing on Elizabeth Pritchard's (2006) model of a relational assessment of power, and my own communitarian reading of the dialogue community of standpoint theory as a mode of Taylor's (1995) description of group or shared agency.

Standpoint theory was originally a feminist theory of how non-paradigmatic epistemological communities in the realm of scientific study and knowledge standards produced alternative epistemological standards within a care ethics or relational perspective. It has evolved since its theoretical emergence as a theory adapted to other contexts of feminist epistemology (Alcoff, 2003), feminist epistemological conceptions of the products of democratic deliberation (Young, 2011), and epistemologies that emerge from subaltern or racialized dialogic communities (Mills, 1997). In the current project, standpoint theory is interpreted as grounded in a communitarian ontology. In this account, standpoints are shared perspectives or "mediately-common" cultural goods, to use Taylor's (1995) terminology (p. 190). They are produced from the group agency of a marginalized group within covert, subversive, and everyday informal dialogic contexts. By marginalized groups, I have specifically in mind vulnerable and/or non-liberal racialized women in restrictive societal conditions of national-state culture, in a cultural minority within a liberal state.

The value of cultural diversity and its substantive recognition:

What I mean when I discuss or refer to "culture" in this project is actually existing ethnocultures or ethnocultural traditions that have fruitfully sustained whole communities for generations (Deveaux 2000). Taylor (1994) explains this definition of culture in this way: "one can argue that it is reasonable to suppose that cultures that have provided the horizon of meaning for large numbers of human beings, of diverse characters and temperaments, over a long period of time—that have, in other words, articulated their sense of the good, the holy, the admirable—are almost certainly to have something that deserves our admiration and respect, even if it is accompanied by much that we have to abhor and reject" (Taylor, 1994a, p. 72). I will elaborate on my initial definition here below when I discuss moral pluralism.

I affirm the intrinsic value of culture and cultural diversity, not only morally but also politically. I put forth two arguments for this affirmation here. The first considers cultural diversity to be on par in intrinsic value to biodiversity, with a qualifying caveat. I argue that culture and cultural diversity is intrinsically worth protecting, particularly in the form of *living* cultures that are allowed to change, and that are encouraged towards progressive reform, preferably from the inside. The caveat is that this right to political protection is not *absolute*. While we do not tend to question the value of protecting biodiversity for its own sake, many political theorists object to affirming the claim that there is an intrinsic value to culture and cultural diversity that warrants an argument of political and moral protection. In my view, this is often because they define culture in a static sense, which I do not, but the rejection of the intrinsic value of culture is not limited to this failure of definition.

The second argument for the intrinsic value of culture and cultural diversity is that ethnic cultures, and religions or religious cultures, are universally recognized as at least one of the most valued aspects of human life and identity, and for many, perhaps the majority of human beings, they are the most valuable.

Culture and cultural diversity also have instrumental value because the promotion and protection of cultural diversity furthers deliberative democracy and effective and just political decision-making. This is firstly, because this diversifies (and therefore democratizes) the options that could potentially be considered in a deliberatively democratic decision. More importantly, the promotion of cultural diversity and pluralist respect on a deliberative basis combats bias and ethnocentrism in identifying the initial candidates for reasonable consideration in any political decision in a pluralist context, and in any political decision in general. Secondly, the value of recognizing culture and diversifying moral language in political theory is that this furthers cross-cultural understanding, tolerance, and/or respect. An additional point is that affirming moral languages has the practical benefit that some groups or individuals will not sign onto political proposals that could better their situations and/or promote justice because they are couched in unfamiliar moral language or politically and negatively loaded language. For reasons I explain in Chapter One, I argue against Kymlicka's argument for this being primarily the case in terms of the indigenous rejection of liberalism and human rights. However, I do think there could possibly be good reason to believe that it is relevant, for example, in the case of the rejection by many devout Turkish Muslims of secularism for Turkey. Hashemi (2009) argues that this is the case, because secularism was historically rolled out in conjunction with a politically oppressive regime that was repressive in relation to religious freedom, on a model of radical or strict secularism based on and sometimes exceeding the model in France. This model is only one historical and philosophical model of secularism, and not the one liberal multiculturalists (e.g. Kymlicka and Taylor) typically condone. I also do not, as a postcolonial democratic multiculturalist, personally endorse strict secularism.

Moral pluralism

I affirm moral pluralism as opposed to moral universalism, both substantively and methodologically. Below, I explain this commitment and its justification briefly in contrast to Seyla Benhabib's claim of moral universalism in her article, "Nous et les autres: Is Universalism Ethnocentric?", reprinted as Chapter Two of *The Claims of Culture* (2002).

Benhabib is a moral universalist who makes a distinction between the moral, which is universally valid, and the ethical, which is specific to a particular cultural community. She understands the cultural to fall in the latter realm, of the ethical. She then makes the claim that "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* or disrespect them by dismissing their life-worlds altogether. We may disagree with *some* aspect of their moral, ethical, or evaluative practices without dismissing or holding in disrespect their life-worlds *altogether*" (Benhabib, 2002, p. 41). I agree with Benhabib's claim here insofar as it affirms that one can morally disagree with part of a cultural community's beliefs or practices without rejecting their cultural tradition as a whole.

However, I argue for moral pluralism rather than moral universalism. There is not necessarily only one morally right principle and/or way of doing things in the field of the political or the cultural that everyone should follow in order to be moral. Some theorists might call this view universalism with strong contextualism. Eisenberg (2002), for instance, might make this judgment, given how she describes her own position. Others might call this view pluralistic relativism. David Wong, who describes his own moral theory as a pluralistic relativism, might describe my view in these terms, though there are significant differences between his view and the one I advance in this thesis, a discussion of which lies beyond the main scope of my analysis, which is oriented towards the moral pluralism of alternative modernities. For the purposes of this current project, which is a work of political philosophy,

I prefer to describe the position for which I am arguing simply as moral pluralism, and bracket the question of whether this counts as strong contextualism or weak pluralistic relativism. Some of the reasons justifying this approach are given below.

Where I do affirm certain broad moral universals, it is not on an *a priori* basis, or at least not a comprehensive one, but on the basis of a deliberative democratic approach to establishing moral universals. In the political sphere, I believe that deliberative democracy has taken us far enough to make some important broad claims about certain moral standards. For example, I affirm the moral universalism of human rights insofar as these have been democratically validated by a genuine international consensus. I affirm the moral universalism of democracy, but not on the conditions affirmed by Benhabib's liberal understanding of deliberative democracy. See my discussion under the fifth heading in Chapter One, including my discussion of Bell's (2015) arguments, for a justification of this affirmation and some of its details.[8]

Secondly, I affirm a moral pluralism not only in the substantive sense, but also in the *methodological* sense. In other words, as a political philosopher, a key aspect of my method is that I take as a *starting point* for political inquiry the presumption of the equal moral worth of non-liberal cultural and political practices and moral beliefs. This presumption of course, has limits. For example, practices and beliefs that *grossly and obviously* deny actually existing international consensus on human rights and the equal worth of all human beings are not deserving of the benefits of such a presumption. Nevertheless, even if *particular and specific* grossly and obviously wrong cultural and political practices and moral beliefs are not worthy of consideration, this does not preclude methodological pluralism about a particular *culture* or cultural tradition itself. In fact, I propose that methodological pluralism about cultures and cultural traditions, for critical democratic reasons that promote the agency of the

[8] See also Parekh (1992).

marginalized, vulnerable or misunderstood, can become especially important in cases where one's initial impression of a culture or cultural tradition of which one has limited knowledge, is dominated by one's judgment that particular and specific cultural and political practices and moral beliefs are grossly and obviously wrong and not worthy of consideration.

It may be objected that the difference between Benhabib's commitment to moral universalism, and my commitment to moral universalism where the latter falls within the defining constraints of my affirmation of substantive and methodological pluralism is only a difference in terminology. (Or more likely, this objection will be raised in relation to my critique of Kymlicka's liberal universalism.) I disagree that this is so (for both Benhabib and Kymlicka), but perhaps my claim to this difference between moral universalism and moral pluralism is most obvious on the point of methodological pluralism. Consider the following statement Benhabib makes in *The Claims of Culture* (2002) as a follow-up to her affirmation of the partial validity of many cultural traditions cited a couple paragraphs above:

> …one can condemn the ancient Chinese tradition of foot binding of women while admiring Chinese calligraphy, pottery, and dedication to the value of honest work. Likewise, one can condemn the controversial rite of sati (widow burning) while praising Indian erotic traditions, Indian pluralism, and the everyday sense of the aesthetic. In others words, we need not approach cultural traditions and worlds as wholes. The method of complex cultural dialogue suggests that we focus on the interpenetration of traditions and discourses and disclose the interdependence of images of the self and the other (p. 41).

This paragraph is the full extent to which Benhabib discusses Chinese culture and Indian culture in *The Claims of Culture* (2002). On my reading, this paragraph, written in the context of a 213 page book on political philosophy, is a fundamentally ethnocentric statement, for reasons I will explain presently. On the one hand, what she says in this paragraph does not technically violate her commitment to respect human beings as "culture-creating beings" (at least on her definitions of respect), nor does it technically violate her belief that "cultures permit varying degrees of differentiation between *the moral,* which concerns what is right or

just for all insofar as we are considered simply as human beings; *the ethical,* which concerns what is appropriate for us insofar as we are members of a specific collectivity, with its unique history and tradition; and *the evaluative,* which concerns what we individually or collectively hold to be valuable, worth striving for, and essential to human happiness" (p. 40). However, I argue that it is fundamentally ethnocentric, disrespectful, and potentially harmful to Chinese and Indian cultures and communities to describe (and so briefly) what is good or morally admirable about those cultures exclusively through examples of cultural products that do not reference political and moral practices *in the context of a book entirely about political and moral philosophy.* This is a rhetorical and a methodological moral failure, but I also believe that it has substantive implications for how Benhabib understands moral universalism.

Regarding methodological pluralism, I believe it is more likely, not only to produce better and more nuanced arguments, but also to be culturally inclusive and respectful. It could also be more facilitative of the empowerment of marginalized members of non-liberal cultural minorities than methodological universalism. Methodological pluralism promotes the agency of vulnerable individuals (in this project, this means "conservative" women in restrictive societies), including sometimes emancipatory agency of the kind liberals promote. it also promotes progressive reform of political institutions of a formal and informal kind. In addition, the theoretical approaches of methodological pluralism *complement* approaches of methodological universalism, and the two in dialogue produce better results all round.

On the point of a substantive affirmation of moral pluralism, I firstly, offer some particular variations on moral universals with regards to state or societal affirmations of "thin" theories of the good (see Chapter One), as well as possible moral variations in terms of cultural practices.

Secondly, I affirm the claim that the diversification and recognition of particular moral languages in the discussion of moral universals and morality in general is itself a form

of substantive moral pluralism. This is so for several reasons: it recognizes agents whose cultural perspectives are defined by these moral languages as moral agents. It contributes to the manifestation of alternative modernities and their international and scholarly recognition. It also furthers the project of cultural diversification, and has emancipatory and/or empowering effects for members of cultural groups who live in politically restrictive conditions.

Thirdly, I affirm the claim that it is fundamentally democratic to be at least a methodological pluralist if not also a substantive moral pluralist.

As a corrective to Benhabib's statement above, I affirm Taylor (1994a), who says, "There must be something midway between the inauthentic and homogenizing demand for recognition of equal worth [of all cultures], on the one hand, and the self-immurement within ethnocentric standards on the other. Perhaps we don't need to ask whether it's something that others can demand from us as a right. We might simply ask whether this is the way we ought to approach others" (p. 72). That is to say, I affirm Taylor's ethical principle of the presumption of the equal worth of all cultures. Note however, that I do not affirm the implied notion in Taylor's (1994a) work that the full and comprehensive ranking of all cultures will be possible sometime in the future. This notion is untrue[9] and/or irrelevant/harmful within the context of political philosophy.

Immediate aims and scope of the current project

The immediate aim of the current project is to contribute to the larger project of making space for alternative modernities within the context of critical democratic multiculturalism by firstly, developing the latter dimension of critical democratic multiculturalism—that of a critical theory approach to multicultural analysis, and secondly, to

[9] See David Wong (2006) for a justification on this point.

identify some possible examples of legitimate political variations to those favoured by liberal multiculturalists.

The dissertation is organized into two parts: The first section systematically critiques the dominant liberal multiculturalist model based on Canadian multicultural policy and theorized by Kymlicka, which is oriented by the liberal state's perspective in its aims of integrating minorities. In the first chapter, I reject his universalist principle of liberal neutrality as the standard for justice in favour of a pluralist democratic standard that accommodates "thin" theories of the good. I also address the question of religious neutrality in religiously pluralist states. In the second and third chapters, I reformulate Kymlicka's categories of "national minorities" and "polyethnic minorities" respectively in order to take account of postcolonial indigenous sovereignty in relation to the Dene nationalist movement, and the transnational scope of ethnic identity in relation to East Asian "immigrant" minorities. In Chapter Two, I also address the question of the shifting and ambiguous line between religion and culture by applying Eisenberg's identity approach to a case study of the conflict in Québec over the legitimate place of "religious symbols" in the public sphere.

The second section develops a pluralist account of agency in its descriptive (Chapter 4), normative (Chapter 5), and prescriptive (Chapter 6) dimensions (Deveaux 2006 p. 179). This is developed as a constructive critique of liberal standards of autonomy, particularly feminist proposals for a standard of procedural autonomy, as unable to adequately describe and assess heteronomous agency. The second section is a critique of multicultural theory insofar as it takes as its framing structure and starting point, the treatment of the question of "minorities within minorities". Here, both the independence ideal of autonomy, and the authenticity ideal of autonomy are challenged through a constructive critique. The independence ideal is challenged with reference to the heteronomous structure of the Confucian family, both in terms of classical philosophical texts, as well in relation to present

day parent-child dynamics and the questions posed by parent-child conflict. In relation to the authenticity ideal, the Muslim women in the Egyptian pietist movement challenge this ideal through their self-project of a life made from the outside in.

Section I: Culture, identity, and the neutral liberal state

In this section I focus on the Kymlickan framework for organizing a just model of liberal multiculturalism. His theory aims precisely to spell out the just basis of Canadian multiculturalism and formalize it into a theoretical standard against which the actions of the Canadian government and governments of other pluralist societies could be assessed.

In the conventional liberal multiculturalist framework, Kymlicka begins from the starting question, what cultural rights would liberals accept as compatible with justice? This produces a liberal standard for the protection of individual freedoms that serves to assess the justness of the nationalist projects of cultural minorities, and places the focus of scrutiny on minority groups as to how well they measure up to liberal conceptions of justice.

If we instead begin from our alternate starting point of the conceptions and aims formulated by identity groups themselves to determine a just model for national identity, we begin from the question, what is it that cultural minorities describe when they assert a cultural nationalism or cultural identity as a legitimate claim of justice, and how well do liberal formulations meet these claims?

The flip side of the question places the scrutiny on the conventional model of liberal multiculturalism by asking, how well does the liberal multicultural model satisfy the legitimate conceptions and aims of minority nationalisms that meet universal requirements of justice?

When the focus of scrutiny is flipped into an assessment of the dominant theory of Kymlickan liberal multiculturalism from the perspective of identity groups, what becomes conspicuous is the inadequacy of Kymlicka's idiosyncratic definition of culture to meeting the just demands and priorities of oppressed or marginalized ethnocultural minorities.

Chapter One gives an extended critique of the liberal political basis for Kymlicka's model of multiculturalism. This political basis is his principle of neutrality which he justifies and defends in *Liberalism, Community and Culture* (1989), where he contraposes the liberal management of pluralism with that of the communitarian model. This chapter serves to clear the necessary space for my own proposal for the requirements of a political basis for just cultural societies that is inclusive of both liberal and non-liberal models of moral legitimacy.

Chapter Two expands the scope of moral legitimacy by rejecting the neutral liberal definition of national identity that circumscribes the cultural identity aims of national minorities. In the first part of the chapter, I question whether Kymlicka's culturalized understanding of civic nationalism can do justice to the sovereignty aims of indigenous nationalist movements. In the second part of the chapter, I point to the ways in which liberal secular regimes subtly deviate from the neutral liberal ideal through shifting definitions of the boundary between public culture and private religion. These examples point to the need for standards of assessment of inclusivity and non-discrimination in relation to national membership that can expressly recognize the legitimacy of structures of public culture that deviate from that assumed in the liberal nationalist ideal.

Chapter Three expands the scope of moral legitimacy by rejecting Kymlicka's definition of culture as societal culture, a definition which justifies too wide a scope for the assimilation of immigrant cultures and reduces the scope of analysis of the cultural aims of immigrant groups to the interests of the liberal state and the expectations of the majority group. In pursuing this aim, I argue, not for the rejection of Kymlicka's model of accommodation and account of immigrant expectations and aims in relation to the "host" society, but for the expansion of analysis beyond that relation, through the recognition that cultural groups do not define themselves only in relation to the dominant majority, but also through a diasporic understanding of their ethnocultural identity.

Ch 1: A critique of Kymlicka's principle of neutrality in five iterations:

The aim of this first chapter is to reject Kymlicka's instantiation of liberal neutrality as the only just political basis for a multicultural state. In its place, I argue in favour of recognizing the legitimacy of plural multiculturalisms—liberal and non-liberal, each with a thin theory of the good. That is, I reconceive the universal moral requirements for a just political basis for multicultural states.

Kymlicka presents a choice between two political frameworks for organizing a common national identity: a liberal politics of neutral concern that would be universally acceptable to citizens with a diversity of conceptions of the good, and a communitarian politics of the common good, which would be particular to a certain conception of the good. He makes a moral case for supporting the former over the latter on the basis of egalitarian justice.

I reject the notion that there is a category of neutral politics which liberalism is uniquely qualified to inhabit, that sets it apart from all other political frameworks for national identity which would stem from culturally particular conceptions of the good. I favour an interpretive lens which would qualify all politics as politics of the common good (i.e. politics that tend towards the advantage of the dominant group's values). In my view, the choice of political theory for *all* regimes is between different thin theories of the good that are capable of meeting the basic requirements of egalitarian justice.

Kymlicka originally makes his claim within the theoretical context of the liberal-communitarian debate, but his solution to this question is meant also to answer the question of the appropriate political basis for common culture and egalitarian justice in a multicultural state. Since I am ultimately interested in the theoretical implications for the latter context of multiculturalism, I will be directing the assessment of Kymlicka's claims with that context in

mind. In the discussion below, I apply Kymlicka's various formulations of neutrality to his own political framework to demonstrate that his theory of liberalism fails to meet the requirements of neutrality. I argue that a less demanding standard is sufficient to serve as a measure of a just society. Following this assessment, I propose a modification of Kymlicka's formulated requirements for egalitarian justice in a multicultural context that would be more inclusive of alternative "thin" formulations of the good to that of his own model of liberal multiculturalism.

The reason Kymlicka judges communitarian politics to be illegitimate is because a 'politics of the common good' would require a basis of shared ends that would be legitimate for everyone in society, a basis which Kymlicka (1989a) thinks does not exist (p. 86). In his view, a liberal politics is the only legitimate alternative since a 'politics of neutral concern' does not rest on a basis of shared ends, but on the state's protection of the essential and equal freedom of every citizen to pursue and revise their chosen ends.

Communitarian[10] critics such as Taylor (1985) and Sandel (1998) have challenged the liberal claim to neutrality, arguing that liberals are in fact committed to certain moral priorities that stem from particular judgments about the good. Kymlicka's (1989a) response to this critique is to acknowledge that liberal morality is justified on a "thin theory of the good" but that liberal politics remains neutral because the endorsement of this thin theory of the good is meant precisely to secure an egalitarian "politics of neutral concern" in contrast to an exclusionary communitarian politics which would endorse a particular way of life above all others (p. 33, p. 78). I take up this critique of liberal neutrality below and examine Kymlicka's claims to it in five various formulations.

[10] I think of these as 'first generation communitarians'

In what sense neutral?

The first thing to note about Kymlicka's liberal claim to neutrality is that it cannot meet its own requirement to provide a basis that would be endorsed as legitimate by everyone in society. This is because all standards of neutrality are qualified rather than absolute standards. By Kymlicka's (1989a; 1989b) own description, his standard of neutrality is qualified as a justificatory neutrality as opposed to a consequential neutrality (p. 884; p. 96 n. 2). Kymlicka's (1989b) justificatory neutrality is committed to state neutrality with regards to a definition of the good life, in the sense that government refrains from evaluating conceptions of the good by "not [taking] a stand on which ways of life are most worth living, and the desire to help one way of life over another is precluded as a justification of government action" (pp. 883-884). However, Kymlicka (1989b) is not committed to consequential neutrality or a neutrality of effect, which "requires that the state seek to help or hinder different life-plans to an equal degree", since justificatory neutrality may well produce unequal effects on the pursuit of different ways of life, and indeed, posits principled reasons to justify such differential effects (pp. 883). These two are competing conceptions within liberal theory of what it means for the state to maintain a principle of neutral concern, and thus, it is not at all clear that a political consensus could be reached on one over the other by treating all perspectives with equal detachment. Indeed, the necessity of choosing between standards of imperfect neutrality is recognized as an operative limitation of justice in juridical reasoning.[11]

It is not clear why those who are disadvantaged in terms of this non-neutrality of effect would endorse a neutrality of definition. Liberal democratic proceduralism would entail that the majority choice in light of a dispute between standards of neutrality wins (Rawls, 2005, p. liii). This limitation sits uneasily with the fact that the purpose of

[11] See for example, S.L. v Commission scolaire des Chênes, 2012, paras.30-31.

establishing a principle of neutral concern is precisely to protect minorities against the unequal implications of majoritarian decision-making. Thus, even if we allow that Kymlicka's principle of equal concern meets a standard of neutrality, the evaluation that determines the choice of which standard of neutrality is not neutral. He explains the principled moral reason for the choice of justificatory over consequential neutrality as stemming from a belief in what he calls a "principle of responsibility" that would require people with "expensive tastes" to adjust their pursuit of the good to their share of societal resources (Kymlicka, 1989a, pp. 37-39). This expectation of personal responsibility that is demanded by Kymlicka's (1989a) conception of justice makes a moral claim about the subject of the good life that legitimizes some conceptions of the good life while excluding others (p. 33).

The conception of resource-heavy conceptions of the good as "expensive tastes" would, from the perspective of some who hold them, be a crude description of deep-seated convictions and beliefs that may require more resources to pursue. The use of this loaded language points to a particular conception of agency as underlying it. It is much easier to agree with Kymlicka (and Rawls) on a principle of responsibility if one also favours a perspective on agency that is primarily categorized by choice of one's ends, as opposed to a perspective on agency that views the genesis of one's deep-seated commitments and values primarily on the model of discovery, where one's ends are given in advance of the self-reflection which identifies and affirms them (Sandel, 1998, p. 58). If one endorses the latter over the former model of agency, the expectation that one must adjust one's moral commitments in light of the rights of others becomes a more complicated matter, one that becomes inappropriate to describe in the language of "expensive tastes" where the commitments and beliefs are of a more fundamental sort. An example of a political model that may be compatible on some interpretations with the latter conception of agency and a

principle of consequential neutrality is Indian constitutional secularism, which provides the justification for non-preferential state aid to all Indian religions. On the interpretation of Jha (2002, as cited in Katrak & Kulkami, 2021), the Indian Constitution was drafted on the basis of a theory of secularism that would operate, not by maintaining separation from religion, but by actively respecting all religions equally. Similarly, Dhavan (2001) argues that a key approach of Indian constitutional secularism is its "celebratory neutrality", which describes a "participatory secular state which would neutrally assist and celebrate all faiths and generally not discriminate amongst them" (p. 311). Sadly, this vision of secularism was never fully implemented and, through the political rise of the Hindu nationalist Bharatiya Janata Party--now the ruling party of India--has deteriorated almost completely into a majoritarian regime that actively facilitates the violent oppression of the Muslim and Christian minorities.[12] Singapore is perhaps a more promising example which could also fit into this category of neutrality of effect. I discuss Singapore under the fifth heading of this chapter.

Does Kymlicka's liberalism really refrain from endorsing standards of the good?

One of Kymlicka's legitimate concerns is that communitarianism can lead to authoritarianism. However, he often expresses this concern uncarefully by equating communitarianism by definition with authoritarianism simply by the fact that communitarians sanction state-endorsed conceptions of the good. At the same time, he fails to recognize the ways in which liberalism also poses shared conceptions of the good as legitimate objects for state endorsement, and thus fails to recognize that not all authoritative endorsements of the good are also authoritarian. In his words, Kymlicka (1989a) frames communitarianism as illegitimate in contrast to liberalism because communitarian authorities endorse a substantive

[12] See for example, Katrak & Kulkami (2021) and Dhavan (2001) for analyses of the historical factors that contributed to the erosion of this egalitarian vision.

conception of the common good which, rather than "adjusting itself to the pattern of people's preferences, provides a standard by which those preferences are evaluated" (p.77).

Kymlicka thinks that the liberal endorsement of autonomy serves entirely to promote individual freedom of choice in the pursuit of the good life, empowering rather than hindering individuals in this pursuit. However, Kymlicka's liberalism poses Kantian autonomy as an evaluative standard that assesses choice, as is evident in his elaborations of the ideal of autonomy grounding the associated political principle. This ideal does not simply equate autonomous preference and choice with first person perspectives and claims, but rather with a preconceived moral ideal for the pursuit of the good life which poses a morally regulative standard for what counts as authentically autonomous choice. The normative ideal is the consequence of Kymlicka's (1989a) claim that the Kantian sovereign self is the universal account of agency as understood from the self-referential perspective of any individual: "we understand ourselves as sovereign moral agents (i.e. as having the capacity, *and indeed the task,* of judging the value of the purposes we could pursue)" (p. 61). If all this meant was that the agent's pursuit of her purposes must be voluntary (through some minimal indication of consent or endorsement), this may well be unproblematic. However, Kymlicka (1989a) explicitly endorses a Kantian account of reflective endorsement that is narrowly rationalist in content:

> As Kant says, "we cannot possibly conceive of a reason as being consciously directed from outside in regard to its judgments; for in that case the subject would attribute the determination of his power of judgment, not to his reason, but to an impulsion. Reason must look upon itself as the author of its own principles independently of alien influences" (Kant p. 116). We can see ourselves as having come to a judgment for external causal reasons, but we can't stay with it unless we endorse it as independently valid. (p. 62).

Kant's transcendental rationalism presents a picture of reason as independent of both the socialized and embodied self, categorizing even the individual's own feelings and affinities

as providing only external causal reasons unless validated by reason alone. While Kymlicka is attempting to affirm Rawls' grounding of Kant's transcendental reason in practical reason, the picture of reason Rawls affirms in the original position remains one that holds up this narrowly rationalist ideal as modeling reason in its purest or clearest form—that is, as independent of any considerations from our particular attachments, affinities or experience, or even of awareness of embodied characteristics such as that of gender, sexual orientation, or disability. Feminist theorists have long taken issue with this account of choice and agency as overly masculine and unnecessarily dismissive of the reflective contributions of emotion, and as underestimating the role of embodiment in constituting our conceptions of self.

Moreover, Kymlicka's rationalism comes very close to a categorical rejection of all forms of normative socialization that do not proceed through this rationalist mode of endorsement, presenting them as violations or at least, distortions of autonomy. This rejection is given in the context of rebutting a counterargument to his principle of revisability. This counterargument Kymlicka (1989a) ascribes to MacIntyre as the concern that authoritative norms and prescribed roles have a guiding function that is needed to provide even the sovereign agent with the confidence to pursue the ends she has chosen, even if this confidence is produced by discouraging or even limiting individual questioning and revision (pp. 61-2, 72-3 n. 6). In rejecting this communitarian argument, he draws a contrast between his own liberal approach and the communitarian one to present a strict dichotomy between individual choice and authoritarian prescription:

> The liberal view operates through people's rationality—i.e. it generates confidence in the value of one's projects by removing any impediments or distortions in the reasoning process involved in making judgments of value. The alternative view operates behind the backs of individuals involved—i.e. it generates confidence via a process which people can't acknowledge as the grounds of their confidence. We'd lose that confidence if we thought our beliefs weren't rationally grounded, but rather merely caused (Kymlicka, 1989a, p. 62).

Here, he reasons that the judgment of a conception of the good life as good is either independently judged as good by a self-determining reason, or it is caused and therefore "works behind the backs of its members" by "distorting conscious reasoning" (Kymlicka, 1989a, p. 62-63). The problem with Kymlicka's claim is that the contrast he draws between choice and social prescription is too categorical—not only is it a form of ideal rather than real theory, it obscures the ways in which liberal regimes legitimately and on principle employ solidaristic, empathy-driven or even sloganistic public campaigns in order to promote liberal values, in addition to or in place of rational persuasion, and do so as a matter of regular practice. Furthermore, it obscures the way in which rational persuasion is always employed in a rhetorical medium, a fact about language that is inescapable.

Moreover, Kymlicka's claim presents the authoritative guidance that may be employed by perfectionist regimes in a reductive manner. As I discuss in the examination of agency in section II, Ranjoo Herr (2010) argues for recognition of a legitimate form of heteronomy that is supportive of individual agency in non-liberal contexts. Here, an individual who relies on an authoritative figure such as a parent or religious leader to guide or even prescribe major life decisions and commitments on their behalf may be considered agential if the agent has reason to trust the proxy to act in their best interest. This would involve a form of authoritative guidance that would not be "working behind the backs of members", but that is not based on autonomous choice or independent reflection either. Kymlicka may well reject such a model of non-autonomous guidance on liberal grounds, but it would surely be reductive to categorize such a model as a form of manipulation or deception. Additionally, Kymlicka's claim draws a false dichotomy insofar as he neglects to analyze the role of non-rational factors of decision-making that fall conceptually in-between independent choice and social prescription, that is, the acculturation of situated subjects in a society which does not just direct or refrain from directing the individual to specific ends, but

also shapes general patterns of preference--a phenomenon of social conditioning that operates not only on a programmatic level, but is a basic and unavoidable fact of our social embodiment, and takes the form of culture. Kymlicka argues that our inherited cultural or socialized preferences can and should be independently rationally endorsed once their genesis is discovered, but this overestimates the independence of our reasoning faculties from our culturalized predispositions if Kymlicka (1989a) is indeed set on affirming the strict Kantian dichotomy he sets up, as he does in citing Kant's distinction between independently determinative judgment and "impulsion" (p. 62).

In contrast, clarifying this mixed view of choice and heteronomous direction serves to widen the scope of what it means for an agent to have legitimate reasons for action that rejects the narrow Kantian model that Kymlicka affirms here, and as a consequence, makes clear the difference between this larger category of mixed models which would include greater or fewer authority-driven formative practices, and genuinely authoritarian regimes that restrict basic individual freedoms and reject democratic authority.

The task or standard for choice in Kymlicka's (1989a) Kantian account is presented as self-given, and even a matter of self-compulsion, a task of autonomous judgment that our own sense of personal sovereignty compels us to take up for ourselves rather than defer to others (pp. 61-63). This account presents the Kantian standard of choice as originating out of agency rather than through an imposition upon it. However, given that the universality of this account of agency is contested, and therefore, does not align with every individual's self-understanding, this standard then becomes, for those individuals, a standard that renders a moral judgment on the individual against their own perspective. As Deveaux (2000; 2006) has rightly argued, the narrowness of Kymlicka's standard of autonomy sets up a situation in which autonomy can be used as a reason to reject the voluntary commitments and acts of individuals themselves as failing to meet a liberal standard of choice or consent, or as ruling

out certain group-specific forms of social conditioning prior to any appraisal of its acceptability from the perspective of community and vulnerable group members (p. 132; p. 37).

Interestingly enough, it turns out that Kymlicka's operational assessments of the choices and practices of minority groups differ from the narrow Kantian account of agency he attests to in his theoretical account. In his assessment of case studies, he consistently proceeds on a standard of autonomous choice that takes bare consent to be sufficient, without engaging first in an assessment of the rationality of the agent's justificatory reasoning. Yet it is clear that even if Kymlicka does not endorse a formal political validation of individual consent, he does endorse a moral standard of choice that he takes to be authoritative and as giving a moral judgment on peoples' self-affirmed choices even if this standard is not given political force. Moreover, as Deveaux shows, Kymlicka's moral standard does have indirect political consequences on peoples' choices that would qualify as causal rather than rational modes of persuasion on his own definition. For example, one of the possible responses he identifies for liberal states in response to minority requests for state funding for religious schools is to make funding conditional upon the inclusion of liberal democratic values in the curriculum (Kymlicka, 2015, p. 29). Elsewhere, Kymlicka (1995) looks favourably on causal methods of persuasion in general in the circumstance of contemporary liberal states using financial incentives to coax illiberal states to adopt liberal policies (p. 166). In relation to the example of conditional state funding for religious schools, this can conceivably be thought of as government policy designed to causally guide the individual judgment of group institutional authorities, parents and students in their choice of schools through a predetermined schedule of values that set the conditions for state support. Included among this list of values is gender equality, presumably a liberal interpretation of this as excluding gender differentiated socialization. This may preclude some parents' or students' choice to prioritize the benefits of

religious schooling for individual empowerment and academic achievement over liberal concerns for gender-identical socialization (Deveaux, 2000, p. 133). If he were to endorse a model of pure rational persuasion, this might present an alternative which could involve community and student consultation on the desirability of such schooling from the perspective of the students and parents, and reflective cross-cultural discussion of the developmental risks to autonomy, and come to a decision through a deliberative democratic approach rather than precluding funding *a priori* based on a predetermined schedule of values that would eliminate an option from the viable range of choices of schooling within the community or make financial support conditional on conformity with the state's schedule of values. My point is not necessarily to argue for state funding of gender-differentiated schooling, but to demonstrate that Kymlicka's model of liberalism does involve the state serving as a moral authority that assesses, guides and even limits the choices of citizens.

Kymlicka's anti-perfectionism

Kymlicka's rejection of state perfectionism depends on a particular understanding of perfectionism that implies a hierarchy concerning conceptions of the good. Kymlicka (1989b) defines perfectionism in terms of this characteristic, as "the public ranking of the value of the different ways of life" (p. 900). He argues in favour of liberal neutrality against communitarian critics of liberalism who propose civic republicanism as a democratic form of state perfectionism. The difference between liberal neutrality and civic republicanism, in Kymlicka's view, is that liberal neutrality is an approach that relegates collective deliberation about the ranking of different conceptions of the good to the informal sphere of the cultural marketplace, while civic republicanism relies on state forums and formal processes for public deliberation to determine the collective good. Respectively in Kymlicka's (1989b) account, liberal neutrality endorses the informal (and everpresent) processes of social perfectionism but rejects the formal instantiation of state perfectionism, while civic republicans distrust the

cultural marketplace as an adequate forum for deliberative determinations of the good and advocate for formal political processes for collective deliberation and action (p. 899). Kymlicka's (1989b) reason for rejecting state perfectionism is that the "all-embracing authority and coercive means which characterize the state make it a particularly inappropriate forum" for collective deliberation about the good (p. 899). He reasons that while communitarians may be right that the cultural marketplace is a forum that encourages majoritarian domination, state perfectionism is worse because it intensifies the risks of majoritarian domination by empowering it with the full coercive power of the state. The perfectionist state is given the mandate to employ state action to adverse effects for minorities and their ways of life (Kymlicka, 1989b, p. 900).

This argument against perfectionism is formulated within the liberal-communitarian debates where interlocutors are arguing from within the same cultural context—that of western liberal-democratic societies where ethnocultural traditions and identity are shared across competing positions. Within such a context, state formative projects involving conceptions of the good do imply, as Kymlicka describes, the choosing and ranking of moral values, practices, and virtues that are formulated in opposition to and as arguments against one another. For example, civic republicans valorize a different aspect of ancient Greek democracy than liberal democrats—the Greek forum as opposed to the basic idea of distributing sovereign rule to each recognized citizen translated into the contemporary electoral system of one man, one vote (Parekh, 1992). Relatedly, civic republicans formulate communitarian arguments for cultivating a basis for shared values as a solution for what they see as the self-defeating principles that govern liberal individualism, while liberals argue for state neutrality as a safeguard against state enforcement of the traditionalism that has historically been expressed by republican ideals.

However, Kymlicka's rejection of perfectionism is not only intended as a response to the liberal-communitarian debate about the best political model for western liberal societies, where the different positions involve claims of superiority against one another, but is also meant to apply to sovereign nations and self-governing national minorities or subnational communities whose formative projects are not justified primarily on the basis of claims of moral superiority to competing alternatives, but on the basis of the affirmation of cultural identity and the promotion of cultural survival. In this latter context, state perfectionism does not reduce to the act of ranking conceptions of the good. While moral arguments in favour of certain cultural values may also be proffered by proponents of various of these groups, what is essential to their motivations in affirming certain values or practices is the attachment to one's cultural identity. Thus, the Québec government does not take a stance of neutrality towards the survival of French language culture, leaving its chances to the cultural marketplace, and this formative project for creating French speaking citizens is not justified on the basis of the superiority of French over English. Similarly, the Inuit of the self-governing territory of Nunavut do not justify their democratic endorsement for the state promotion of traditional ways of life primarily on the basis of the superiority of these traditional practices to modern western practices, but on the basis of identity. Of course, there are also values that are justified on the basis of moral arguments for the superiority of certain cultural practices to competing alternatives in both these examples. For example, the recent arguments in Québec for French style "strict" secularism and a republican legal regime as superior to the alternatives of "open" secularism and English common law, or the Inuit ratification by democratic vote in 1992 of the Nunavut Land Claims Agreement (1993) negotiated between the Tunngavik Federation of Nunavut and Canada, wherein land claims under historical treaty were ceded in exchange for the creation of a new Inuit-dominant territory that would honour traditional values and customary practice through various means

of oversight (p. 1). For example, in which land development would be governed by conservationist principles overseen by an appointed government committee rather than a more open-ended market-driven capitalist approach to land development (Nunavut Land Claims Agreement Article 11.2.1). But accompanying these moral arguments is the conscious recognition by claimants that one's endorsement of the respective value or practice is partly or even primarily justified on the basis of an identity claim. In this context of justification, state perfectionism does not primarily or necessarily imply a public ranking of conceptions of the good. State endorsement of formative projects of identity do not necessarily imply a claim of superiority for the values in question nor an inevitable denigration of minority doctrines. There are, however, definite circumstances where identitarianism is a clear danger, a key one being when religion or ethnicity is politicized as an oppressive or exclusionary nationalism.

One might object to my argument at this point on the basis that the above examples I have provided inappropriately apply the conception of perfectionism to cultural identity rather than moral values. Kymlicka intends his discussion of perfectionism to apply to the choice of ends of the good life available within a societal culture, not to cultural identity, where he thinks the former involves subjectively variable judgments on the objective value of competing doctrines of the good, while the latter involves only universally legitimate (i.e. liberal) moral commitments which anyone can and should endorse. Firstly, this presupposes that the line between moral universalism and moral particularism falls where Kymlicka says it does, and that his version of political liberalism is in fact value-neutral. Secondly, and more relevantly to the immediate point, this presumes that when any individual or group endorses a collective aim or good as an aim for their particular society, such an endorsement is always made in the form of a universalizing judgment of moral worth rather than an affirmation of one's commitment to follow an inherited or preferred way of life. That is, Kymlicka assumes a Kantian view of individual choice as the assertion of the universal law, rather than a view

where the choice of the good life often proceeds from loyalty to a cultural identity and is situated against a pluralist position on the value of the collective aims of different societies or cultures. While groups may sometimes accompany such an endorsement with a claim of cultural and moral superiority, it is also common for such an endorsement to be exclusively self-referential to the group's identity concerns and lack a comparative moral claim of superiority to alternatives from other cultural contexts.

A second aspect of this objection about my argument is more serious and indeed represents an important consideration with regards to the legitimacy of state perfectionist projects. The concern here is that, even where a cultural group authority endorses a value or practice on the basis of identity motivations rather than on the basis of moral superiority to other cultures, there remains the fact that the value or practice will represent the view of the dominant elite who control power within the group. Marginalized members of the same identity group (or those that reject that identity or never shared it in the first place) may prefer competing interpretations of cultural values or practices, or reject the traditional value, role or practice altogether. State endorsement of the values of the dominant elite do imply a claim of superiority to marginalized alternatives, and do carry the risk of unjust consequences for or even the penalization of vulnerable dissenters. This is an important concern which demands adequate response. Here, I first stress the point that I make throughout my critique of liberal neutrality, that all regimes, including those that endorse a neutral position in relation to conceptions of the good advance formative projects and endorse values that are controversial or that disadvantage those in the minority view. As Sandel (1998) has cogently argued, even policies that are justified on the basis of justice claims rather than conceptions of the good can and often are endorsed in the face of significant moral dissent, such as the endorsement of liberals and liberal state representatives of the right of women to access legal abortions (p. 198). If we accept that absolute neutrality is not an option, my view is that to pose the choice

of regime as that between one that has a moral agenda and one that does not is misleading. A better strategy is to distinguish minority disadvantage in the face of majoritarian moral positions from the active or unnecessary penalization of dissenters, the former which is unavoidable and needs to be minimized rather than eliminated, while the latter qualifies as an oppressive or unjust form of state or majoritarian rule.

In order to develop the justification for my rejection of neutrality and proposed solution, it is necessary to examine Kymlicka's elaboration of his definition of perfectionism:

> A perfectionist theory includes a particular view, or range of views, about what dispositions and attributes define human perfection, and it views the development of these as our essential interest. Perfectionists demand that resources should be distributed so as to encourage such development. What one gets depends on how much one needs to pursue, or how much one contributes to, this preferred view of the good life. People are not therefore, free to choose their own conceptions of the good life, at least not without being penalized or discriminated against by society …Rawls, on the other hand… favours a distribution of primary goods, based on a 'thin theory of the good', which can be used to advance many different ways of life. (Kymlicka, 1989a, p. 33)

If our understanding of the Rawlsian antiperfectionism endorsed by Kymlicka is that it promotes only autonomy while perfectionist theories promote a particular conception of the good, this clarification complicates matters. Here, Kymlicka acknowledges the fact that nonperfectionist liberalism promotes a "thin" theory of the good. This acknowledgement clouds the difference between a perfectionist and a liberal promotion of the good life. According to Kymlicka, a perfectionist theory promotes "a particular view or range of views" of the good life, while Rawlsian liberalism promotes "a thin theory of the good' which can be used to advance many different ways of life". The difference appears to be a rather vaguely defined range of choice that distinguishes a liberal thin theory of the good from a perfectionist theory.

Proceeding further into the definition, what qualifies a perfectionist regime beyond a vaguely defined narrowness in permissible options is the political impact on people's rights and freedoms: "People are not therefore, free to choose their own conceptions of the good life, at least not without being penalized or discriminated against by society". However, even this further specification is not as helpful as it appears. It is clear that it rules out overtly punitive regimes, but it does not necessarily clarify the difference between a tolerant perfectionist regime and a liberal nonperfectionist regime.

Kymlicka states that a perfectionist regime distributes resources in a way that promotes its conception of human perfection and the good life: "What one gets depends on how much one needs to pursue, or how much one contributes to, this preferred view of the good life". Is it clear that Kymlicka's liberalism refrains from distributing resources according to its own preferred range of views of the good life? Central to his theory of minority rights is his proposal that liberal states should provide for rights of cultural protection to threatened minority groups conditional upon their meeting liberal standards of legitimacy. In *Multicultural Citizenship* (1995), Kymlicka speaks to the use of financial and trade incentives, and privileges of membership as a means to apply acceptable pressure to encourage self-governing minorities to "liberalize" their governance policies (p. 168). This example can be justified on the basis of justice—the state is not attempting to influence individual choice of the good life, but attempting to encourage a group authority to increase freedom for individuals who would otherwise be restricted within the group—it is conceivably promoting the expressed claims of internal minorities.

In another example, Kymlicka's response to recent challenges to unequal funding of Catholic schools in some provinces to the exclusion of other religious denominations, Kymlicka (2015) suggests that it would be a permissible and even desirable project for the liberal state to extend state funding to religious schools of newer immigrant groups where

funding is made conditional on the fulfillment of a liberal educational mandate that involves the teaching of "the essentials of democratic citizenship, including human rights, gender equality and multicultural tolerance" (p. 29). Such a requirement would seem to restrict itself to the promotion of a relatively uncontroversial conception of justice, rather than to a particular conception of the good. However, Kymlicka (1993) elaborates this requirement to include education designed to develop the capacity of students to pursue a distinctly liberal ideal of autonomous self-creation in which it is not enough for religious schools to respect the individual freedoms of their students and to promote reflective agency in the learning of moral principles; schools sanctioned by a liberal government would be required to encourage students to question the validity of the beliefs or practices of their faith in order to "judge for themselves whether these practices are worthy of continued allegiance" (p. 95). In response to Tariq Modood's (1993) critique of Kymlicka's portrayal of British Muslims' demands and views, including on religious and sex-segregated schooling, Kymlicka (1993) spells out what he means by the requirement of a "broad liberal education" that is lacking in the community proposals: "Within the British Muslim view of education, "there is no question of individuals being encouraged through education to work out for themselves their own religious faith, or to subject it to detached rational investigation at a fundamental level", which would be a fundamental aim of a liberal education (pp. 94-95).

This liberal stipulation of the conditions for state funding does not promote individual freedoms in an uncontroversial sense, but rather, a very particular doctrine of the autonomously led life, for, in rejecting proposals like that put forth by members of the British Muslim community, rather than expanding schooling choices for a community, it would add a barrier to accessing an additional choice of schooling for many members. Poulter (1987) notes that British Muslim parents who would wish to follow the religious doctrine of *purdah,*

sex-segregation at puberty, are left without viable options in the event of state denial of public funding for religious schooling:

> For those parents who live in an area where the State schools are either exclusively or predominantly co-educational and who possess insufficient means to send their daughters to independent fee-paying schools this custom poses acute problems. They have no legal right to insist upon a place at a single-sex school and if they keep their daughters at home without giving them proper educational instruction they commit a criminal offence (p. 602).

Deveaux adds the point that even where proposals for religious schooling might include more active discouragement of or restrictions on autonomous reflection and choice, religious schooling may provide other desirable benefits that may be valued by parents and students over autonomy. She gives the examples of "a sense of place and belonging, reprieve from the constant sense of being culturally different (and perhaps from harassment by teachers and classmates); and in some instances, improved academic performance" (Deveaux, 2000, p. 133). In making a "broad liberal education" a condition for state-funding of religious schools, Kymlicka would preclude choices in favour of schooling that offers an alternative bundle of goods (Deveaux, 2006, p. 170).

In Kymlicka's account, this disadvantage would not necessarily amount to an injustice, for there is a significant distinction between refraining from providing support for and banning religious schooling. The latter would certainly violate a liberal mandate in any context, while the former is not required as a matter of justice, so long as all denominational requests for religious schooling are equally denied (Kymlicka, 2009, p. 9). While I do not dispute this claim, the fact remains that his liberal doctrine does offer a justification for how to distribute resources based on its preferred thin theory of the good, which affirms an interpretation of individual autonomy that is given the political authority to deny the conflicting claims of individuals themselves. The significance of the difference between a

tolerant liberal and a tolerant communitarian regime then comes down to whether one agrees with the basic moral justification of the state's thin theory of the good, in this case, a minimal endorsement of Kantian autonomy over competing interpretations of individual agency, and whether a decent scope for the freedoms of dissenters is protected. Posing this difference as a choice between neutrality and communitarianism is unhelpful and distortive of the relevant moral judgment to be made, and serves as a barrier to articulating a basic standard of justice in universal terms. The problem here is that Kymlicka's perfectionism overdetermines more universal requirements of justice.[13]

While I am posing the above argument in the context of fully sovereign nation states, it applies equally to the question of assessing the justness of self-governing minority communities within a state, what Kymlicka refers to as "national minorities". Writing in this latter context, specifically in terms of self-governing minorities within liberal states, Deveaux (2000) notes, "Kymlicka's argument cannot help us to distinguish between overtly antiliberal groups that restrict their members in coercive ways (which democrats cannot support) and merely nonliberal communities with more heteronomous ways of life (which democrats could potentially support)" (p. 133). Deveaux is responding to Kymlicka's argument for limits to the right to cultural protections as precluding internal restrictions and as justified only on the equality justification for external restrictions. In relation to indigenous minorities, both positions—that on internal restrictions and that on external restrictions, through their top-down universalist application of liberal principles-- entrench existing colonial assumptions that already proliferate, namely that justice would be better served by state authorities through the natural moral superiority of Western liberal principles over the justice principles of other systems of moral order, namely, First Nations tribal governance and constitutional

[13] Deveaux (2000) labels this Kymlicka's "weak liberal perfectionism", while Thomas Hurka (1995, as cited in Deveaux 2000) describes Kymlicka as an indirect perfectionist (p. 130).

treaty making. Kymlicka defends his approach by framing his project as one that does not supplant nation-to-nation discussion and negotiation with the forced imposition of liberal principles. He justifies his project as having the aim of getting clear precisely what it is that liberal principles entail prior to that discussion (Kymlicka, 1995, p. 171). The problem remains, however, that the scope of what is left up to debate are the practical applications of liberal principles rather than the cross-cultural legitimacy of the principles themselves, which he assumes to have universal validity. He does not investigate First Nations approaches in their differences from liberalism. Where he does mention these, he interprets them through a reductive liberal lens that obscures potential conflicts and legitimate differences of values. His justification for this assimilative strategy is that it is liberal authorities that need convincing of the rights of national minorities rather than indigenous ones, and presumably, that they are more likely to be convinced if minority claims and practices are presented in liberal forms. This approach is problematic since it reinforces the colonial assumption of the naturalness of evaluating cultural minorities according to liberal standards that are assumed to be superior. Moreover, Kymlicka's preferred equality principle directly conflicts with First Nations sovereignty claims. Kymlicka's argument for the priority of the principle of distributive equality closely matches colonial arguments for overriding historical treaty agreements, the latter which stems equally from historical European principles of constitutional negotiation as it does from First Nations treaty making (Tully, 1995). Distributive equality also assumes a top-down administration of benefits, a mode that matches the current system of colonial management. In this light, it is difficult to see how accepting Kymlicka's liberal framework can serve First Nations as a means to decolonization and both nation-to-nation and individual equality.

The relevant equality issue with regards to the question of internal minorities is not primarily about ensuring maximal options of choice for every individual, though of course, a

decent range of freedom in this area is pertinent to ensuring a good life for everyone. But, as I have been arguing, all societies have their thin theories of the good and promote certain ends and limit others on the basis of that schedule of goods, delimiting a range of options that is never optimal to the moral preferences of every citizen. Through his monism about autonomy, Kymlicka turns the principle of equal citizenship into one of freedom of autonomous choice rather than equality of membership. On the other hand, if the issue of internal minorities is treated more generally as a matter of ensuring equality of membership on the level of citizenship, its purpose is directed towards the plural principles of illegitimizing exclusion, discrimination and denigration—internal minorities should not be excluded from equal concern, recognition and inclusion, receive a lesser bundle of rights and benefits, nor be targeted with disrespect, hatred and violence. On the latter model of democratic rather than liberal equality, freedom of choice is protected as a component of basic human freedoms but does not amount to the only consideration of benefit, which includes a bundle of goods which may at times include tradeoffs of choice for security of belonging or material welfare, in other words, for the more varied array of goods that make up a good life and that may or may not align with a liberal schedule of goods. The check on state-sponsored collective ends in this model is democratic endorsement and the right of exit. Democratic endorsement ensures that state ends do actually benefit the majority of citizens in relation to their conception(s) of the good, and the right of exit provides a last option for dissenters. These checks, coupled with the principles of equal membership amount to a standard as robust as Kymlicka's liberal standard without imposing a liberal conception of the good on all groups.

Does liberalism necessarily do better in supporting the ability of subordinated and marginalized groups to define their own identities?

Kymlicka argues that because the shared ends of historically established cultural communities[14] generally stem from sexist, racist, homophobic, classist or otherwise exclusionary traditions, communitarian endorsement of these as constitutive ends will lead to oppression, or at least, fail to empower the subordinated and marginalized members of society (Kymlicka, 1989a, pp. 85-86). In his view, what liberalism does better in this regard is to provide minorities with the liberty and security required to define their own identities, through the endorsement of individual rights as a buttress against majoritarian projects (Kymlicka, 1989, p. 87). While Kymlicka does acknowledge that existing liberal regimes have yet to correct the inequality in their own historical institutions, he makes a categorical distinction between liberal and communitarian efforts at equality reform that sets liberal theory apart from its historical failures in a manner not attributed to communitarian theory. Specifically, he argues that liberal principles are sound, though liberal institutions need revision, but "the problem of the exclusion of historically marginalized groups is endemic to the communitarian project" (Kymlicka, 1989a, p. 87).

Kymlicka's skeptical lens on political movements which espouse projects of "shared ends" may be justified insofar as Sandel and MacIntyre elaborate the communitarian thesis through a romanticized view of early American and ancient Athenian politics. Kymlicka (1989a) points to Sandel's legitimation of communitarian reasons to support pornography bans in the latter thinker's 1984 essay, "Morality and the liberal ideal" as expressive of this dangerously naïve romanticism (p. 87). While Kymlicka, in discussing the issue of

[14] He has in mind as his exemplar the civic republican regimes referred to by Taylor and Sandel, and MacIntyre, of eighteenth century New England town governments, and Ancient Athenian direct democracy, respectively, but uses these examples to reject the basic thesis of the communitarian project as a whole: "Sandel and Taylor say that there are shared ends that can serve as the basis for a politics of the common good which will be legitimate for all groups in society. But they give no examples of such ends or practices. And surely part of the reason is that there are no such shared ends" (Kymlicka, 1989, p. 86).

pornography bans, problematically oversimplifies the gender dynamics involved in the debates over pornography by relying on a reductive "traditional cultural values v.s. women's empowerment" paradigm, I would nevertheless affirm his basic impulse to condemn the way in which Sandel (1984b) glosses over the problematic links between the conservative bent of American republican movements that would tend to support legislative restrictions on pornography and the aggressively gender-oppressive politics of the American religious right (p. 17). Indeed, Sandel's (1984b) concluding statement in this essay that "the totalitarian impulse has sprung less from the convictions of confidently situated selves [i.e. civic republicans rooted in traditional values] than from the confusions of atomized, dislocated, frustrated selves [i.e. individuals unmoored by a value-impoverished rights-centric society], at sea where common meanings have lost their force" is not only highly doubtful, but seriously alarming, given the political sources of the totalitarian movements that have managed to wreak the most havoc on equality, individual liberty, and wellbeing in America (p. 17). The main problem Kymlicka points to is this, citing Hirsch: 'any "renewal" or strengthening of community sentiment will accomplish nothing for these groups'. On the contrary, our historical sentiments and traditions are 'part of the problem, not part of the solution' (Hirsch p. 87)" (Kymlicka, 1989, p. 87). Kymlicka then argues that Sandel's discussion of pornography bans is an illustrative example of this point.

My response needs to be carefully elaborated here. Kymlicka is right to say that not all forms of renewal or strengthening of community sentiment will have an empowering effect on historically marginalized individuals, and Sandel's example of pornography bans is indeed an example of a form of renewal or strengthening of community sentiment that will *not* have such an empowering effect. What communitarians such as Sandel get wrong is precisely to take a naïve view of the content of traditional culture as espoused by elite members of a group, rather than looking to the perspectives of the marginalized for the ways

in which they seek to renew traditional culture or strengthen community sentiment around cultural identity, in terms of the aspects of culture these members value, and in terms of the reformative approach to culture they tend to favour, as opposed to the complete relinquishment of shared ends.

I would therefore urge caution in rejecting wholesale the communitarian claim that some shared ends that stem from historically established cultural traditions can legitimately serve as collective or shared ends. The American context to which Kymlicka and Sandel refer above is one in which a traditionally privileged group in the larger society possesses the power to define the community's ends. When it comes to the context of racialized national minorities that are seeking to emancipate themselves from colonial liberal states, the collective endorsement of a shared way of life is often the most promising path of empowerment for the marginalized. Even where the dominant elite define collective shared ends to the detriment of vulnerable members, the path of empowerment that women tend to endorse is an adaptation of the group's tradition of shared ends rather than a rejection of them. Furthermore, the postcolonial and antiracist project is often posed from this perspective in opposition to the liberal project rather than through it, and most relevantly to the present critique, the theorists that help to define the subaltern project do not only criticize liberal institutions, but also the theoretical underpinnings of liberal political principles that have and continue to justify those institutions.

Kymlicka (1989a) argues that a key reason liberal neutrality is preferable in relation to the demands of justice is that the communitarian endorsement of shared ends denies rather than "supports the ability of subordinated and marginalized groups to define their own practices and identities" (p. 87). However, in important respects, Kymlicka's approach to

liberal multiculturalism also directly violates this standard of empowerment. This is because he posits liberalism as a measure of universal justice, measuring and defining the world's political regimes according to their degree of liberality. In doing so, he both translates and reduces the institutions, practices, and identities of subordinated and marginalized groups into liberal terms, denying the groups' own formulations of their identities in the process. In *Multicultural Citizenship* (1995), we see Kymlicka explicitly rewriting minority perspectives on identity in liberal terms as well as their rejections of liberalism:

> Even when minority leaders express hostility towards liberalism, it is important to remember the political context. These leaders may simply be responding to the fact that liberals have been resisting the minority's claims for self-government, or other external protections. If we examine the way that minority cultures actually treat their members, in terms of respect for civil liberties and tolerance of dissent, they are often just as liberal as the majority culture (p. 172).

As an example of the type of statements that should be reinterpreted with this lens of understanding, Kymlicka (1995) gives this citation: "See e.g. the statement of the First Nations of Treaty 6 and 7, which said that applying the Canadian Charter to Aboriginal self-government 'is a subjection of a value system based on individual rights. Our governments are based on the paramountcy of collective rights' *(Globe and Mail,* 24 Sept. 1992, p.A5)" (p. 235 n. 21).[15]

A similar statement is given by the Assembly of First Nations to the parliamentary subcommittee, asserting a rejection of the imposition of the Canadian Charter on First Nations governance structures by the Canadian state. This statement sheds light on the rationale behind First Nations rejections of liberal proposals in relation to individual rights, and its meaning can be parsed without the need for reinterpretation:

[15] Unfortunately, due to what may be a citation error, this particular quotation could not be found in the newspaper issue referenced above.

> As Indian people we cannot afford to have individual rights override collective rights. Our societies have never been structured that way, unlike yours, and that is where the clash comes. If you isolate the individual rights from the collective rights, then you are heading down another path that is ever more discriminatory. The Charter of Rights is based on equality. In other words, everyone is the same across the country… so the Charter of Rights automatically is in conflict with our philosophy and culture and organization of collective rights. There would have to be changes. We could not accept the Charter of Rights as it is written because that would be contrary to our own system of existence and government (Assembly of First Nations' (AFN) Memorandum Concerning the Rights of the First Nations of Canada and the Canadian Constitution, 16 June 1982, p. 10, as cited in Boldt & Long, 1985a, p. 171).

This statement is in line with the one cited by Kymlicka in terms of its message as a rejection of "a value system based on individual rights". While the AFN is a separate entity from the Treaty 6 and Treaty 7 associations, and so does not represent their views, the AFN statement, given just less than two months after the Charter was enacted into law, gives an example of the motivations many First Nations have for rejecting a liberal system of rights.

Firstly, it is stated explicitly in the AFN statement that the rejection of Charter rights is due to a conflict that is identified between a liberal schedule of rights and First Nations philosophy, culture and societal organization. There is no ambiguity here that can suggest a possible interpretation of the intended meaning of this rejection as exclusively a political objection to a violation of sovereignty. While the statement also rejects the specific constitutional form of the Canadian Charter of Rights that includes a concern about the conflict of colonial constitutional forms with First Nations treaty and self-governance rights, a philosophical difference is also named here that exceeds a circumstantial rejection of the imposition of the Charter.

The philosophical objection can be elaborated on two levels. First of all, it points to a general conflict that the AFN sees in the conception of rights between the universalism of the Charter and the customary form of indigenous rights: "The Charter of Rights is based on

equality. In other words, everyone is the same across the country… so the Charter of Rights automatically is in conflict with our philosophy and culture and organization of collective rights". Peter Kulchyski (2013), a Native Studies scholar and indigenous ally who has worked for over two decades with the Begade Shuhtagotine Mountain Dene, helpfully contextualizes this sentiment through his argument demonstrating the fundamental difference between aboriginal rights and human rights declarations such as the Canadian Charter of Rights and Freedoms:

> Human rights, a product of the late 18th-century Enlightenment, and of a long history of struggle, are rights and freedoms that human beings enjoy inasmuch as they are human. … Everyone, on principle, has access to them. They reflect a universalizing notion of humanity and involve equality rights and various freedoms that all humans should enjoy. This includes indigenous peoples inasmuch as they, too, are human.
> Aboriginal rights, by contrast, are rights that only certain people and peoples, indigenous peoples, have by virtue of being indigenous. … Aboriginal rights stem from the struggles of indigenous peoples. In a way, they could be seen as a specific form of customary rights, rights that developed over time, through repeated practice of an activity, rather than abstract rights that reflect a notion of how all people are the same. … The reason this is not simply an academic issue is that human rights can be used in justifying attacks on aboriginal rights (pp. 20-22).

Kulchyski (2013) gives this explanation in the context of a critique of the United Nations Declaration of the Rights of Indigenous Peoples, which conceives aboriginal rights as an extension of human rights (p. 23). Kulchyski's statement explains that while aboriginal claims are articulated in the language of rights, the conceptualization of rights here has a very different source fromthat of the universalist humanism of the European Enlightenment. He describes them as customary rights not only because their claim originates from historical indigenous customary practice, but because the notion of customary rights is a recognized legal concept even in the Western context (Kulchyski, 2013, p. 46). For example, it is the basis of English common law, and its source of authority in performative repetition by claimants rather than in top-down government decree is documented by the historian E. P.

Thompson (1993, as cited in Kulchyski, 2013). Kulchyski (2013) explains that "common rights derive from the actual practices of people, whether in walking a particular circuit to demonstrate their right of passage or to traverse the passage itself, or in engaging in centuries-old subsistence activities" (p. 46). He notes also that customary rights were asserted in 18th-19th century England in opposition to the liberal regime of property rights and the growing conceptualization of individual rights based on a universal and abstract human dignity (Kulchyski, 2013, p. 47). Thus, if there is to be a parallel drawn between an aboriginal conception of rights and a European one, it would find itself, not in the liberal theories of the European intellectual elite, but in the rural peasant rebellions that were eventually given political and legal defense in the writings of Karl Marx (Kulchyski, 2013, p. 46). In fact, of the European theorists that contemporary indigenous scholars and activists have adopted, it is Marx rather than Rousseau or Kant who is named.[16] Secondly, on the level of specific conflicts with cultural, moral and institutional forms, the AFN statement specifically names a clash between Charter rights and the societal structure of First Nations communities in terms of their "philosophy and culture and organization of collective rights", and their "system of existence and government". Boldt and Long (1985a) contextualize these statements by explaining the moral ontology of First Nations worldviews that ground indigenous conceptions of individual and collective rights, and the difference in historical societal forms that generated traditional indigenous mechanisms of governance respectively.

On the first count, Boldt and Long (1985a) explain the philosophical difference in worldviews as that between an indigenous framework of cosmocentric interrelatedness and a liberal framework of homocentric individualism (p. 166). The Enlightenment myth begins in a "state of nature" described variously by Rousseau, Hobbes and Locke in which individuals

[16] See for example, Glen Coulthard's (2014b) explanation of the philosophical influences that contributed to the wording of the 1977 Dene Declaration for indigenous self-governance of Dene, Inuit, and Métis land in the Northwest Territories (pp. 158-160).

act for themselves and are free of any form of external governance or obligation to others. The state is an artificial creation based on a social contract, and the common ruling structure derives its legitimacy from the aggregated will of equal and autonomous self-interested individuals. The practical implication of the instantiation of this myth for a Western rights conception is that, because the individual is morally prior to the collective, individual rights are natural and inalienable and take precedence over any state law or group claim (Boldt & Long, 1985a, p. 166). The political relationship is a direct and oppositional one between the individual and the state (Boldt & Long, 1985a, p. 166).

In contrast, the cosmological worldview of indigenous peoples takes the interrelatedness of the natural world as its basis and views the constituents of this world animistically (Boldt & Long, 1985a, p. 166). That is, the relevant society includes both human and non-human persons—animals, trees, lakes-- as sentient and volitional members, each fulfilling a critical role in the survival and flourishing of the others, each situated in reciprocal relationship and bearing mutual responsibilities to everyone else (Boldt & Long, 1985a, p. 166). As Boldt and Long (1985a) explain, the implication of this view of interrelated flourishing is that: “Rights can exist only in the measure to which each person fulfils his responsibilities toward others. That is, rights are an outgrowth of every person's performing his obligation in the cosmic order. In such a society there is no concept of inherent individual claims to inalienable rights” (p. 166).

As Boldt and Long (1985a) take care to note, while existent forms of both indigenous and western political organization may differ by nation and community, and adapt and evolve in step with the varying local exigencies, influences and pressures of the modern world, these mythological accounts play a central role respectively in both native and liberal theory and practice by serving as “charter myths…fundamental to their version of the ‘good society’” (p. 169).

On the second count, the clash between Charter rights and the societal structure of First Nations communities is named in the AFN statement in relation to their "system of existence and government". Boldt and Long (1985a) contextualize this statement by drawing attention to the fact that the historical difference in societal forms between small face-to-face tribal societies and large feudal states generates different possibilities and exigencies of governance (p. 167). In feudal Europe, the seat of power is set apart from the people, who are ruled in a framework of class hierarchy (Boldt & Long, 1985a, p. 168). While this later gives way to a philosophy of equal rights and democratic sovereignty, it takes the form of large-scale industrial-capitalist societies governed indirectly through representative democracies (Boldt & Long, 1985a, p. 168). In other words, government is in the latter case also centralized and set apart from the people (Boldt & Long, 1985a, p. 168). It is in the context of a system of centralized power, first by feudal rule, followed by the rule of representatives with the power to make and abuse law, that the need for a system of prior and independent individual rights becomes exigent.

In contrast, tribal communities were historically face-to-face communalist societies in which the survival of the individual was dependent on the survival of the collective (Boldt & Long, 1985a, p. 168). Even today, most indigenous communities in North America are small and rural rather than large and urban, and tribal customs and traditional systems of tribal governance often survive alongside the colonially imposed system of elected band councils in Canada. These tribal systems of governance in many cases have non-hierarchical ruling structures based on direct, participatory democracy in which decisions that affect the group are made by consensus (Boldt & Long, 1985a, p. 169). Rather than arising out of a reaction to feudalism, the participatory democracy of these tribes is a traditional practice that derives its authority from sacred and historical custom; guiding principles stemming from impersonal customary authority derive their legitimacy from the Creator's founding prescription, and

from the historically proven practice of traditional societies that had followed these customs over generations prior to colonial interference (Boldt & Long, 1985a, p. 168-169). This basis for customary authority provides the justification for a different understanding of the relationship between individual and collective rights. Since these customs originate in a time in which individual survival depended on cooperative living, individual rights and benefits are also understood as dependent on the fulfillment of one's responsibilities to the group. What benefited the group also benefited the individual. In the tribal context, if the individual opposed the interests of the group by asserting her self-interest independent of a consideration of the group interest, this also hurt the prospects of the individual by jeopardizing the collective (Boldt & Long, 1985a, p. 169). In the context of this framework of understanding, the demand from the Canadian state to instantiate a Charter of individual rights with independent authority from that of local tribal governance structures is read by AFN as a threat to the survival of First Nations communities. This is why the AFN's objection to the Charter is formulated as an objection to isolated individual rights that would override collective rights.

It should be noted that while tribal custom does not recognize individual rights as having prior status to the requirements of the collective, tribal custom provides its own mechanisms for protecting individuals against injustice. Firstly, in tribal societies, personal autonomy beyond responsibilities to the group is wide-ranging; it is up to each individual in every context, even that of war, to participate or not with respect to the group's chosen activity, so long as basic responsibilities for group survival and flourishing were met (Boldt & Long 1985a p. 168-169). Moreover, in a direct participatory democracy ruled by consensus, no individual or subset of the tribe holds delegated power, not even the chief, whose position is a spiritual rather than legal appointment; he is followed voluntarily for his wisdom so long as he earns his community's respect, but holds no more decision-making

power in a lawful sense than any other member (Boldt & Long, 1985b, p. 338-339). Boldt and Long note that gender equality and the dignity of every individual member was provided for in "positively stated mutual obligations enshrined in sacred custom", an alternative approach to that of individual rights, one that emphasized individual dignity rather than rights (Boldt & Long, 1985a, p. 178). Customary authority, due to its longstanding status and sacred source, "protected individuals from self-serving, capricious, and coercive exercise of power by their peers. Since customs are not readily changed or new ones quickly created, authority was not easily or expediently expanded", and so could not be manipulated by any one individual or subgroup to seize power or oppress others (Boldt & Long, 1985b, p. 337-338). Boldt and Long elaborate on the security of this system: "Rule by custom, without a separate agency of enforcement, was possible in traditional Indian society because a face-to-face society can maintain order with a few broad rules known to everyone" (Boldt & Long, 1985b, p. 338). Moreover, this structure had the potential to be expanded temporarily to manage larger groups: "When large gatherings of diverse bands occurred (for example, during the Sun Dance) it was customary to invest one of the Indian societies with a temporary peace-keeping role" (Boldt & Long, 1985b, p. 338).

Even if we are to take Kymlicka's starting point for analysis of First Nations' rejections of the liberal philosophy of individual rights—that is, to treat it as a political rejection rather than a philosophical rejection, there is a formidable difference between the Kymlickan and the postcolonial indigenous accounts of the larger political context. This difference in account stands in the way of Kymlicka's claim that the indigenous objection to the philosophy of individual rights is political rather than philosophical. That is, apart from philosophical differences between indigenous and liberal traditions of human rights, even where the AFN statement does mean to indicate a distrust of the colonial state rather than a rejection of the philosophy of individual rights, it is important to recognize that the colonial

legacy of liberal states is not merely a historical fact, but is grounded in philosophical justifications within liberal theory itself, and this recognition fuels hostility to liberal theory as an avenue of colonial justification rather than a mere political hostility to governments that have happened to be liberal.

Indigenous theorists and Aboriginal rights scholars identify a historical pattern in the Canadian state's interventions into First Nations affairs that has consisted of moves to block and disintegrate First Nations sovereignty under the auspices of liberal democratic principles of individual rights and equality. Of particular note is the use of rhetoric to champion individual and specifically indigenous women's individual rights while acting to the detriment of indigenous women and indigenous sovereignty. While First Nations communities and associations remain politically divided as to the proper relationship between individual and collective rights, what is generally agreed upon is that collective sovereignty measures rather than the isolated protection of individual rights are a necessary route to the fulfillment of both the self-determination of First Nations as well as indigenous women's rights. For example, Bonita Lawrence (2004), while calling to task both male community leaders as well as the colonial state in one of the most thorough critical analyses of the history of gender discrimination of indigenous women, stresses this point as the relevant takeaway of her work:

> In Canada a history of gender discrimination in the Indian Act has created an ongoing conflict within Native organizations and reserve communities around notions of individual and collective rights, organized along lines of gender. It is crucially important, then, to understand the central role that the subordination of Native women has played in the colonization process, in order to begin to see the violation of Native women's rights through loss of Indian status, not as the problems faced by individuals, but as a *collective* sovereignty issue. (p. 46)

Patricia Monture-Angus (1995), a Mohawk legal scholar, gives a critical legal analysis of the Canadian Charter that leads her to the conclusion that the Charter, as it is now written and enforced, is unlikely to benefit indigenous women, while its imposition on First Nations communities carries real threats to indigenous sovereignty. She recommends decolonization as the path to gender equality—both through indigenous women demanding their rights from the Canadian state through the repeal of gender discrimination in the Indian Act (accomplished legislatively with the passing of Bill S-3 in December 2020 through the efforts of Sandra Lovelace and others) and the decolonization of indigenous men in power or positions of abuse who have absorbed the Indian Act's colonial edicts of gender exclusion as indigenous norms and instrumentalize them to maintain their own positions within the colonial power structure.

On the other side of the debate, feminist legal scholars such as Snyder, Napoleon and Borrows (2015), while affirming the position that a central feature of the path to indigenous women's equality is the championing of collective sovereignty, stress that even full decolonization cannot solve all issues with gender inequality in indigenous communities, for the reason that gender discrimination has not only colonial but also internal indigenous sources of support, the latter which can only partially be credited to colonial legacies (p. 617). They argue for a pluralist approach that would include at least two key components: the critical retrieval and adaptation of indigenous legal resources to the present context through a feminist lens, as well as a recognition of indigenous women's right to bodily security and equality on the basis of their humanity (p. 613). The latter is stressed in light of the fact that communitarian narratives can and have been coopted by patriarchal ideology within indigenous movements that risk confining indigenous women within a culturally mandated role, not only as symbolic but also literal mothers of nations (pp. 611-612). They note that the rhetoric of mothering nations is often stressed in anticolonial appeals to tradition in the

absence of mention of any reciprocal obligation of men to fulfill their responsibilities towards the women and children of nations (p. 613).

Thus, while in keeping with such a critique, the Native Women's Association of Canada has taken a clear position in support of the inclusion of indigenous women under the protection of the Canadian Charter, the doubts of others about the Charter's emancipatory potential is arguably borne out by the fact that the Supreme Court has yet to rule in favour of indigenous women's rights in any case in which these have been at issue. In the face of the unfulfilled promise of colonial institutions to protect indigenous sovereignty, a number of indigenous spokespeople take up the sceptical position towards colonial remedies that has been highlighted in the present discussion. For example, Glen Coulthard (2014a), following in the footsteps of Taiaiake Alfred (1999) and Leanne Simpson (2011), argues for a community-driven path to collective decolonization and indigenous sovereignty over the affirmation of the principles, values, and colonial mechanisms of reform and protection offered by the liberal state:

> Alfred and Simpson start from a position that calls on indigenous people to "turn away" from the assimilative reformism of the liberal recognition approach and to instead build our national liberation efforts on the revitalization of "traditional" political values and practices. "We must choose to *turn away* from the legacies of colonialism," writes Alfred in *Wasáse,* "and take on the challenge of creating a new reality for ourselves and for our people." For Simpson, decolonization requires that Indigenous communities reorient our collective labor from attempts to transform "the colonial outside into a flourishment of the *Indigenous* inside." In other words, we need to decolonize "on our own terms, without the sanction, permission or engagement of the state, western theory or the opinions of Canadians. (p. 154)

Bonita Lawrence and others have detailed the destructive interventions of the colonial state which motivate the conviction that the rights and protection mechanisms offered through the sanction of colonial mandates operating upon liberal principles are not the path to

the flourishing of indigenous women and indigenous nations. I summarize the most relevant highlights of this history below.

Lawrence (2004) challenges the conventional framing of the problem of gender discrimination and disenfranchisement of indigenous women where indigenous women's rights are invariably presented as "individual rights" and the opponents of indigenous women's rights are presented as "the collective" (p. 63). In her critical account of the historical disenfranchisement of indigenous women in Canada, she makes the solid case that the problem of indigenous women's inequality has its most destructive source and pivotal force in the legislative acts of the colonial state, rather than in the tribal traditions or authority of "the collective". The Indian Act and its legislative relatives established and maintained the gender-differentiated Indian status that has produced the financial, social, community and cultural losses suffered by indigenous women and their descendants, and it is the striking down of this legacy of legislative differentiation (first in 1985 with Bill C-31 and most recently in December 2020 with Bill S-3) that has initiated systemicrecognition of indigenous women's equal entitlements and status.

If systemic gender discrimination was in large part a legacy of the Canadian state rather than tribal authority, where does the predominant framing of indigenous women's individual rights against "the collective" come from? Boldt and Long (1985a) suggest that it is the racist belief in the inferiority of indigenous cultures that naturalizes the assumption that indigenous men and cultural traditions are the main source and cause of the discrimination and disenfranchisement of indigenous women, and that the liberal colonial state and its institutions and laws are the natural recourse to this injustice.

In terms of the larger political picture, Kymlicka (1995) takes up the conventional account that presents the problem of indigenous women's equality as an opposition between

indigenous women's individual rights (as represented by the Native Women's Association of Canada (NWAC) and Indian band councils/AFN championing collective sovereignty rights (pp. 39-40). Kymlicka (1995), to his credit, does add nuance to this account by noting that the position of NWAC is contested by others from the indigenous community who challenge this frame (p. 39). While Kymlicka's account does well in noting an alternate perspective to the conventional account that gives challenge to the framework of scrutiny placed on indigenous collectives and traditions (through the suggestion that liberal fears of sexual oppression are based in cultural stereotypes), what is conspicuously missing from this picture is an account of the larger colonial context which sheds crucial light on the nature and source of the threat to indigenous women's rights, without which, an accurate account of what is problematic and what is protective about the imposition of Charter rights, and therefore, whether to implement, reject, or modify and how to modify a charter document of individual rights cannot be adequately resolved to the benefit of indigenous women's rights, both in terms of their "individual" rights to gender equality, and their sovereignty rights as members of First Nations collectives.

As Bonita Lawrence's historical study shows, the false view of the issue of indigenous women's rights which Kymlicka's framing affirms is partly an invention of the colonial state to divide indigenous groups against one another as a means to stall decolonization efforts and deflect blame for gender discrimination onto male leadership and indigenous traditions. According to Lawrence, the disenfranchisement of indigenous women has been a colonial strategy dating back to nation-building processes in the late 18th and early 19th century Canada, a strategy that was directly motivated by the colonizer's thirst for indigenous land. She focuses her analysis on British negotiations with the Anishinaabe and Haudenosaunee in Ontario. Due to matrilineal structures that organized clan life and inheritance in these traditional native societies, land tenure was largely controlled by women,

and in the case of the Haudenosaunee, these clan matriarchs held the land in trust for all the collective nations of the Confederacy (Lawrence, 2004, p. 47). As Lawrence (2004) succinctly puts it, “removing women, then, was the key to privatizing the land base” (p. 47). Thus, the fact that the British negotiated only with men in early treaties was not the mere happenstance result of patriarchal European political attitudes of the time, but part of a deliberate and systematic strategy for acquiring land. The prior step of this strategy was the compromise of indigenous men through the introduction of alcohol. The resulting social disintegration that ensued from alcohol dependency rendered the men more susceptible to exploitative land deals, while the bypassing of women in the negotiation process removed the main resistance to surrendering the land that women held in trust for the community as a whole into future generations (Lawrence, 2004, pp. 46-47).

These early strategies of land acquisition indicate the true impetus and model for the century and a half of indigenous women’s disenfranchisement that would follow. As Lawrence (2004) puts it, “a central aspect of the colonization process in Canada would be to break the power of Indigenous women within their nations” (p. 47). This strategy not only served to facilitate land theft, it also served to substantially reduce the cost of the state’s fiduciary and social obligations to its colonial wards through the gendered removal of Indian status from women who married non-status men, as well as to disintegrate the collective nature of traditional societies through the disruption of matrilineal structures of land tenure, collective governance, inheritance and familial lineage, clan membership and communal practices. From 1850 to 2020, gender-differentiated definitions of Indian status and the resultant removal of entitlements have had an enormous destructive impact on indigenous women and their descendants and been the source of a cultural genocide that has lost more than a million women and their descendants to their communities (Lawrence, 2004, p. 55). Thus, it is only in the long view of the colonial history of cultural genocide through gender

exclusion that the dynamics of more recent conflicts over “individual” v.s. “collective” indigenous rights can be properly grasped in significance.

In the more recent history, the Canadian government’s White Paper proposals of 1969 serve as the main historical reminder of the threat that “a value system based on individual rights” poses. The remembrance of this historical landmark underpins every statement of rejection of liberal rights from indigenous ranks. The White Paper as it is commonly known, or more officially, the Statement of the Government of Canada on Indian Policy (1969), was put out by the federal government on the moral rationale and self-serving motivation that it was time for Canada to grant its Indian wards their human right to equality with other Canadians by canceling all existing Aboriginal and treaty rights and enfranchising them as full Canadian citizens (Kulchyski, 2013, p. 22; Coulthard, 2014a, p. 95). The stated intent of Indian Affairs (1969) was to recognize that, “To be an Indian must be to be free - free to develop Indian cultures in an environment of legal, social and economic equality with other Canadians” (p. 1). This would be achieved by doing away with Indian status and the differential system of rights altogether, for, in the view of Indian Affairs, this status and system preserved the collective nature of tribal society to the exclusion of indigenous individuals from Canadian society such that, “To be an Indian is to lack power - the power to act as owner of your lands, the power to spend your own money and, too often, the power to change your own condition” (Indian Affairs, 1969, p. 1). In other words, the argument for individual rights meant assimilation out of cooperative economic structures into an individualist capitalist market and the parceling out of collectively held indigenous land to individuals on the basis of their liberal property rights and the independence of Indians to seek individual empowerment outside of their community obligations. This would allow the land to be made accessible to the open market and pave the way for a repeat of the early British strategies that capitalized on colonially induced conditions of poverty and addiction as

a means to coax indigenous men into exploitative land deals that would eliminate First Nations as such. The rhetoric in this document and its consistency with the values of the liberal individualist philosophy of Pierre Trudeau's government speaks to the fact that the White Paper proposals were not a mere result of liberal institutions acting politically rather than morally, but liberal institutions empowered by moral confidence in the consistency of their political ambitions with the liberal values of their mandate. Underpinning the White Paper proposals of 1969 and the piecemeal resurrections of them in various forms over the decades following is an assumption of the racial and cultural inferiority of indigenous ways of life that has helped to entrench the naturalness of the liberal claim to the universality of its value system and its superiority to all others.

The logic of the White Paper proposal, rather than running counter to the oppressive legislative practices of the Indian Act that it sought to replace, has been reproduced in key court judgments and government actions that have served to shore up the power of the Indian Act to discriminate against indigenous women. The landmark cases of Lavell and Bédard and the Lovelace affair serve to illustrate this point. In Attorney General of Canada v. Lavell (1974), the Supreme Court of Canada ruled against Jeanette Corbiere Lavell and Yvonne Bédard in their joint legal challenge to the gendered discriminatory provisions of the Indian Act that had resulted in their exclusion and eviction from their homes and communities on grounds of exogamy, a provision that was only applied to women who married non-status individuals. In an echo of the skewed logic undergirding the formulation of equality in the White Paper, the Court determined that Lavell and Bédard's cases failed to qualify as discrimination on either count of race or sex. Where the Bill of Rights (the precursor to the Charter of Rights) defined equality in the context of this case as "equality before the law" and "protection of the law without discrimination by reason of race, national origin, colour, religion or sex", meaning that the laws issued by the state in governance of Canadian citizens

must be applied equally to all Canadians, and that a guaranteed right or freedom that is enjoyed by one group of citizens cannot be denied to another. However, in response to the claim of sex discrimination, the Court determined that no discrimination existed. Since the loss of status under the Indian Act meant enfranchisement as Canadian citizens with equal individual rights to other Canadian women, the Indian Act provisions did not amount to discrimination. In response to the claim to sex discrimination, the Court likewise determined that no discrimination existed. Since the Indian Act is an act of legislation lawfully issued by the Canadian government in their special constitutional role as colonial administrators of the internal affairs of Indian bands, the Court judged that it was reasonably within the government's purview to determine the qualifications for that status (Lawrence, 2004, p. 57).

Effectively, the Court judgment determined that the Bill of Rights defined equality only in terms of equality to white Canadians, and since the entitlements afforded by the Indian Act did not apply to white Canadians, no inequality existed. In other words, equality in Lavell and Bédard meant the same thing it did in the White Paper—that equality, premised on a liberal universalist logic, was freely subject to the designs of the Canadian state through legislation that aimed at the eradication of Canada's "Indian Problem" through gradual assimilation.

It was not through the moral force of liberal formulations of the claims of indigenous women that gender equality reforms were eventually to be brought about, but through the struggle of indigenous women to force the issue through any and all political and legal means at their disposal. One notable push on this front was made by the organization, Indian Rights for Indian Women to embarrass the Canadian government into reforms by presenting their case at the International Women's Year conference in Mexico City in 1975 soon after the defeat of Lavell and Bédard at the Supreme Court (Lawrence, 2004, p. 58). Notably, it was not liberal rights that they advocated for, but Indian rights, i.e. the rights accorded to status

Indians under the Indian Act, but that had theretofore only been accorded to men and to women who married status men and their descendants. In recounting indigenous women's fight for Indian rights, Mary Two-Axe Earley (1994), one of the pioneers of the movement, notes that "Their traditions provided the energy and solidarity that were essential to keep them going," and the rights to practice these traditions in community with their peoples were the rights that they were fighting for (p. 429). The equality that is conceived in her account of this struggle is expressly defined as stemming from the laws of the Creator and as maintained by the passing of these laws from generation to generation through oral histories and cultural legacy:

> Having been steeped in a culture that has a legacy of the equality of men and women, and having had the good fortune of being reared by grandparents who passed on to me the history and legends of my people, remembering these stories of my culture told to me as a child, I felt that the Indian Act governing my people, as it relates to the separate treatment of men and women, to be in violation of the tenants of my ancestral heritage, and in violation of the inalienable right of every woman to be equal to every man in the eyes of the law (Earley, 1994, pp. 429-430).

While Earley seems to describe something very similar to the "equality before the law" that Kymlicka might affirm as affording inalienable liberal rights, including the right to one's own culture, the "inalienable right" to gender equality in Earley's conception conceives of equality before the law of the Creator, which is understood in terms of a tribal communalist ethic rather than a liberal humanism. This is evident in her explanation of the relevant model for recognition of this right:

> There were days of hope, days when I had a vision of the life that could be, if Indian nations reclaimed their old cultural values of community caring and sharing, of respect and love for women and children, of Indian communities where women received the recognition of their importance to community life - where children born of Indian fathers and Indian mothers would both be equally Indian. (Two-Axe Earley, 1994, p. 431).

The model articulated is not of a right premised on the universal nature of individual autonomy, but of a right premised on role relations within a bonded community of equals, a right acquired by birth or adoption into such a community and inalienable thereby.

Moreover, contrary to Kymlicka's suppositions, the egalitarian nature of this right cannot be determined definitively simply by looking at "how indigenous peoples actually treat their members", for the government's gendering of the Indian Act has had the effect of normalizing its definitions of band membership into indigenous community practice over the course of the last several decades. Sexist attitudes, corruption and protectivism in band leadership and indigenous associations, and economic pressures collude to produce indigenous women's exclusion and eviction from their communities. It is only by reference to matriarchal systems of social organization and various sources of indigenous law-- many of which were replaced by colonial interventions--that an obscured historicalrecord of indigenous conceptions of equality and individual freedoms becomes evident.

In correction of Kymlicka's other suppositions about the assimilative role that liberalism should play in framing evaluations of legitimacy, the right way to check the first person pronouncements of indigenous representatives is not to immediately translate them into liberal terms, but to compare them against historical records. Lawrence gives a key example of how this has been done by feminist scholarship on the legal history of this case. In order to discredit the self-serving cultural claims of more recent testimony from indigenous men endorsing a conservative and illiberal representation of indigenous customs, Lawrence (2004), citing the work of Kathleen Jamieson (1978), uses historical legal debates and prior testimony to contradict these claims (p. 59). Referring to recent self-serving cultural claims of male representatives, she cites prominent indigenous theorist Taiaiake Alfred's claims in the year 2000 that "gender discrimination in the Indian Act was put there to oblige Native people because "the Indians complained" about what would happen if white men were

allowed to marry Native women and live in their communities", while he and other male indigenous representatives also endorsed the idea that the gender discrimination brought about by the Indian Act was in fact "traditional" in native societies (Lawrence, 2014, p. 59, 60). The clear evidence against such statements comes from two sources. The first is the content of the formal governmental debates about this legislation, which recorded the repeated assurances of Indian Act administrators that white men already resident at Kahnawake reserve would be allowed to stay, and this is borne out by licenses that were allocated to these men to do so (Jamieson, 1978, p. 32, as cited in Lawrence, 2004, p. 60 n. 12). The second piece of evidence refers to public statements and actions of indigenous men at the time the legislation was proposed that moved clearly to reject the proposed legislation in solidarity with indigenous women; no indication was given at that time that indigenous men saw gender discrimination as a valued part of their traditions (Jamieson, 1978, p. 36, as cited in Lawrence, 2004, p. 60 n. 13).

Nearly a decade after the Supreme Court defeat, through the case of Sandra Lovelace, a successful appeal of these gender discriminatory provisions was finally won by indigenous women only by bypassing the Canadian justice system. In 1981 the United Nations judged that Section 12(1)(b) of the Indian Act, according to Article 27 of the International Covenant on Civil and Political Rights, denied Lovelace's cultural right to live in her community (Lawrence, 2004, p. 57).

My objection in this section is not to Kymlicka's argument that liberalism can be rethought in terms that allow for a liberal argument for collective rights. It is merely to point out that if even liberal theory, given its deep historical and theoretical entanglements with the genesis and continuation of the colonial project, can be mobilized in certain present day circles in the name of cultural justice and indigenous sovereignty instead, then it is entirely reasonable to posit the separability of communitarian theory from the historical patterns of

the American religious right. In the indigenous example in particular of tribal blueprints for societal organization, we find an example of a "communitarian"-like or neo-communitarian theory of society that is not definitionally opposed to individual rights but consonant with them in theory and in historical practice.

While some indigenous organizations like the Native Women's Association see the best promise for the future of their members in the liberal guarantee of Charter rights, others, including legal scholar Patricia Monture-Angus (1995), assess the biases within liberal rights documents and thereby view liberal justifications of individual rights with suspicion. She and others like her take the position that a just formulation of human rights for indigenous individuals can only be built upon a solid understanding of the communal basis of indigenous peoples' path to individual justice, collective sovereignty and prosperity for their members.

Comparing liberal multicultural neutrality and critical democratic multicultural neutrality on the question of religion:

In relation to the religious neutrality of the state, while it is certainly true that separation between religion and state is in some areas, a requirement of justice, I follow recent trends of scholarship that challenge the idea that separation between religion and state is *always* a requirement of justice (Modood 2010, Laborde 2021). What matters here is the principle of equal respect and inclusion, not necessarily whether all references to religion are removed from the public sphere.

In "Two Models of Pluralism and Tolerance" (1996), Kymlicka frames the question of religious freedom in political philosophy within a false dichotomy he sets up between liberal states that allow for maximal individual choice through an unregulated marketplace of ideas, and multicultural states that provide for legal pluralism along religious lines, but that restrict individual religious freedom by outlawing religious conversion and dissent. The paradigmatic models that make up this dichotomy are a contemporary liberal secular model

and the 18th century millet system of the Ottoman Empire. I argue that this is, in the first place, an anachronistic and distortive comparison, and in the second place, it is an unhelpfully simplistic paradigm for understanding contemporary debates over the proper scope for the regulation of religion and religious freedom in actually existing societies. Through this paradigmatic contrast, Kymlicka again sets up an overly polarized contrast between the liberal and the illiberal, neglecting the real scope for political inquiry that lies within the range of credible possibilities from the liberal to the non-liberal.

The reasoning for why Kymlicka thinks the communitarian critique of the Rawlsian conception of the self is the basis for a critique of liberal political principles for governing a pluralist society is elaborated in detail in a 1996 essay called "Two models of pluralism and tolerance". In this essay, he states that "This communitarian conception of the self as defined by constitutive ends is one possible basis for the group-rights approach to tolerance," and names his interpretation of the Ottoman millet system an example of a hypercommunitarianism" on this basis (Kymlicka, 1996, p. 89). He is wrong on both counts. On the first count and as Taylor (1995) explains, the communitarian conception of the self as radically situated is not the basis for a political position advocating for the denial of basic civil liberties in favour of group rights. On the second count, and as Kymlicka (1996) himself admits in a footnote to the above claim, the communitarian thesis concerning the ontology of the self is not the philosophical basis for the millet system from the point of view of the Ottomans (p. 99 n. 12). While I am advocating neither for the communitarian thesis of the self as a justification for group rights, nor for the moral legitimacy of the Ottoman millet system, it is important for the current discussion to correct Kymlicka's distorted instrumentalizations of both in turn in order to set the stage for my own positions.

Firstly, as Taylor (1995) has correctly interpreted, the liberal-communitarian debate has been mired from the start in unproductive confusions which can be broadly understood in

terms of a conflation of "ontological issues" and "advocacy issues" (p. 181). The debate on the ontological issue Taylor (1995) describes as between "atomists" and "holists", where the atomists are "methodological individualists": "They believe that in (a), the order of explanation, you can and ought to account for social actions, structures, and conditions in terms of properties of the constituent individuals; and in (b), the order of deliberation, you can and ought to account for social goods in terms of concatenations of individual goods" (p. 181). The holists are those who believe that (a) at least some aspects of the social life of the individual are constitutive of their subjective or agentic selves, such that they cannot stand completely apart from this social background when reflecting on the good life, and (b) social goods are not all accounted for in terms of merely collective or convergent goods; some social goods are goods in common, where the former type of good is a concatenated good while the latter is shared in the sense of sharing an understanding or a value, or the public life of a society in common (Taylor, 1995, pp. 189-192).

The debate on the advocacy issue Taylor (1995) describes as between those thinkers who are more "individualist", in that they give primacy to individual rights and freedoms", and those who are more "collectivist", in that they give "higher priority to community life or the good of collectivities" (p. 182). The divide between Kymlicka and Sandel is one that on Taylor's (1995) paradigm, is between an individualist and a collectivist, respectively, that fall within the middle of this spectrum, where the individualist "believes that the state should be neutral between the different conceptions of the good life espoused by individuals", and the collectivist believes that "a democratic society needs some commonly recognized definition of the good life, on the other" (p. 182).

Having defined the ontological and the advocacy debates, Taylor (1995) then succinctly outlines the relation between the two sets of issues:

> The relation between these two congeries is complex. They are distinct, in the sense that taking a position on one doesn't force your hand on the other. Yet they are not completely independent, in that the stand you take on the ontological level can be part of the essential background of the view you advocate. Both these relations, the distinctness and the connection, are inadequately appreciated, and this confuses the debate (p. 182).

This is the key problem for Kymlicka's (1989a, 1995, 1996) critical response to Sandel's arguments. This problem is explained in Taylor's (1995) analysis, since Kymlicka draws on the liberal critics of communitarianism that Taylor has in mind here:

> …while the principal point of Michael Sandel's important book *Liberalism and the Limits of Justice* is ontological in my terms, the liberal response to it has generally been as a work of advocacy. Sandel tries to show how the different models of the way we live together in society—atomist and holist—are linked with different understandings of self and identity: "unencumbered" versus situated selves [respectively]. This is a contribution to social ontology, which can be developed in a number of directions (p. 182).

Sandel's argument about constitutive ends is a descriptive account of the self as an agent that elaborates its identity on the model of discovery rather than the model of choice. This argument foregrounds a certain phenomenological account of how agency is experienced; it is not a normative argument advocating for the denial of basic civil rights. Sandel does not imply by this account that individual identity in terms of the determination of essential goods is wholly determined by communal identity, and he certainly does not mean that individuals should defer to an authoritarian state to determine that communal identity. He is making the argument that agency is interrelational, such that it does not strictly make sense in ontological terms to speak of the moral agent in terms of a self that can stand wholly apart from its identity and essential ends. The implication for political theory of this ontological claim is merely that a political model that treats the political agent as a self whose freedoms and interests can be conceived prior to its situated identity and ends will tend to arrive at a distorted account of social life.

Sandel's advocacy argument on the other hand, stems from a further argument that is distinct from, but connects his advocacy argument to his ontological argument. This connective argument, on the basis of the interrelational account of the self, takes a skeptical stance against the practical viability of procedural liberalism alone as a political mechanism that can sustain a substantively egalitarian society in which positive freedoms are realized. On the basis of this skeptical position, Sandel advocates for civic republicanism as a more viable model for the realization of a democratic egalitarian society than political liberalism, on the basis that it can cultivate the civic virtues required to sustain such a society. It is for this reason that Sandel (1984a, 1998) and Taylor (1995) advocate for the legitimacy of certain shared ends, the main one being the intrinsic valuation of the civic republican ideal of participatory self-rule for its own sake (Taylor, 1995, p. 200). This ideal recommends that democratic societies actively cultivate a civic spirit of participation in the public sphere and instill a sense of responsibility in citizens to fulfill their democratic obligations of political engagement. But it is precisely because an individual's identification with shared ends is *not* guaranteed that this civic culture must be actively cultivated. Sandel's and Taylor's political thesis, then, is not the result of a conception of the self that is determined by a community's shared ends, but a thesis that attempts to convince individualists that their own conception of individual positive freedoms can be furthered by the democratic cultivation of a communal end in common, namely, participatory democracy itself.

It is on the point of other permissible shared ends for the civic republican polis that Sandel and Taylor's positions diverge. This divergence concerns the democratic permissibility of candidates for shared values that come from ethnocultural rather than strictly democratic traditions. Here, Taylor (1994a, 1995) identifies permissible candidates for a national culture within a pluralist context that are in substance the same as in Kymlicka's model, a key example being Québec, where the French language is taken up as part of the

shared culture for all citizens. Taylor and Kymlicka both agree that this is a legitimate component of an inclusive national culture. They differ on the descriptive account of Québec's political framework, but generally agree on the legitimate content of shared political values. With respect to the difference in their descriptive accounts and their political implications, Taylor (1995) describes Québec as a civic republican society where it is not only the liberal democratic institutions that define the national culture, but also the ethnocultural shared end of the "defense and promotion of French culture and language" which is not neutral between conceptions of the good life (p. 203). In Taylor's (1994a) view, this shared end requires a political framework that must compromise some secondary rights of individuals (in this case for the choice of the language of education for francophones and allophones, and for the choice of the language of commercial signage for private businesses, legislated under Bill 101), but remains liberal so long as fundamental rights are respected for every individual, where this alternate liberalism is based on a principle of equal respect for minorities that do not share its conception of collective good (pp. 55-61). In contrast, Kymlicka describes Québec national identity as falling basically within the boundaries of a liberal democratic society that is neutral towards conceptions of the good life, because a neutral societal culture can include an official language for the public sphere. Where Québec's language laws exceed the principle of neutrality and violate the private rights of some individuals, Kymlicka (1995) justifies this on a liberal multicultural right to equal liberty to that of the larger Canadian English speaking society, which he understands as a collective right premised on individual freedoms (protecting equal socioeconomic opportunity for francophones), rather than a common good of cultural survival for its own sake, as in Taylor's conception (p. 205 n. 14). He also thinks some parts of these language laws are illegitimate, such as that of the restriction on the use of English on commercial signage, where this amounts to an internal restriction on the choices of citizens, and an "over-

restrictive external protection, since it unnecessarily restricts the freedom of anglophones to use their own language" (Kymlicka, 1995, p. 205 n. 14). Despite these differences, Taylor and Kymlicka are essentially agreed on the central importance of autonomy as expressed in the liberal democratic ideal of participatory self-rule, as well as on the legitimate characteristics of an inclusive national culture.

Sandel, on the other hand, while endorsing the same social democratic values espoused in Taylor's vision of the civic republican ideal, also means to include as permissible in his vision of American civic republicanism, some of the conservative "family values" that are often associated with the social policies of the American Republican party, and this is the real cause of Kymlicka's negative reaction to his arguments.

As noted earlier, Kymlicka identifies a problematic example of this sort of conservative sexual politics in Sandel's promotion of civic republicanism, where Sandel seems to legitimize this association between communitarianism and social conservativism by suggesting that "Communitarians would be more likely than liberals to allow a town to ban pornographic bookstores" (Sandel, 1984b, p. 17). Kymlicka (1989a) severely critiques this move, following Catherine Mackinnon, as prioritizing the exclusionary cultural values of a certain category of the male-dominant elite (sexually conservative patriarchal authority) over the empowerment of women through feminist arguments (either for or against the banning of pornography) (pp. 87-89). While I agree with Kymlicka's assessment that Sandel is, in this essay, prioritizing the promotion of civic republican democratic culture over the empowerment of women (or at least, to the neglect of the empowerment of exploited women), I disagree with Kymlicka's argument that all proposals for shared ends involving communal goods are illegitimate objects of governance. As I will propose later in this discussion, Singapore's elevation of the end of religious harmony as a neo-communitarian value, rather than one justified and limited by procedural liberal principles, presents an

example of an at least partially legitimate shared end for a just nonliberal society. Note that this is not a blanket endorsement of this neo-communitarian end for every society, for, given the demographic context and the extent of safeguards, state-sanctioned communitarian policies of religious harmony can go very wrong, and serve, as in Kymlicka's critique of Sandel here, as a reinforcement of the domination of an exclusionary political elite, rather than as a social good that benefits all groups.

Kymlicka's reaction to Sandel's conservatism is justified in relation to the latter thinker's more dogmatic moments, a prime example being the quite disturbing statement from Sandel (1984b), below, that Kymlicka rightly condemns:

> Communitarians reply [to the liberal claim that "Any attempt to govern by a vision of the good is likely to lead to a slippery slope of totalitarian temptations"], that intolerance flourishes most where forms of life are dislocated, roots unsettled, traditions undone. In our day, the totalitarian impulse has sprung less from the convictions of confidently situated selves than from the confusions of atomized, dislocated, frustrated selves, at sea in a world where common meanings have lost their force. (p. 17)

Taylor (1995) gives a more reasoned account of the basic argument underlying this reaction. He terms his version of this argument the "republican thesis", which holds that there is an essential "link between the solidarity of patriotism [i.e. citizen identification with the common good] and free institutions, on the grounds that a free society needs this kind of motivation to provide what despotisms get through fear; to engender the disciplines, the sacrifices, the essential contributions it needs to keep going, as well as to mobilize support in its defense when threatened" (p. 193). As a demonstrative example of the supposed power of this brand of patriotism, Taylor (1995) references the outrage of the American public in reaction to the Watergate scandal where this "citizen outrage actually drove a president from power" (p. 195). On the basis of this "republican thesis", Taylor (1995) argues that "the first criticism of procedural liberalism [is] that it offers a nonviable formula for a free regime" in

denying the legitimacy of common goods as an object of allegiance to the nation-state (pp. 193-194).

Like Kymlicka, I find this thesis highly problematic. On my estimation, any political regime will always be driven to a significant extent by the agenda of the political elite of the dominant societal group. Patriotism, then, is always a risky sentiment for proponents of freedom to endorse and, on my estimation, bears more dangers than rewards. In relation to a patriotism based on the historical traditions of civic republicanism, Kymlicka (1989a) points out in his critique of the republican thesis, that the republican exemplars of civic humanism exalted by communitarians like MacIntyre and Sandel, of the Athenian polis and New England town governments, were made up solely of participants belonging to the dominant societal group—that is, white men of the dominant socioeconomic class, to the exclusion of the racialized, women, LGBTQ individuals, and the lower classes or socioeconomically disadvantaged (pp. 86-86). If fellow-feeling sustained the health of these exclusionary democracies, it was partly because and not merely in spite of the fact that this spirit of patriotic solidarity deliberately excluded these other groups. While today's America has made a formal commitment to inclusion of these groups, it has not gone far enough in its substantive commitments, for this historical exclusivity of belonging is preserved in the actually existing hierarchies that still structure American political life. This, I contend, against liberal patriots like Kymlicka, is a problem whether America (or Canada) bases its politics on civic republican or procedural liberal traditions, for both have historically been built on exclusionary foundations that must be confronted and reformed, both on the principled and institutional levels.

In response to Sandel's warning of the supposed totalitarian danger that would accompany a relinquishment of the civic republican ideal, my view is that a completed transformation from a civic republican polis to a procedural liberal polis might, taken on its

own, serve as the cause of an era of nihilism, but not of totalitarianism. The idea that a political regime with strong constitutionally protected legislative safeguards on individual rights, absent a thriving civic republican culture of democratic participation would be more likely to succumb to totalitarianism than a civic republican regime sympathetic to the "family values" of the American religious right, I find, frankly delusional, particularly in the face of recent legislative instantiations of abortion bans following the striking down of Roe v. Wade. Sandel might argue that this development is partly a result of the problem he criticizes, since an impoverished democratic culture has effectively left this all too important political decision in the hands of the judiciary. Here, I side with Kymlicka, where he condemns this civic republican thesis as a dangerous romanticization of historical models of civic republican regimes that excluded women and other marginalized groups from participation.

In response to Taylor's more temperately stated version of this thesis, I object to his and Sandel's primary identification of the cause of an ailing democratic culture in America as that of the lack of individual sense of responsibility for democracy. This focus on individual responsibility grossly neglects the social and systemic causes of low voter turnout, which have to do with the systemic exclusion, marginalization and alienation of disadvantaged groups from the political process. Citizens disengage from politics not because of procedural liberalism, but because political systems are already biased against them, through the prior and ongoing manipulations of the political elite, whose civic concern has never included these groups. In my observation, this sort of systemic bias arises equally in civic republican as in procedural liberal political regimes, if the exemplar of both at different times or from different perspectives is the United States of America. And while the political engagement of the marginalized is one important way to combat such inequalities, lack of political engagement of the marginalized is the result, not the source of the problem. Moreover, effective political action from the marginalized that aims to bring about a more egalitarian

society would not take the form of taking up a republican spirit of mutual concern for the privileged, or an intrinsic valuation of the activity of self-rule for its own sake, but of the self-empowerment of historically oppressed communities in the service of their self-defined aims, whether liberal or other, the gaining of allies through the exposure of the hypocrisy of the political elite, and the leveraging of any and all sources of democratic power at their disposal.

The discussion up to this point has provided a clarification of some of the confusions that mar the liberal-communitarian debate, and that serve as the source of Kymlicka's critique of communitarianism. Now I will address Kymlicka's argument against what he describes as a "group rights approach to tolerance" on the justification of a model of personal identity based on constitutive ends. I have already pointed to the problematic attributions of this position to communitarian theorists such as Sandel, who does not put forth a thesis denying the capacity for individualized agency of the members of communitarian cultures, and does not put forth an argument for group rights. Nevertheless, if the "group rights approach to tolerance" does need to be addressed, my position is straightforwardly that if the argument for a "group-rights approach to tolerance" were based on a model of personal identity on the theory of a reflective discovery of constitutive ends, it would be misconceived, either as a misunderstanding of the relevant issue at stake, or deliberately, as a cloak for oppressive power.

If there is political relevance to the notion of constitutive ends in relation to religio-cultural identities it is not primarily because we discover through reflection the ends that our culture's doctrines of the good life have seeded in us, but because they are based on a sense of loyalty to or agential identification with familial and communal bonds. These sources of constitutive ends tend to have more of a pull on us the more that the societal context in which we live makes ethnic, racial and religious self-identification a salient fact to navigating personal ends, as when one is a minority, is racialized and/or lives in a society with a history

of ethnic, racial, or religious conflict or colonialism. But these ties are not necessarily constitutive on the model of discovery recounted by Sandel. Indeed, as Sikka's (2004) study shows, one can feel drawn to identify with the culture of one's parents without sharing any understanding or beliefs found within that culture. The taking up of cultural understandings or beliefs can sometimes be the products rather than the source of that identification, where the identification in such cases necessarily involves individual choice. Moreover, since my version here of the self of "constitutive ends" is not a claim about the content of beliefs, but a claim about the perceived obligations that stem from the identification of oneself with a cultural community, this account of the self of "constitutive ends" does not necessarily commit one to the account of shared culture provided by the elite members of that cultural group. It can also commit one to the democratic reform of the way of life of that cultural community through the challenging of the authoritarian conceptions of dominant community actors. Moreover, this can be done through the promotion of liberal principles, or through the moral language internal to the philosophical sources of the cultural tradition itself, or neither, or a combination of all of the above.

The ideal of liberal democratic autonomy as participatory self-rule is common to both the liberal and communitarian parties of the liberal-communitarian debates, and both traditions have been guilty of the kind of ethnocentrism about the superiority of liberal politics that my project criticizes. While I strongly affirm the universality of democracy and of human rights (and giving civil and socioeconomic rights equal weight), I affirm as a moral universal, neither Taylor's ideal of participatory self-rule *for its own sake*, nor Kymlicka's monistic prioritization of the ideal of liberal autonomy as a governing political principle.

On the former point, while global public opinion polls such as the World Values Survey show that an overwhelming proportion of citizenries in every world region endorse or desire democratization to some degree, what many nonliberal citizens might understand this

as entailing may be a political regime that combines only some of the same institutions, procedures, characteristics or values as democracy in the western world, rather than meaning a fully participatory form as citizen self-rule (Shin, 2015, p. 27). While more research is needed to unentangle the significance of what poll participants understand as valuable about the democratic and non-democratic characteristics of their preferred political regimes, theorists have begun to proffer some reasonable justifications for thinking that the liberal democratic ideal of fully participatory self-rule may not be universal. For example, Daniel Bell (2015), through an analysis of East Asian regimes with a Confucian heritage (South Korea, Japan, Taiwan, Singapore, Hong Kong and China), argues that a Confucian conception of the family, rather than the nation, is the centre of the good life for a significant proportion of East Asians. On his view, this precludes the workability of an Ancient Athenian or contemporary civic republican model of democratic citizenship: "the main problem is that [the high level of commitment demanded by republican democracy] threatens to overwhelm all our other communal commitments, particularly ties to the family" (Bell, 2015, p. 12). Bell (2015) claims that while many citizens of these regimes would support political reform where it would bring about a fully free and fair electoral process, particularly where this would improve citizen wellbeing, "the republican tradition is so far removed from people's self-understandings that it is a complete nonstarter.[17] Most people have devoted time and energy to family and other "local" obligations, with political decision making left to an educated, public-spirited elite"[18] (p. 12).

[17] Bell (2015) points to the fact that the workability of Athenian democracy was in no small part facilitated by particular socioeconomic conditions where "the material surplus of largely commercial societies and freedom from family obligations provided sufficient leisure time for a class of male citizens" to devote themselves fully to the activities of the polis (p. 11).

[18] Bell (2015) elaborates that "In imperial China, the meritocratic ideal was institutionalized by means of the civil service examination system. This system was of course imperfect, but neo-Confucian thinkers put forward ideas for reform that may still be relevant for the modern world. Huang Zongxi,for example, argued for a political institution composed of representatives selected on the basis of competitive examinations that test for both memorization and independent thought. Combined with a democratically elected lower house, Huang's proposal could institutionalize dual commitments to "rule by the people" and rule by a talented and public-spirited elite" (p. 12).

Additionally, Bell provides an important argument that could well be directed against Taylor's (1995) promotion of patriotism as the main mechanism for sustaining the civic republican ideal (pp. 195-196). Bell (2015) notes, by drawing on specific examples from Southeast Asian regimes, that "one specific way that democracy can harm minority interests, [is] namely, that it tends to promote a form of nation building centered on the culture of the majority group", which can have disastrously oppressive effects on minorities where democratization is instituted without appropriate caution and awareness of local conditions (p. 185).

In place of the civic republican virtue of patriotism, Bell (2015) recommends that a more minimally democratic regime in East Asia would require a much less demanding set of civic virtues from the general populace to be workable, namely, "it is important for all sectors of society to feel a stake in the outcome, to be motivated by slightly more than crude self-interest, and to respect the rights of minority groups" (Bell, 2015, p. 14). Bell (2015) recommends multicultural education as the means to instill these civic virtues:

> One of the teaching methods designed to improve democratic virtues is public recognition of the intellectual contributions of different groups [of the society in question], including those historically marginalized. Failing to recognize those contributions, as Amy Gutmann puts it, "morally damages democracy by conveying a false impression that members of these groups have not contributed significantly to making . . . politics what it is today".[19] […] The aim is not so much to transmit specific moral content from particular traditions as to identify significant contributions by authors of scholarly traditions that students take pride in and that seem to address their concerns, thus increasing the students' desire to learn and participate in classroom discussion, and, it is hoped, improving their ability to participate intelligently as adults in the political processes that shape their society" (Bell, 2015, pp. 206-207).

[19] Conversely, majoritarian vices can be encouraged by divisive education. Hindu nationalist motivations in India have recently prompted the replacement of multicultural education in history textbooks with propagandist curriculum that as Bell (2015) notes, "aims to demonize the contributions of Muslims in Indian history" (p. 206, n. 1).

While in my own view, I affirm the value of deliberative democratic principles, such as cultivating a critically reflective citizenry, a deliberative political process, and improving democratic inclusivity in relation to marginalized groups, I do not affirm these necessarily as of intrinsic value for the sake of participation in democratic rule *for its own sake*. The development of a polis' capacity for deliberative democratic rule is *universally* important only for its instrumental value for the furthering of equality, justice, and the responsivity of the state to the needs and interests of the various groups that make up the society.

Returning to the critique of Kymlicka's 1996 essay, "Two models of pluralism and tolerance", Kymlicka is not only wrong on the first count of the political implications of the communitarian conception of the self, as I have explained above, he is also wrong in characterizing the Ottoman millet system as an example of a hypercommunitarianism, at least as he defines it. As he himself notes in another buried footnote, the millet system was justified by the Ottoman rulers on theological reasoning, not on an endorsement of an ontological conception of the self which understands communal ends as determinative of personal identity and beliefs (Kymlicka, 1996, p. 99 n. 12). While I do not intend to endorse the Ottoman millet system as a model to emulate with regards to the regulation of religion diversity, it is important to correct the malappropriation of this system in Kymlicka's political arguments, which serves unhelpfully to perpetuate mistaken and prejudicial beliefs about Islamic moral justifications and their relation to individual choice, and presents Western liberal examples of the regulation of religious diversity and freedom as the only contrapositions to authoritarian regimes in the Muslim world.

Simply put, the justifications of group rights and restrictions on religious freedoms in the Ottoman Empire had nothing to do with a classic or first-generation communitarian conception of the constitutive self as one that cannot stand apart from its ends. The actual moral justifications that would have played a part in authorizing group autonomy and a

limited scope for religious freedoms have to do with the theological conceptions that ground religious freedom.

On the question of the civil freedoms permitted to Muslims in the Ottoman Empire, Kymlicka presents the millet system as a model of group rights that denies or severely restricts civil freedoms. On the other hand, Kymlicka (1996) notes in the same footnote mentioned above that, "the [Ottoman] Muslims did allow for certain kinds of voluntary revisions of religious ends", though he does not specify the nature of the distinction made in that context between permissible revisions and prohibited revisions" (p. 99, n. 12). The citation referred to in that footnote points to a page in Braude and Lewis' (1982) historical account of the Ottoman Empire where they note the existence of "a whole series of radical movements of social and religious protest that arose among the Muslims" against economic, class, ethnic and racial hierarchies and inequalities in the Ottoman Empire (p. 4). These particular hierarchies were seen as unIslamic since they contravened the egalitarian spirit of Islamic brotherhood, which is defined in Islam without these particular distinctions (p.4).[20] It was thus, the moral obligation of pious Muslim citizens to dissent against any state-authorized contraventions of this conception of equality. This tells us that while Ottoman Muslims were religiously bound by theologically delineated restrictions on freedom of dissent, they were not bound, as Kymlicka suggests, by an obligation to defer to the views of the state or other communal authorities on the ends and societal arrangements worth pursuing. Nevertheless, the Ottoman Muslims, ascribing to a theological rather than a secular politics, accepted the legitimacy of dissent only insofar as it contravened human authorities, but not the divine authorities of the *Qur'an* and the authentic *Sunnah,* which represent the word of God and the Prophet, respectively.[21]

[20] On the other hand, Islamic doctrines recognized other basic inequalities as sanctified by holy law, namely, in relation to slavery, gender inequality, and unbelievers (Braude & Lewis, 1982, p. 4).
[21] Nevertheless, on this point An-Na'im (2008) notes that this leaves room for quite a large range of theological debate about what the *Qur'an* and the *Sunnah* say, even on basic tenets.

The theological basis for religious tolerance of non-Muslim communities in the millet system can be found, for example, in verse 5:48 of the Qur'an, which addresses all nations: "For every one of you, we appointed a law and a way. And if Allah had pleased, He would have made you a single people (or one religious community), but that He might try you in what He gave you. So vie one with another in virtuous deeds. To Allah you will all return, so He will inform you of that wherein you differed" (as cited in Ismail & Mat, 2016, p. 4). This has historically been interpreted to mean tolerance for and religious freedom for Jews and Christians, and sometimes other religious communities, through a pact called *dhimma,* through which the Ottomans allowed a wide scope for group autonomy and protection by the Muslim state (Braude & Lewis, 1982, p. 5). Al-Alwani (2011), an Islamic legal scholar trained in Cairo, and the founder of the Fiqh Council of North America, counts more than two hundred passages in the Qur'an that affirm the value of individual freedom for human beings, of which the religious freedoms of belief and expression are of the highest value (p. 34-35). Freedom in the choice of one's belief and practice is necessary for the individual to be accountable to God's judgment. There is therefore, no possibility of interpreting a place for a conception of the self as determined by one's culture of birth. While there is disagreement in Islamic scholarship and jurisprudence concerning the place of legal punishment for apostasy in the temporal life, there is no prescribed form of earthly punishment for apostasy given in the Qur'an, and several passages that instruct against temporal punishment and compulsion against both apostates and nonbelievers (Al-Alwani, 2011). Religious tolerance of Christians and Jews in the millet system was also based on the recognition that children inherit the religion of their parents. By inheritance of a religion here this does not imply an ontological claim that the self is constituted by an inherited communitarian conception of the good, but merely the more straightforward claim that children generally take up the religion of their parents (at least until they encounter alternatives), and that it is normal to do so. Indeed,

Ismail & Mat (2016) cite a *hadith* (d. 261 A.H.) where the Prophet is reported as stating that all are born *fitrah,* meaning pure of corruption and with freedom of belief, and it is "his parents that make him a Jew, Christian, or a Magian" (as cited in Ismail & Mat p. 4). Importantly, it is because the ability to reason and choose is part of the God-given human capacity for freedom of religion that divine punishment is reserved only for apostates rather than those born into other religions, where the latter may not have become properly acquainted with the true faith. For the sake of unbelievers or questioners of the faith, Qur'anic verse 6:104 speaks to Allah's providence in giving the means for voluntary change towards true belief, rather than providing any affirmation of cultural essentialism: "Clear proofs have indeed come to you from your Lord: so whoever sees, it is for his own good; and whoever is blind, it is to his own harm. And I am not a keeper over you" (as cited in Ismail & Mat, 2016, p. 4). It is clear from the above that the millet system would not have been theologically justified by some theory of cultural essentialism as it is misrepresented in Kymlicka (1996).

So what were the theological and political justifications and scope for religious toleration and restrictions on freedom of religion in the Ottoman Empire? The Jewish and Christian millets were tolerated so long as they accepted the inferior status assigned to them by the Empire, as lower religions to Islam. In legal and practical terms this entailed, for example, that churches and synagogues could not be built to stand taller than mosques. Freedom of proselytization and conversion were allowed so long as it was in favour of Islam, but these were prohibited where they benefited the other faiths. Thus, the actual rationales for the Ottoman millet system, while not following from the ontological thesis of the self Kymlicka attributes to communitarianism, were certainly not the basis for the political instantiation of a system of multicultural equality either.

Apostasy:

Kymlicka's focus in the 1996 article is on internal religious freedoms that follow from the recognition of civil rights—freedom to dissent and to convert. In relation to Ottoman Muslims, these restrictions would have centred on the regulation of apostasy. Since Kymlicka attributes these types of restrictions to the theocratic structure of the millet system, it is pertinent to briefly outline Islamic conceptions of apostasy and their political implications. According to Ismail and Mat (2016), while classical jurists were of the judgment that even simple apostasy merited capital punishment, "Pre-modern Islamic jurists [who took contextual factors into account in interpreting the *hadiths*] seem to maintain a view that changing religion does not merit a death penalty, because the Qur'an says that it merely merits total damnation in the afterlife" (p. 8). The judgment of the pre-modern jurists here is in relation to simple apostasy, or the changing of religion or doctrinal beliefs of an individual away from Islam and its basic tenets. Based on their analyses of the actions of the Prophet as reported in the authentic *Sunnah,* which show the toleration and mercy of the Prophet with respect to apostates who converted and publicly dissented, apostasy that was referred to by these pre-modern jurists as necessitating state intervention referred not to simple apostasy but to apostasy that was accompanied by what were perceived in historical context to be acts of sedition or treason (Ismail & Mat, 2016, p. 8).

In relation to contemporary Islamic jurisprudence, the positions vary by political regime and juridical schools on the question of whether and how apostasy should be punished in this life, but the criminalization of apostasy in much of the Muslim world remains a human rights problem. The position of moderates and political reformists such as al-Alwani (2011), founder of the Fiqh Council of North America, follow the above traditionalist interpretation that apostasy should not be punished in this life, and advocate against its political sanction. Notably, this position is justified on theological rather than secular reasoning.

However, there are also contemporary proponents of human rights and democracy that take up a secular Islamic perspective in their push for political reform of authoritarian governments in Muslim majority states. Abdullahi Ahmed An-Na'im (2008) advocates for a version of Islamic secularism that is typical of this approach. He argues that Muslims need a secular state that is neutral with respect to religious doctrine, formed on the basis of civil laws rather than Shar'ia (An-Na'im, 2008, p. 1). His religious justification of secular government for Muslims is, in the spirit of the Qur'anic justification of religious freedom, that true religious piety is only possible if "compliance with Shar'ia [religious law] cannot be coerced by fear of state institutions or faked to appease [officials]" (p. 1). His vision of secular Muslim society is one where the state, but not necessarily the society, is secular (areligious):

> When observed voluntarily, Shar'ia plays a fundamental role in shaping and developing ethical norms and values that can be reflected in general legislation and public policy through the democratic political process…Shari'a principles cannot be enacted and enforced by the state as public law and public policy solely on the grounds that they are believed to be part of Shari'a. If such enactment and enforcement is attempted, the outcome will necessarily be the political will of the state and not the religious law of Islam. The fact that ruling elites sometimes make such claims to legitimize their control of the state in the name of Islam does not mean that such claims are true (An-Na'im, 2008, p. 1).

An-Na'im argues for a combination of constitutionalism, participatory democracy, and human rights-based citizenship as the political basis for secular states with a Muslim majority. These are the basis for securing individual rights, the public accountability of governments, and equal citizenship for minorities. An-Na'im (2008) also affirms civil freedoms, civic reason[22] and gender equality as part of this contemporary package. According to An-Na'im (2008), the realization of a human rights-based citizenship in Muslim majority states has three components to success. The first component is the "actual transition

[22] An-Na'im (2008) states that, "By civic reason, I mean that the rationale and purpose of public policy or legislation must be based on the sort of reasoning that most citizens [regardless of their religious affiliation or non-affiliation] can accept or reject. Citizens must be able to make counterproposals through public debate without being open to charges about their religious piety" (pp. 7-8)

from the *dhimma* system to formal citizenship" for Muslims and non-Muslims in Muslim states (p. 132). By his account, this has already occurred throughout the Muslim world such that "the *dhimma* system is neither practiced nor advocated anywhere in the Muslim world today" (An-Na'im, 2008, p. 134). Note that An-Na'im is not saying that non-Muslims in theocratic Islamic states today have equal citizenship, or adequate religious freedom, but that religious discrimination in Islamic regimes today is not instantiated in the name of the *dhimma* system, and so this system of rule is formally obsolete. The second component is "the means to sustain and develop that transition through methodologically sound and politically sustainable Islamic reform in order to root constitutional and human rights values in Islamic doctrine" (An-Na'im, 2008, p. 132). I will return to this component in a moment. The third component is the consolidation of the first two components through an indigenization of human rights-based citizenship "within Islamic societies on their own terms and not as a Western imposition" (An-Na'im, 2008, 138). He elaborates this component by explaining that a contextually specific approach must be taken up with respect to the reform of any particular regime, one that "[focuses] on internal dynamics and processes" in specifying and adapting constitutionalism and human rights-based citizenship for local settings (An-Na'im, 2008, pp. 137-138). This, according to An-Na'im (2008), involves a participatory process in developing and internalizing this discourse through democratic activity which poses and seeks resolution of questions and concerns that will arise as tensions between the theoretical principles of constitutionalism, human rights, democratic citizenship and Shari'a, and "the socioeconomic and political context and cultural traditions of each society" (p. 138).

Returning to the second component, An-Naim (2008) prescribes two guiding principles for what he refers to as a "sound reform methodology" through which reinterpretation of *Shari'a* in light of human rights-based citizenship should be carried out:

"First, those undertaking reform efforts must be clear about the preexisting principles of Shari'a as established by Muslim scholars and not confuse them with possible reinterpretations. Second, we must avoid arbitrary selectivity among competing Qur'an and Sunna texts without addressing texts that can be cited in support of the opposite view" (p. 135). These two principles speak to the credibility of reforms, both with respect to the basic method of the Islamic science of scriptural interpretation, and with respect to the integrity of Shari'a as consistent across theory and practice, which in turn upholds the "credibility and coherence of Islam as a religion" (An-Na'im, 2008, p. 136).

An-Na'im (2008) also recommends the interpretive strategy of Ustadh Mahmoud Mohamed Taha as one credible example of a reform method that meets the above interpretive standards (An-Na 'im, 2008, p. 135). An-Na'im (2008) summarizes this reform proposal in the following explanation, which, for the sake of efficiency, I reproduce in whole below:

> [Ustadh Mahmoud] argued for a shift in the basis of social and political aspects of Shari'a from verses included in the Medina phase of the revelation of the Qur'an (622–632) to those revealed during the Mecca period (610–622). To simplify and summarize, the rationale for this proposed shift is that earlier revelations represented the universal message of Islam, while the later ones were specific responses to the historical context of human societies at the time. Ustadh Mahmoud also demonstrated the temporary rationale for the notions of aggressive *jihad,* subordination of women to men, and subordination of non-Muslims to Muslims that underlie the *dhimma* system, as revealed during the Medina phase. The basic point here is that Islam was offered first through the peaceful propagation of its universal message during the Mecca period. But when that was shown to be unrealistic in the context of seventh-century Arabia, a more historically appropriate message was advanced during the Medina period, which sanctioned the use of aggressive *jihad* and subordination of non-Muslims. Thus the chronologically later message of Medina came to be implemented first as Shari'a after the seventh century. Asserting that it is now possible to implement the earlier message of peaceful propagation and nondiscrimination, Ustadh Mahmoud calls for that shift to be achieved through a fresh concept and methodology of juridical reasoning *(ijtihad).* (p. 135)

To be clear, in An-Na'im's model, the reinterpretation of Shari'a would only indirectly serve as the secular rationale for the civic laws of the state, where the language and references of

the latter would take a form that all citizens, regardless of religion, could agree with and identify. In this way, Islam could be secularized to serve as an inclusive basis for democratic citizenship in the contemporary world, in place of secularization in the West, which transformed Protestant conceptions of freedom of religion that arose out of the Protestant Reformation and wars of religion in Europe.

While the challenges for the adoption of this model of secular Islam in the Muslim world are steep, given the unconventional character of the proposal coupled with the stronghold of Islamist organizations on politics today, other Muslim thinkers occupied with the question of human rights reform also affirm the basic approach suggested by An-Na'im, of separating the divine from the human aspects of Shari'a law and opening up the latter to political innovations more suited to contemporary political contexts and the moral demands that arise from the universal adoption of the Westphalian state model of nationhood. For example, Hashemi (2009) argues that, given the negative opinion that many citizens of postcolonial Muslim states harbor concerning secularism, given their association of secularism with its authoritarian and religiously repressive historical imposition by European colonial powers and militant governments, the most promising path of secularization for Muslim majority countries today appears to be one that is constructing its own alternative modernity adapted to the Islamic tradition, in parallel to, rather than in wholesale adoption of, the model provided by Protestant Christianity and its secularization of its own religious justifications into the form of Western liberal democracies. Such a path, on my reading, requires that reasoning from local traditions be taken up and adapted to contemporary contexts and human rights requirements rather than supplanted by that from the liberal West, as is modeled in Kymlicka's rhetorical approach in Two Models of Pluralism and Tolerance (1996).

This particular version of the secular Islamic perspective is not unanimous, however, on the incorporation of a maximal scope for civic freedoms in Muslim contexts on a liberal model particularly, of a very wide berth for freedom of speech, as is proposed in An-Na'im (2008) and Hashem (2009), even if local rationales are developed for these. Tariq Modood's account of the British Muslim reaction to the Rushdie affair of 1989, and his debate with Kymlicka concerning the nature and motivations for this reaction are worth revisiting, as it asks Western readers to rethink their perception of the rationales behind some arguments for anti-blasphemy laws, insofar as they can be propounded by a religious point of view that also endorses the importance of freedom of speech and critical debate about religion.

Are all anti-blasphemy laws morally illegitimate?

In a 1993 article, Kymlicka presents his position on freedom of religion in light of the Rushdie Affair, as a contrast to what he sees as an attack on public apostasy and internal religious dissent from British Muslim organizations. In his view, a liberal state permits and provides positively for apostasy as both a private and quiet rejection of one's religion as well as for aggressive and public apostasy, stopping short only of hate speech or community libel (Kymlicka, 1993, p. 94). In Kymlicka's (1993) view, liberal societies allow for public apostasy for the same reason they allow for proselytism—in order to positively provide for freedom of conscience by making individual questioning and renunciation of one's religion (whether public or private) a "genuine option" for everyone, by bringing "alternative ways of life" to public awareness (p. 92). On the liberal view Kymlicka defends, a just society should positively allow for public apostasy, proselytism, and a broad liberal education designed to provide for both "the right and the responsibility" of children to "work out for themselves their own religious faith, or to subject it to detached rational investigation at a fundamental level" (Kymlicka, 1993, p. 95; Halstead, 1990, p. 5, as cited in Kymlicka, 1993, p. 94).

While Kymlicka focuses on the issue of apostasy rather than blasphemy, Tariq Modood (1993a, 1993b) clarifies that a public expression of apostasy that reaches the level of gross gratuitous offense as, in his view, Rushdie's *Satanic Verses* had, is legally objectionable to much of the religious world on the basis of its status as an act of blasphemy, regardless of whether it also counts as an act of apostasy. Moreover, he corrects Kymlicka's account of British Muslim positions in the Rushdie Affair by presenting evidence that British Muslims had from the very beginning, interpreted the issue as one concerning blasphemy, and did not have hidden motivations for the repression of apostasy (Modood, 1993b, pp. 97-98). This corrective account is also borne out by other in-depth studies of the Rushdie Affair.[23] Modood (1990) explains the British Muslim response to the *Satanic Verses* (SV) as having "had nothing to do with fundamentalism—or indeed with Khomeini" or his *fatwa* on Rushdie's life (p. 154). Rather, the anger was continuous with that expressed against what was perceived as part and parcel of a long history of racial prejudice and attacks on the Muslim community in general. With reference to this point, Modood (1993a) notes that while "the literary establishment who were showering prizes on *The Satanic Verses* argued that the brilliance of the book lay in its use of new, original images…In reality, virtually all the images and language which Muslims found offensive in the characterization of 'Mahound' (a medieval Christian insult out of joining 'Mahomet' and 'hound') are found in the Christian medieval diatribes and slanders against Islam", and it was for this reason that some British Muslims accused Rushdie of "cultural treason", as well as lobbying for the British government to apply its blasphemous libel law to the banning of the *Satanic Verses* (p. 87). Rather than attributing the British Muslim objection to blasphemy to fundamentalist tendencies, Modood (1990) gives this corrective account:

[23] See O'Neill (1999) for a summary round-up of the literature that is directly relevant to discrediting Kymlicka's interpretation (pp. 226-232).

> Virtually every practicing Muslim was offended by passages from the book…It is important to be clear that SV was not objected to as an intellectual critique of their faith (libraries are full of those); for the average Muslim the vulgar language, the explicit sexual imagery, the attribution of lustful motives—without any evidence—to the holy Prophet, in short the reduction of their religion to a selfish sexual appetite was no more a contribution to literary discourse than pissing upon the Bible is a theological argument (p. 154).

In contrast to the secular liberal sensibilities of certain sectors of the West, which have tended to view religion with suspicion, a quite different attitude towards religion is held by much of the rest of the world population, including a sizable proportion of religious citizens in the West, including Christians. In the context of non-Western regimes (but also including some Western ones), anti-blasphemy laws are common and widely supported. Again, Kymlicka's rhetorical contraposition in "Two Models of Pluralism and Tolerance" between the liberal West and the Ottoman East reproduces an Orientalist trope that has rhetorically harmful effects, despite the fact that he does not intend to affirm this trope in posing this contraposition.

In contrast to the false dichotomy posed by Kymlicka and typical of the liberal perspective on the choice posed between group protections and freedom of speech, Ng (2020) notes for example that Southeast Asian countries such as Singapore, Indonesia and Myanmar view the choice as a matter of balancing communitarian aims with those of individual freedoms, as opposed to privileging the latter in all contexts (p. 217*ff*).

The liberal stance reacts to the fact that a large proportion of regimes with operative anti-blasphemy laws use these laws at least in part, to intimidate or persecute religious minorities and to discourage or punish religious dissent, contributing to serious human rights atrocities. One of the worst examples that is often cited is Pakistan, which punishes blasphemy against Islam with a minimum mandatory life sentence, and a maximum sentence of death. Even though the majority of accused are acquitted, those who are acquitted are

subjected to violent mob justice, encouraged by the existence of the law and by the fact that the authorities provide the accused with no protection. Many of these victims are human rights defenders. In India, the reverse situation has occurred, where the Muslim minority are the victims of mob violence facilitated by the state's interventions, which includes anti-blasphemy laws. Even the above cited regimes of Indonesia and Myanmar, which make some good faith attempts at an even-handed administration of their anti-blasphemy laws, are marred by systemic discrimination through the disproportionate application of these laws to religious minorities, exacerbating the disadvantaged status of these groups overall. While I agree that the global problem of religious oppression connected to anti-blasphemy laws is a very serious one that demands moral reprobation, I argue that it is important to formulate this moral reprobation carefully. This is because the justification for such laws, despite the presence of abuses, often has a moral basis with some legitimate grounding, and this grounding reflects the religious sensibilities of a large proportion of the global population who view blasphemy, as distinct from religious dissent, as an intolerable form of moral disrespect. A failure to acknowledge this moral basis could serve to undercut calls to eliminate religious oppression, by failing to identify the nature and scope of the abuses that are criticized on the basis of a genuine international agreement on morals, rather than on a secular liberal schedule of values. It will be instructive to describe and assess a brief typology of the main justifications of anti-blasphemy laws that are existent in the world today, starting with the category of justification that is most objectionable from a liberal perspective. There are three main categories of justification, which analyze in turn, below.

The first category of justification for anti-blasphemy laws refers to the inherent objectionability of blasphemy as its basis-- that is, for the reason that blasphemy offends against public morality rather than for the instrumental reasons of maintaining peace and order or protecting the rights and feelings of religious persons, as in the following two

justifications (Cox, 2020, p. 35). I will refer to this as the public morality justification. It is defined by the reasoning that the sacred should not be treated irreverently, a judgment that garners its moral force from the public moral vision of a state *qua* representative of the society at large; in Neville Cox's (2020) words, the public morality justification proscribes the "morally unsayable" in relation to religion (p. 35, 40).

This category of justification is the one that is generally considered the most objectionable from the perspective of the secular liberal critic, and therefore, deserves particular attention. Objections to the other two categories largely question the feasibility of just application of anti-blasphemy laws, targeting the issue of necessity in relation to the third justification, predictability in relation to the second justification, or the danger of abuse of the law that may stem from hidden motivations by corrupt authorities to use anti-blasphemy laws as a means to oppress religious minorities and suppress religious dissent. While these target difficulties with practical implementation, liberal objections to the first category make the more serious charge that blasphemy laws are unjust by definition (Cox, 2020, p. 35). For example, Kymlicka explicitly rejects the idea that the state can play a legitimate role in maintaining the sacred treatment of religion, an aim that is assumed in a liberal framework to violate the principle of neutrality, and to infringe on civil rights and individual autonomy. He states that "It is up to the individuals themselves to decide how sacred they view the particular traditions and practices of their culture" (Kymlicka, 1997, p.83). This also seems to be the reasoning in the UNHRC Covenant on Civil and Political Rights (CCPR) General Comment No. 34 (2011), which states incontrovertibly that "Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant" (para. 48). The only exception stated is with reference to prohibitions on hate speech towards the members of a religious group, though no explicit analysis or reasoning for this wholesale rejection of blasphemy laws is given (Cox, 2020, p. 37). The UN

Rabat plan of action, however, might be read as affirming the liberal position of the inherent objectionability of anti-blasphemy laws indirectly, by stating that "the right to freedom of religion or belief, as enshrined in relevant international legal standards, does not include the right to have a religion or a belief that is free from criticism or ridicule" (UNGA Human Rights Council, 2013, para 19). This liberal position stems from a commonly accepted interpretation of John Stuart Mill's distinction between harm and offense which reasons that, while hate speech harms and can therefore be prohibited, mere offence falls short of harm and therefore must be permitted in the name of the right to free speech.

While I do not wholly agree with Neville Cox's views in support of anti-blasphemy laws, his position in the scholarship represents one of the most cogent of arguments for the moral legitimacy of anti-blapshemy laws in the blasphemy debates and so is worth analyzing in detail.

Cox (2020) argues that paragraph 48's unqualified rejection of blasphemy laws demonstrates an unjustified secular liberal bias that undermines the authority of the International Covenant on Civil and Political Rights as a universal statement on human rights, given that there is no genuine international consensus on this point (p. 59). He points to the press release of the General Secretariat of the Organisation of the Islamic Conference (OIC) in response to the Danish cartoon affair in 2006:

> …the Secretary General views that how far it could be called a civilized democratic behavior (sic) when a newspaper invites publicly to draw pictures of the Prophet Muhammad, which blatantly purge his personality by showing him terrorist with a bomb over his turban, most wanted criminal, fond of women, dagger carrier, etc; need no further mentioning due to reverence for him. These are all reprehensible and deeply sick notions portrayed by individuals who have no knowledge about the personality of Prophet Muhammad. It is evident that the invitation of Jylland Posten was motivated to incite hatred and violence against Muslims. By exposing the level of understanding of Islamic religion and its symbols the newspapers have seriously damaged their credibility in the eyes of the Muslim world and harmed democracy, freedom of the press, violated decency and civilized norms.

> …This has unfortunately vitiated the climate of trust which OIC and international community were trying to build for dialogue among cultures. The Secretary General strongly believes that there are no two opinions on respecting freedom of expression. The 1.3 billion Muslims have no problem in accepting the right of electronic and print media to exercise their freedoms without any let or hindrance. The Muslims strongly support exercising freedom of conscience as one of the principles which is completely in consonance with the western concept of freedom of expression. However it has to be exercised by taking into account respect to the values of those with whom one may tend to disagree. Superimposing the right to revile other religions and prophets goes against the essence of freedom of expression as no democracy, legal or political system allows preaching of hate and insult for the sacred values and symbols of others.

Cox (2020) explains the moral difference expressed by the OIC as distinct from an unjustifiable position that would reject the importance of civil rights to religious dissent. Rather, the difference in principles is a more moderate difference in the ordering of relative priorities of various public values with respect to predominantly secular and predominantly religious societies, and on the religious nature of some of the public values of the latter:

> …in many cases [of state legislation of anti-blasphemy laws], this is because of that process of moral prioritization that operates on any occasion that a state restricts rights in the name of public morals. Naturally, the moral priorities of liberal, secular states will be fundamentally different to those of more religious states. The former will inevitably deem individual freedom to be morally more important than any concern with the sacred, and will, consequently, conclude that irreligious speech only warrants legal control if it has a negative societal impact that is unrelated to religion or if it impinges on the rights of others. Furthermore, the removal of a concern with sacredness from the equation will mean that the rights of others that such states would regard as relevant cannot relate to some entitlement not to see the sacred being immorally treated. Rather they must be rights that involve no concern with the sacred—most obviously the right not to be the victim of incitement to hatred, violence, or discrimination. The latter kind of state (the non-secular), by contrast, may regard freedom of expression as being less valuable, on occasion, than the need to protect the sacred from morally inappropriate treatment. Of course, this will involve judgments about what is sacred and what is morally appropriate that will impact on those who disagree with these judgements, but exactly the same thing will happen in relation to the judgments that will be made about what is morally unacceptable in a secular society (Cox, 2020, p. 39).

With respect to the appropriate legislation of public values, Cox (2020) argues that paragraph 48 controverts the CCPR's own stated guidelines for legitimate restrictions on freedom of expression (p. 36). Specifically, Article 19(3)(b) instructs that rights can reasonably be made subject to restrictions that are "provided by law", "necessary", and "For the protection of…public health or morals", where the approach of, for example, the European Court of Human Rights has been to leave the content of public morals to the discretion of the state in question, and to focus assessment on the requirements of necessity and proportionality (p. 36).

It is often assumed that the principle of liberal neutrality rules out any moral value as an object of state regulation other than those that protect civil, political and other human rights (democracy, equality, individual rights and freedoms). In contrast to this assumption, culturally particular moral values that serve no further practical aim are often the object of government regulation in secular liberal democracies. One example is laws against streaking, mooning, and otherwise appearing naked in public. For example, Canada prosecutes Indecent Acts under the criminal code, which usually refers to intentionally exposing oneself in public, but also extends to private acts where the act of exposure is made with the "intent to insult or offend any person" (s.173). An act of exposure here is considered indecent even where there is no intent or effect of sexual assault or harassment towards the onlooker. This is a secular example of the morally unsayable (morally inexpressible) that is grounded in culturally particular sensitivities that serves as a justification of a restriction on free expression that is independent of any further instrumental justifications of public health and peace and order. Another example is laws against flag desecration which persist in many liberal Western states, including Finland, Germany, Italy, France, and New Zealand, which, despite the UN's expressed concern about such laws, receives much less attention from secular liberals. Cox (2020) offers the example of obscenity laws, which are operative in many Western countries

and are regulated "by tribunals of fact assessing whether particular kinds of speech cross the thresholds of acceptability by reference to community standards" (p. 40). For example, Canada's Criminal Code includes a typical example of such laws which defines as obscene "any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence" (s. 163(8)). Indeed, even Mill (1991/1859) identified "offenses against decency" such as public drunkenness as an exception to his own claim that liberty should only ever be restricted by the state in order to prevent harm to others (pp. 108-109).

The reasoning behind the international call to single out anti-blasphemy laws for universal repeal is, then, not because secular liberal regimes do not legislate public morals, or that the legislation of public morals always leads to an overreach in the restriction of individual freedoms, but for the contingent reason that there is a clear and widespread global and historical pattern of abuse involving the legislation of anti-blasphemy laws and the suppression of religious dissent and/or the oppression of religious minorities. While Cox is right to intuit that religion is singled out here as a problem, and that the rationale given in the document contains a secular bias, the call itself, on my assessment, is not ultimately rooted in a secular prejudice against religion, but on sound judgment with respect to the particular dangers that accompany the state regulation of religion. Namely, no comparably serious patterns of misuse of laws restricting the sale of pornography, public nudity and flag desecration exist to prompt the same forcefulness of international condemnation. The UN call to repeal anti-blasphemy laws, then, should be based solely on the risk of these contingent abuses, and not on the basis of a dismissal of the legitimacy of blasphemous offense as a component of a society's public morals.

Cox (2020) puts forth the argument that, while oppressive anti-blasphemy laws should not be condoned, the contingent dangers of anti-blasphemy laws referencing a single

religious tradition should not be used as a reason to rule out the very *possibility* of the enactment of a morally legitimate anti-blasphemy law (p. 39*ff*). Cox (2020) makes the argument in rejection of a statement put forth by the UNHRC that restrictions on freedom of expression that reference a public morality justification must be grounded in a justification that is not limited to a single moral or religious tradition (p. 46). Cox's position is that the UNHRC statement is another example of secular bias in UN reasoning. I side with the UN Council here—theocratic states, if not unequal by definition[24], have such a poor historical track record as to warrant the position that they are assumed to be in violation of human rights, for I can find no example of a substantively theocratic state with an anti-blasphemy law regulating speech about the state religion that has treated religious minorities equally.

Nevertheless, the discussion of the legitimacy of anti-blasphemy laws also needs to take into account the various reinventions of these laws that have accompanied the secularization of political regimes both in the West and elsewhere. The fact that many regimes have chosen to generalize or diversify the religious reference points of anti-blasphemy laws to make them inclusive of minority religions rather than repealing them upon secularization suggests that an alternate version of the public moral value of anti-blasphemy laws in the context of global secularization in the human rights era has emerged. This contemporary valuation of anti-blasphemy laws takes the form of an attempt to recognize religious sensibilities while reconceiving these laws as continuous with laws regulating religious equality and social justice. This will be explored in the course of an analysis of the second and third justifications of anti-blasphemy laws—grave offense of religious feelings, and maintenance of peace and order.

[24] In Chapter 2, I discuss the unclear lines between culture and religion present in Western liberal states that are considered to be substantively secular regimes.

Grave offense of religious feelings is the second category of justification for anti-blasphemy laws. Where this justification is adopted in the absence of our first category of justification, of offense against religion itself, it is typically adopted by secular regimes as an extension of the right to religious freedom, i.e. as a protection for religious persons rather than for religion. This contrasts with the offense against religion justification, which implies that respect for the sacred is included in that society's public morality. Switzerland is notable as an example of a Western liberal state that has taken a stance rejecting the UN call for the universal repeal of anti-blasphemy laws with respect to its own law, which the state defends as a means to protect freedom of religious expression, religious harmony and racial and religious minorities from discrimination.[25]

Article 261 of the Swiss Criminal Code, which frames the crime of blasphemy in terms of insult to religious feelings, states that "Any person who publicly and maliciously insults or mocks the religious convictions of others, and in particular their belief in God, or maliciously desecrates objects of religious veneration…shall be liable to a monetary penalty". Article 261 also includes the protection of acts and places of worship and religious ceremonies from public and malicious insult in the same provision. The fines for violation of this law are adjusted in relation to the financial means of the guilty individual so as not to impose an undue financial burden. In its rejection of a 2018 motion to repeal the law, the Federal Council defends it as including the function not only of "[protecting] the peaceful "vivre ensemble" of all religions, but also the right to respect for religious convictions". In a 2008 report to the UN (as cited in OHCHR, 2008), Switzerland cites this Article as part of its overall commitment to end racial discrimination, saying that "the increase of procedures against racism and discrimination, which had been implemented in article 261 of the Criminal

[25] The most recent motion put forth in 2018 to repeal the law was once again rejected by the Federal Council https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20184344 .

Code on racial discrimination, represented an essential tool against ring-wing extremism, racism and anti-discrimination".

Ireland presents an unusual example of a recently created anti-blasphemy law on this second justification, formulated in 2009, and later repealed in 2019, that is a contemporary example of a good faith attempt to word an anti-blasphemy law in a way that would clearly delimit blasphemy from religious critique and exempt meaningful contributions to public discourse about religion. The law defined blasphemy as "grossly abusive and insulting statements that are intended to cause outrage to a substantial number of adherents to a religion" and expressly exempted any statements "where a reasonable person would find genuine artistic, literary, political, scientific or academic value in the statements" (as cited in Houses of the Oìreachtais, 2019). During the ten year tenure of the law, no prosecutions were brought forth, despite a highly publicized citizen report made against prominent comedian, Stephen Fry, who criticized the Christian God. The police took a statement from the citizen but judged the case not to merit further investigation. Of further interest to the current discussion are the subsequent events on the international level that prompted the repeal of the law in 2019. Namely, Pakistan, the country most notorious for its abusive use of anti-blasphemy laws, cited the Irish law in a bid to the UN to ask for a universal condemnation of blasphemy modeled on the wording of that law. The Irish Minister of State and other commentators expressed serious concern at the rhetorical use of the Irish law by repressive regimes elsewhere to support abuses under their own anti-blasphemy laws (Houses of the Oìreachtais, 2019). This became a key motivation in Ireland's decision to repeal, though the foremost reason was the citizen referendum vote in which 64.85% cast a vote in favour of removing the prohibition on blasphemy, which reflected the view that anti-blasphemy legislation no longer represented a component of Ireland's public morality, particularly among the younger generation (Graham-Harrison, 2018). The view of the Irish Minister of State

was itself somewhat controversial within Ireland, however. Senator Rónán Mullen expressed the counteropinion in parliamentary debates that "I do accept there is a certain legitimacy to what the Minister of State said in regard to other countries invoking Ireland's law. However, the logical and sensible thing to do is not to endorse their point of view by pretending that our law was ever the same as theirs, but to take every opportunity in diplomatic fora to condemn them for making such bogus comparisons. It is an intellectual and political weakness that fails to see that distinction" (Houses of the Oireachtais, 2019). There is merit to this alternate strategy, since it could hold up well-administered anti-blasphemy laws as a model for a call to reform the oppressive administration of such laws in other regimes. I would note, however, that this can backfire where background conditions differ greatly between regimes in terms of levels of political corruption or the presence of radicalist movements, increasing the risk of abuse in unstable regimes to the point where a just administration of anti-blasphemy laws is untenable.

The alternative strategy endorsed by the Irish Senator is that held by a number of Muslim leaders in the continuing global debates over anti-blasphemy bans. For example, OIC secretary-general Ihsanoglu, while stating at a conference that the OIC would not join Pakistan and others in continuing to push for an international ban on blasphemy, given the lack of consensus between Western and Muslim member states of the UN, appealed instead for states without blasphemy bans to apply hate-speech laws to qualifying speech concerning Islam, and encouraged countries with blasphemy bans to apply these equally to insults against Islam, while adding "not particularly the one in Pakistan" (Heneghan, 2012). While the OIC position is arguably a reasonable position to come out of genuine international deliberation and disagreement on the topic, other Muslim states still point to a perceived Western bias that reflects a sense of political marginalization on the international level, whether justified or unjustified. For example, Turkish foreign minister Ahmet Davutoglu has stated, in reference

to the asymmetric way in which many European states prosecute hate speech in relation to Holocaust denial while ostensibly neglecting attacks on other religious groups, “We Muslims want the same respect shown to Jewish culture, which we support” (Heneghan, 2012). It is for this reason that I would recommend that the UN modify its rationale for denouncing blasphemy bans to reference only the contingent reasons for doing so, while including background considerations as part of such contingent reasons.

A common objection to the second category of justification of offense to religious feelings is articulated by Binderup and Lassen (2017) in their analysis of the Danish case: “it begs the question of why religious feelings are more worthy of protection than feelings directed at other types of beliefs—political, moral, existential, social” (p. 452). There are two responses to this critique that I think are most relevant. Critics such as Binderup and Lassen may be right to say that there may not be a relevant difference for some sectors of a western pluralist, secular liberal society, but this reasoning ultimately depends on whether a reverence for the sacred is a part of that society’s public morality—the legitimating standard being whether this valuation of the sacred is widely shared, not only by the majority or dominant group, but also by societal minorities. For the great majority of the world’s population, the religious and the sacred are taken to be synonymous across religious groups. On the other hand, an alternative response might be to extend the law against grave religious offense to the protection of certain other categories of belief—the sacred may be a wider and more universal category than the religious, while still capturing what is special about religious feelings. Laws against flag desecration or gross disrespect to monuments of national tragedies might count as secular examples of the sacred.

The second response to the objection is relevant to the protection of religious feelings where the feelings in question belong to the members of a religious minority or persecuted

group, or where a history of interreligious conflict marks the society.[26] Here, offense against religion, due to the close relationship between religion and identity, can cause harm that is continuous with comparable harms of epithets directed at race, gender, sexual orientation, class and ethnicity. Kahn (2017) gives a compelling response in this vein: "Moreover, for some believers, religion is also a culture and a shared community. At times it can take on characteristics of an ethnic or a racial category. For example, even a non- religious Jew might still have reason to be concerned about statements that 'The Jews killed Christ'" (p. 170). Here, speech acts that may not qualify as hate speech—for example, where there is demonstrable intent to wound religious feelings but where there is absent an intent or demonstrable intent to threaten or encourage hatred against a religious identity group, serious psychological harms can be suffered internally independent of the anticipation of any external threat of discrimination or diminishment of equal social status, for the religiously devout, due to the strong identification with religious beliefs, and for the non-practicing, due to strong identification with one's religious culture and community. Hambler (2017) elaborates on the nature of such harm:

> …mockery or ridicule of a religious belief might have the effect on the religious actor of presenting a barrier to him or her articulating religious convictions for fear that the same ridicule would be directed at him or her personally. In this sense such blasphemy might be said to create a chilling effect on the manifestation of religious expression (p. 684).

Hambler's analysis requires some critique however. He cites the controversial case of decency campaigner Mary Whitehouse's reaction to the poem, 'The Love That Dares to Speak its Name', which, on her account, consisted of a deeply felt injury which endured for years until her case suing for blasphemous libel was won in the UK in 1979 (Hambler, 2017,

[26] Both Switzerland and Singapore see historical interreligious conflicts as motivation to keep their laws against insult to religious feelings—Switzerland in reference to the conflicts between Catholic and Protestant cantons in the wars of Reformation, and Singapore, in reference to historical race riots.

p. 685). The poem described "the performance of homosexual acts on the body of Jesus Christ immediately after his crucifixion" (Hambler, 2017, p. 685 n. 14). This was the last case of blasphemous libel adjudicated in the UK before it was abolished in 2008. It was also the same law that was referenced by British Muslims in the wake of the publication of Salman Rushdie's *Satanic Verses* in their unsuccessful campaign for the UK's anti-blasphemy laws to be extended to cover Islam and other non-Christian religions. In contrast to Whitehouse's request for prosecution in 1979, the UK government's reaction in 1989 to the British Muslim request was dismissive. Douglas Hurd, the Home Secretary of the British government, gave a public address in Birmingham rejecting the call to modify the existing law, which protected only the Church of England, in order to meet the demands of religious equality. He then urged the Muslim community to join "the mainstream" (as cited in Weller, 1996, p. 47). Hambler cites the Whitehouse and Rushdie cases together, which seems to suggest that if the same kind and degree of hurt sentiments could be found across these two cases, they could equally be said to violate the aforenamed right to freedom of conscience.

Demurring from this suggestion, I would point to the crucial difference that sets these two cases apart. Members of the dominant religious group in a society rarely suffer the harms to freedom of religion named above, of a stifling of their religious expression, which, I would argue, necessitates a social climate in which the individual's religious beliefs depart from the norm, and so would be effectively silenced by the anticipated hostility of normative others. In the case of Whitehouse, the individual's religious beliefs aligned with the state religion of Britain, a fact that casts serious doubts on the legitimacy of her claim as understood on Hambler's reasoning. Indeed, Whitehouse was a notorious and influential public figure who regularly voiced her opinions in public forums and had considerable access and clout to do so. More importantly, her views were not marginalized but had significant support, including in the judiciary forum of the courtroom in which her case was heard. Historian David Nash

(1999) notes that the judge in the case made several rulings over the course of the trial that showed arguable bias towards conviction, and reports that the newspapers generally expressed approval of the verdict, though with some caveats concerning freedom of speech (pp. 244-245). This verdict in turn had the effect for a time of producing a chilling effect on public expression in the marginalized gay community of the 1970's (Nash, 1999, p. 250). The Whitehouse case then, shows the application of an anti-blasphemy law in which the protection of a majority religion had a chilling effect on the public expression of a marginalized minority group. In contrast, Modood's (1990) historical account of British Muslim activism in the Rushdie Affair shows how a lack of public recognition of Muslim concerns early on, through explicit rejection, as in the response of the Home Secretary, or by omission, as in the press silence on coverage of early peaceful demonstrations against the book, was a central factor in the escalation of Muslim anger and the sense of unequal treatment felt in the wake of the Rushdie Affair. Thus, in assessing the silencing effects of blasphemous speech on freedom of religious expression, context matters, specifically the configuration of majority-minority dynamics in speech norms in a given society.

A second argument regarding the special status of religious feelings references contexts in which a particular societal history of interreligious conflict between two groups, such that a blasphemous attack on belief that does not incite violence or hatred but only hurt feelings can be destructive of a social harmony necessary for a healthy society by undermining the process of healing over a tenuous relationship of respect between groups. An anti-blasphemy law in such a case can regulate behavior in such a way as to promote at least the outward expression of minimal respect required for such healing of past hurts. The argument on this count reasons that such a measure is not merely instrumental to the more practical aims of peace and order, but may also aim at the development of substantive

intergroup respect, which, even if only simulated by the current generation, has an effect on positively shaping the views of the younger generation on members of the other group.

This appears to be the case in Singapore, where the state has developed a unique approach to addressing intergroup tensions in a religiously diverse landscape.[27] One important reason why Singapore has developed an extensive legislative regime dedicated to the management of religious harmony is that tension between religious groups has historically been bound up with racial divides. The government's policies on religious harmony are motivated by the memory of the founding conflicts of the nation, as a result of which national unity was very nearly defeated before nation-building efforts had fully gained ground. The Maria Hertogh riots of 1950, the series of incidents most often cited by the state in justifying legislation for the regulation of religion, were sparked by a conflict between the Malay Muslim and European Christian communities, and led to 18 deaths, 173 injured, two burned buildings and 119 vandalized vehicles (Aljunied, 2009, p. 22). Other historical riots include the riots of 1964, between the Malay and Chinese communities over religious insults during the celebration of the Prophet Muhammed's birthday (Chen, 2013, p. 13 n. 69).

One function of the state's Internal Security Department is to investigate and act on citizen complaints reporting insulting statements made by religious leaders of various congregations that could cause offense to other religious groups. The authority of the Internal Security Department (ISD) in this respect is governed by the Maintenance of Religious Harmony Act (1990), which gives the government powers to issue restraining orders in such cases. Decisions are made by the Minister for Home Affairs and subject to review by the Presidential Council of Religious Harmony, a consultatory body consisting of a representative from every major religious group in Singapore, and including secular

[27] The Pew Research Center (2012) ranks Singapore as the country with the highest level of religious diversity in the world.

laypersons with legal background. The Presidential Council has the power to hear representations by the accused and must be given all supporting documents justifying the restraining order for review. The President of the Council then has the power to confirm, cancel or modify the restraining order based on the recommendations of the Council members. Singapore has as yet never had a case in which a restraining order was issued under the Act, and this is due to the success in inducing compliance of its customary protocol for addressing complaints, which has now been formalized as the "Community Remedial Initiative". The protocol includes the delivery by the ISD of a stern verbal warning to the offender to desist and apologize, which has so far been successful in obviating the need to issue any actual restraining order.

Chen (2013) cites two cases in detail from 2010 involving Pastors from evangelical Christian Churches. In the first case, Senior Pastor Rony Tan of the Lighthouse Evangelism Church posted videos on the Church website which showed the Pastor suggesting that the meditation experience of a former Buddhist was produced by a "demon", trivializing Buddhist practices, and insensitively criticizing central Buddhist precepts (Chen, 2013, p. 24). Pastor Tan was given an official warning and told by the ISD that "in preaching or proselytizing his faith, he must not run down other religions, and must be mindful of the sensitivities of other religions" (Chen, 2013, p. 25). In the second case, Pastor Mark Ng of New Creation Church was recorded in a video distributed among the Church congregation and ended up being posted online. In the video, the Pastor "can be heard joking with the congregation about Chinese rituals; in one instance, he compared praying to Taoist deities to 'seeking protection from secret society gangsters" (Chen, 2013, p. 26). Pastor Tan was also issued a warning by the Internal Security Department. In both cases, the official warnings prompted the pastors to take action to have the videos removed and post public apologies, and when those were perceived as insufficient by the Buddhist and Daoist communities

respectively, each pastor visited the respective Buddhist and Daoist leaders to give a more personal apology. In both cases, the incidents were resolved upon acceptance of these apologies, removing the need for the state to take legal action. The government oversaw the resolution of these incidents, with the Deputy Prime Minister and Minister for Home Affairs stating in the press after the conclusion of the Pastor Tan incident that the "religious leaders had led and set the right example" (*The Straits Times* 9 February 2010, as cited in Chen, 2013, p. 25).

Since 2019, the government has formalized this "reconciliation ritual" through a provision added to the Maintenance of Religious Harmony Act giving the Minister formal powers to offer a voluntary remedial alternative in lieu of legal action to any offender, against whom, prosecution would be dropped in return (Neo, 2020). The nature of the "Community Remedial Initiative", which came into effect 2021, is described on the website of the Ministry of Home Affairs (2019): "the Minister for Home Affairs may offer a person who has wounded the feelings of another religious community an opportunity to perform activities to help him better understand the affected religious community, and mend ties with them. Examples of remedial actions may include a public or private apology to the aggrieved parties, or participation in inter-religious events".

Through the 2019 amendments, Singapore's more punitive legal provisions in its criminal code regulating racial and religious hate speech and the incitement of intergroup hostility or violence have also been brought under the purview of the Maintenance of Religious Harmony Act, thereby allowing the Community Remedial Initiative to be offered to accused under these criminal sanctions as well. The Religious Harmony Act has also produced longer-lasting changes in the attitudes and practices of religious leaders: a number of prominent Evangelical Christian leaders have adjusted their positions on aggressive proselytization to advocate a more respectful approach, and shifted from a previously

competitive, exclusionary stance towards other religions in order to participate in interfaith dialogue and cross-denominational collaboration in social work (Chen, 2013, p. 58).

The government's interventions have served to paternalistically shape a shared national value of religious harmony, at the expense, albeit, of some significant measure of individual religious freedom. Certainly, it is true that there are many aspects of Singapore's legal regulations of religious harmony that are forms of overreach. For example, both the Pastor Tan and Pastor Ng cases seem to involve an excessive use of government interference for what are fairly mild comments. Moreover, some question Singapore's use of coercive instruments on the legal measure of necessity, arguing that Singapore no longer remains in the volatile circumstance of the founding years of its nationhood, and can now withstand a greater degree of intergroup disagreement without this threatening national unity.

On the other hand, these same criticisms could prompt the amendment of some of these legal measures rather than a wholesale replacement of them with a liberal approach. For example, the government could circumscribe the use of its quasi-coercive state interventions more narrowly for application only to grossly offensive insults to religion that are made on a publically accessible platform. It could also guard against state abuse by making the regulatory body fully independent from the state, its decision-making processes transparent or subject to regular independent audit, and have the Internal Security Department overseen by the democratically representative Council of Religious Harmony rather than relegating this council to an advisory role subordinate to the singular authority of the PAP party minister.

Other aspects of the 2019 amendments produce considerable cause for concern. For example, while the focus of the act has shifted from a generalized restriction on the freedom of speech of all citizens to one that focuses more on the conduct of religious leaders, the legal force of restrictions has also been expanded to include speech in the private sphere so long as

it is uttered within hearing of one other person. As well, the 14 day notice period for restraining orders has been removed, on the state's justification that expediency is needed to regulate offensive speech online, which can travel much more quickly.

Notwithstanding these very worrying overreaches, the Singapore case is an example in which the creative construction of anti-blasphemy laws has served to ameliorate religious conflicts and promote interreligious respect. In the Pastor Tan and Pastor Ng incidents, the Buddhist and Daoist leaders commented publically on being touched by the sincerity in which the apologies were delivered, and, in the Pastor Ng case, the Taoist Federation Chairman noted that he and the Pastor had become friends as a result of the reconciliation ritual (Chen, 2013, p. 26).

While the Swiss and Singaporean examples present promising legal models in some respects, religious equality and security justifications of anti-blasphemy laws must still be assessed in terms of the actual use and operation of these laws in context, as well as their possible use, both legally and socially, given especially to background conditions that make abuse more likely.

For example, in India, religious equality and security arguments have been strategically raised by Hindu nationalists, who have gained ground over the decades since independence and now control the federal government. These political actors have used India's "hurting religious sentiments" laws in order to foment populist hostility within the majority Hindu population *against* Muslim and Christian minorities, as opposed to the situation in Switzerland, which refers to the protection anti-blasphemy laws afford *to* Muslim minorities. Adcock (2016) gives an insightful analysis of the ways in which the instantiation of India's Section 295A regulating speech that outrages religious feelings has backfired as a legal tool for the reduction of religious conflict and hatred. Where the inciting incident

leading to the creation of the law was the mocking, derisive tone of Arya Samaj Hindus' conversion campaigns using anti-Islamic polemics, invocations of the law have increasingly been made by Hindu nationalists as a weapon to be used against religious diversity, while employing the rhetoric of religious tolerance as a cover.

Adcock (2016) provides an analysis of the historical causes of this situation of abuse, which she argues stems from as early as the first instantiations of laws that address "Offences against Religion" in the Penal Code by the British colonial government in 1860 (p. 342). Following the rebellions of 1857, British officials reasoned from racialized perceptions that Indians, by their uncivilized nature, were more susceptible to unrest through the invocation of religious passions, which necessitated legal provisions to criminalize any invocations of these passions, since the unrest provoked would upset the law and order required to maintain British control over the colony (Adcock, 2016, p. 342). Ironically, these laws served to produce the opposite result to the tempering effect the British intended, precisely through the use of the laws by Indian controversialists to encourage the performance of religious passions through calculated strategy (rather than as arising out of some innate nature) in order to secure legal censorship of opponents. This result was to no insignificant extent due to the manner in which these laws were worded such that they could be invoked together: Penal Code regulation 298, which punished speech acts with the "deliberate intention of wounding the religious feelings of any person" was regularly cited by controversialists in the press together with riot regulation 153, in order to criticize their opponents in forums they knew were monitored by the state. Regulation 153 reads:

> Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with

> imprisonment of either description for a term which may extend to six months, or with fine, or with both" (as cited in Adcock, 2016, pp. 343-344).

Adcock (2016) cites Asad Ali Ahmed (2009, p. 174), among others, to succinctly explain the problem with these laws. Effectively, "the Indian Penal Code "incites" the display of wounded feelings", for "the law has given strategic value to invoking or mobilizing wounded religious feelings", where "violence provides the clearest proof" that the speech act in question has run afoul of regulation 298 or or the later 295A-- prohibiting the wounding of religious feelings and the outraging of religious feelings, respectively (Adcock, 2016, pp. 341-342). As Adcock (2016) explains through examples from the press, "During the colonial period, controversialists of various religious groups regularly called upon government to take action against their opponents - saying their opponents had transgressed the law by wounding their religious feelings thereby provoking a riot - and they strongly implied that the government *had better act*, or *else* there would be violence", as in one typical example from a Punjab newspaper in 1890 which reads, "…If the government does not take serious notice of books of this description written for the express purpose of injuring the religious feelings of the people, riots will be sure to occur…The Sikhs will not submit to be abused by the Aryas" (Adcock, 2016, pp. 344-345).

Compounding the situation created by the Penal Code provisions and the strategies of controversialists was the precedent set by an ill-considered court judgment in 1915, which cemented the growing understanding of religion in the legal and social background of colonial India as not only susceptible to religious passions, but *entirely* "rooted in the emotions and sentiments" (Uttar Pradesh Government, General Administration Department, as cited in Adcock, 2016, p. 346). This judgment removed the previously allowable defense against regulation 298 that reasoned statements made in good faith that were critical of religion were protected as free speech, through the rationale of the judge that "logic has never

been known to convert anyone", effectively setting the precedent that the right to public reasoned debate excluded religion completely rather than excluding only malicious statements (Uttar Pradesh Government, General Administration Department, p. 51, as cited in Adcock, 2016, p. 346). Adcock uses the above analysis to demonstrate the two-way relationship of influence between law and socio-political norms and practice, such that laws against blasphemy do not merely serve as a deterrent to religious conflict but can also inspire it.

While changes to the wording and scope of these laws would likely do too little too late to ameliorate the problem in today's India, at least so long as Modi's BJP party is in power, and where, as Adcock (2016) notes, "violence by the Hindu Right in India seems increasingly to show a deliberate disregard for the rule of law", I would argue that her analysis is instructive as a warning for regimes which might seek in good faith to reform antiquated anti-blasphemy laws into legal instruments for the promotion of religious equality and harmony today.

On my reading, despite problems with the Swiss and Singaporean regimes, these are examples that show that such good faith motivations do exist as rationales behind existing laws of this kind. Nevertheless, contemporary consideration of the potential of any anti-blasphemy law to ameliorate religious conflict must be alert to the potential risks and distortions that can emerge, and either look to noncoercive alternatives instead, and/or, word the scope of such laws conservatively and cautiously to minimize negative impact, while instituting safeguards and regular legal reviews that take contextual account of socio-political impact on the ground. Secondly, an exclusively legal approach is ill-advisable and should be coupled with investment in noncoercive measures promoting multicultural education, diversification and independence of the press, critical thought, and interreligious dialogue, cooperation and remediation.

I now turn to the final category of justification for anti-blasphemy laws, the peace and order justification, which overlaps somewhat with the legal examples in the previous category. An active European example of the third justification can be found in Article 166 of Germany's criminal code, which was modified in 1969 from an offense against religious feelings into a "potential endangerment offense", where the object of potential endangerment is the public peace (Cornils, 2017, p. 368). Article 166(1) reads, "Whoever publicly or by disseminating content (section 11 (3)) reviles the religion or ideology of others in a manner suited to causing a disturbance of the public peace incurs a penalty of imprisonment for a term not exceeding three years or a fine" (Criminal Code of Germany 1998). The law, while infrequently prosecuted, has been brought against insults to both the Christian and Muslim religions, with one of the more notorious cases involving the 2006 conviction of an offender who had sent toilet paper rolls to mosques and Muslim associations imprinted with a text which was labeled, "Quran, the holy Quran", and that attributed terrorism to the Prophet (cited in Cornils, 2017, p. 370).

The *Jyllands-Posten* Muhammed cartoon controversy (2005-6), and the *Charlie Hebdo* terrorist attack are two of the more high profile events involving violent disturbance of the peace in response to perceived acts of blasphemy that have had a continent-wide effect on public debates over anti-blasphemy laws. Germany is an example of a country that has retained its law in recent years, while Denmark is one of the latest of the European countries that has chosen (in 2017) to abolish their law. Binderup and Lassen (2017) detail typical peace and order justifications (prevention of interreligious conflict, violence and terrorist acts, and protection of interreligious harmony and relations) in the context of governmental debates in the Danish context:

> …The final anti-abolition argument – that appears to have swayed many Politicians is based on concerns for public order and safety, thus fearing future victims of violent reactions by those offended. Again, the weight

> of the argument is enhanced by the contextually based fear that a public burning of the Quran might reignite an international crisis with the Muslim world or could give rise to a worsening of the relations between religious and other groups internally in Denmark or, more seriously, that radicalised religious extremists might use the occasion as a pretext for terrorism. This fear appears to loom large in both the advice of the Council and the minds of the politicians and some religious leaders (pp. 454-54).

The peace and order justification, despite being more acceptable to Western states than the other justifications I have discussed, is still highly contested by liberal critics. Indeed, Binderup and Lassen (2017) offer a typical critique of this justification: "Punishing persons offending religious feelings rather than protecting them and punishing instead the offended who are willing to turn to vigilante violence as a matter of principle gets things the wrong way around. It can even amount… in the extreme case … to giving in to terrorism" (p. 454-5). This objection is certainly borne out to disastrous effect in the India case. On the other hand, Binderup and Lassen have in mind the violent policing of speech carried out by Islamic terrorists in such incidents as the Charlie Hebdo attacks. Insofar as this critique uses these incidents of terror as their inciting example, the argument for the prevention of the incitement of violence made in the Danish Parliamentary debates, particularly given their specific and delimited reference to immediate context, had some merit. As Binderup and Lassen report, the relevant argument against abolition of Denmark's anti-blasphemy law references a situation which, I would add, is relevant to many regimes debating such laws in the contemporary context in which the question is not the creation of a new law but of abolition v.s. symbolic retention or reform. This argument "worries about how the signals expressed by the very act of abolition in the current situation would affect Danish society [in terms of licence to hostile speech acts against Muslim and Jewish minorities] and especially Danish relations to foreign (Islamic) powers" (Binderup & Lassen, 2017, p. 452):

> Arguably, even if the intention behind an abolition would be to communicate that religious feelings are not seen as so important that they need special

> protection, it could also send the signal that it is now morally acceptable to mock and scorn religious doctrines or practices of worship intentionally. According to this line of argument, it is important how an abolition would be interpreted – inside but especially outside Denmark where the signal might be simplified or even deliberately distorted. In particular, it could be seen as a hostile signal not just to religions as such but 'especially to particular religions' (Binderup & Lassen, 2017, pp. 444-445).

The second part of Binderup and Lassen's rebuttal to the above worries, I would argue, depends on an assumption that is subject to reasonable disagreement between political regimes with different guiding ideals and socio-political norms. They argue that "free society sometimes results in deep rifts and conflicts over basic values and beliefs" and that the role of the state is not to shield the populace from such rifts through the restriction of rights of free speech, but to punish those who would engage in the further extreme of unlawful violence (Binderup and Lassen, 2017, p. 455). While this concern should indeed be considered universally where the scope of proposed restrictions on free speech are great, the strength of the argument loses some of its strength in the Danish case, in which the restriction on speech was very minimal—limited paradigmatically to the oft-cited case of burning or urinating on holy books, and where reference to the minimalism of the limit was central to the arguments of proponents for retaining the law. In the view of Danish proponents for retaining the law, the government does have at least some minimal responsibility to prevent societal rifts beyond those that narrowly target incitement to hate crimes. This second part of Binderup & Lassen's argument, therefore, puts forth a disputed account of the role of the state in the Danish context, rendering its validity dependent on democratic endorsement of this account. In the Danish case, the democratic endorsement of this responsibility was indeed minimal, as it was only the very immediate and radical nature of the threat of violence, with the Charlie Hebdo attack having occurred in Paris just weeks before, that convinced the government in the past 2015 decision, not to abolish a law that had largely fallen into disuse in a highly

secularized society, and that was eventually abolished two years later when the timing of repeal proved less sensitive (Binderup and Lassen, 2017, pp. 432).

In highly secularized populations in the Western context, Binderup and Lassen's critique could be endorsed by a certain accounting as legitimate, for two reasons: The first is that the public moral vision of secular liberal states has not only been altered by declining levels of religiosity in the Western world, but also conceives a central mode of public reason as adversarially structured, and therefore as accepting of antagonistic speech acts as expected or even normative and constructive, and is therefore highly reluctant to rule out the productive potentialities or allowable limits of expression that veer into the aggressive, obscene, blasphemous, crass, or emotionally hurtful. This is interpreted by many commentators as the message given by the judgment of the European Union Court of Human Rights in affirming the right to free speech as including the right to "speech that may offend, shock or disturb" (*Handyside v. United Kingdom* [1976] para. 49; Moon, 2017, p. 502). Another demonstrative example in the French context can be found in the particulars of the Charlie Hebdo tragedy. The actions and motivations of the editors of Charlie Hebdo, in publishing the now infamous satirical cartoons of the Prophet Muhammad, were in keeping with their publication record of mockery of religious figures regardless of sect, and which has been defended as consistent with a longstanding French tradition of provocative religious satire stretching as far back as Voltaire and Rabelais.

On the other hand, the argument of the drafters of the UN Rabat plan of action for a right to ridicule religion seems to be made from the perspective of a certain secular liberal understanding of the foundations of a democratic society, in which a particular cultural sensibility holds with regards to the speech norms detailed in the previous paragraph. It is pertinent to note that where proponents of a right to ridicule religion often cite the EU court's statement concerning the right to "speech that may offend, shock, or disturb" in *Handyside* v.

The United Kingdom [1976], this may be a misreading of the court's reasoning, which could also be read as endorsing only the right to speech that may *incidentally* offend, shock, or disturb because of the controversial status of the ideas proposed by said speech. In *Handyside*, the court gives the explicit rationale that that statement was dependent on there having been an absence of consensus on public morals in British society with respect to the alleged offensiveness of the speech act at the center of the case.

On the first point, in societies where an adversarial approach to discourse is not endorsed as healthy and productive, lewd traditions of satire not celebrated in the culture of discourse, and local sensibilities about what counts as meaningful religious criticism not conditioned by a culture of provocation, the capacity to anger and shock one's audience in a gratuitous way (as in the Danish limit case of urinating on or burning the Bible or Qur'an, but perhaps also in works like the *Satanic Verses*) may not be widely considered to contribute much, if anything, to furthering discourse and reflection, and could reasonably be viewed as at best unhelpful and at worst, damaging for the constructive furthering of public debate. While the state in such a case should still limit legal intervention against offensive speech to extreme cases in order to avoid the encouragement of abuses and the chilling of speech, it is nevertheless reasonable to reject the idea that one has a categorical right to "speech that may offend, shock or disturb" in cases where offense is both intentional and considered by the average person in that society to be grossly gratuitous to the message contained in the speech act. It is worth noting that even in *Handyside,* which involved a countercultural educational publication directed at adolescents, it is not clear that these two conditions-- intentionality, and gross gratuitousness of offense-- were present, though in that case, the alleged offense was obscenity rather than blasphemy. The publication at issue in *Handyside* arguably represented a good faith intervention into the debate over public morals that incidentally rather than intentionally and gratuitously caused widespread offense. That is to say—

blasphemy, properly understood according to the specifications of malicious intent and gratuitous means, offers a credible standard for marking the line between meaningful debate about religion and potentially harmful speech acts, provided that there is democratic support across a variety of societal groups for such a limitation.

Moreover, the stakes for some countries in relation to the destructive nature of interreligious conflict can be very high, to the point where the very integrity of the country as a unification of ethnoreligious groups with a history of violent conflict may be fragile. Here, the targeting of individual perpetrators of violence, without other measures to diminish animosity between groups, may address individual incidents of violence without addressing the underlying threat, of intergroup hostility and resentment, to national unity. In such cases though, it is clear that anti-blasphemy laws, if they serve this latter purpose at all, must not be the only or main measure for sustaining religious harmony, an end that requires extralegal measures such as intergroup dialogue, rituals of healing and public education as essential components. The contrast discussed above between the Singaporean and Indian cases, where in the latter case, the British colonial government focused exclusively on legal instruments, is instructive here. Note also that this argument works in reverse as well. In the contemporary context, the damage done to religious harmony, religious equality, and religious freedom in India by Modi and the Hindu nationalist BJP party has been a multi-pronged effort that has included the replacement, for example, of multicultural education curricula in public schools with Hindutva propaganda demonizing Muslims in history textbooks, as well as the monopolization of the press for the political purposes of the party.

In order not to have the effect of chilling speech, dissent and societal debate, an anti-blasphemy law must be circumscribed with appropriate safeguards: it must have limited scope, provide some independent check on arbitrary application, the penalties must not be overly severe, and the law must be predictable. Scope can be restricted by distinguishing

serious from trivial offense and requiring the offense to have taken place on a public platform. This means of restriction can also help to prevent individual members of the majoritarian religious group from abusing the law by reporting trivial or fabricated cases as a means to harass and persecute targeted minority individuals or groups. If the law is limited to public statements, this would preclude justification of harassment of suspects through interrogation processes with the purported intent to establish preliminary facts of the case. The frequency of criminal prosecution can also be limited to extreme cases, limiting the main function of the law on an everyday level to that of a symbolic reminder to citizens to maintain intergroup respect. For example, in Denmark, which is a highly secularized country, prosecutions of the recently repealed anti-blasphemy law were limited to very severe cases, and a case could only be prosecuted by the decision of the Director of Public Prosecutions, where one of the interests of the Danish Prosecution Service is to keep the court system from being clogged with trivial or questionable cases (Binderup and Lassen, 2017, p. 434). The independence of such a check on investigation and prosecution could be further assured by giving this authority to a diverse committee such as Singapore's Presidential Council for Religious Harmony, which presently, lacks presiding authority, holding a subordinate status to the Minister of Home Affairs in a governance context of *de facto* one-party rule. Another common measure for limiting the restriction by anti-blasphemy laws on free speech is the *mens rea* requirement of *deliberate* intent to wound religious feelings, thereby excluding accidental acts of blasphemy from prosecution.

Crucial for establishing the legal certainty that would prevent the chilling of critical speech about religion in general is the predictability requirement. Poland's failure to meet this requirement has rendered it especially vulnerable to overzealous prosecution of anti-blasphemy laws following the right-wing takeover of the government in 2009 (Kulesza and Kulesza p. 428). This has also been the case in India. This can be contrasted with Denmark,

where the Criminal Law Council was charged in 2009 with the task of assessing the legitimacy of Denmark's anti-blasphemy law and making recommendations as to its possible abolition. As discussed earlier, the Council was able to identify concrete examples of what counts as a very severe case of blasphemy that would be appropriate to prosecute, namely, the burning of or public urination on the Bible or Quran or other holy book (Binderup and Lassen p. 444).

A further means to prevent overreach in the application of blasphemy laws would be to take an approach like Singapore's, which restricts criminalization of blasphemy to hate speech and speech acts that incite civil unrest, while implementing non-coercive or decriminalized "soft law" measures with regards to milder acts of offense against religious feelings-- the state has used mediation, intervention, public statements and educational campaigns, and where these do not restore intergroup harmony, censorship, restraining orders or fines are stronger potentially non-criminalizing legal alternatives.

This analysis of various anti-blasphemy regimes has shown that not all anti-blasphemy laws are instituted (or retained) for the purpose of shoring up the dominance of a state or majoritarian religion, and that some anti-blasphemy laws can lay claim, at least in part, to moral justifications that, while differing from the liberal approach to freedom of religious expression, may still provide a defensible balance between state promotion of public morals and freedom of expression. Whether an anti-blasphemy law should be retained in the context of any particular regime depends on the nature of the justification, considerations of scope, necessity, proportionality, predictability, due process, democratic support, and protections against abuse. Important background factors that can weaken the case for retaining an anti-blasphemy law are if one religious group dominates the society in power or demographics, and whether the sociopolitical context of a state includes strong factions of religious nationalism that have the potential to gain political control that would quickly

render anti-blasphemy laws that were judiciously applied under a previous regime, susceptible to use as a tool of oppression in the next.

Conclusion to Chapter 1, Requirements for a just politics of the common good:

Given my assessments of Kymlicka's principle of neutrality in this first chapter, is a politics of the common good untenable as a basis for a just political regime? My response is no, so long as the politics of the common good is a thin theory of the good. As an alternative to liberal formulations, below I offer some broad suggestions for universal requirements that all pluralist societies should aspire to meet (that means, they should work towards meeting them, through formal and informal democratic means). Note that this list is not complete, but highlights the areas of scholarly investigation I focus on in the current project[28]:

A just regime should have some robust form of democratic endorsement or popular support, and must allow a reasonable scope for political dissent; a just regime does not suppress political dissent *for the purpose* of maintaining the governing power of the ruling regime.

Liberal neutrality of the state is not required, though collective aims supported by the state must be thin enough to meet universal requirements of equality as detailed below. Different regimes may have different schedules of priorities in interpreting the requirements of the international agreement on human rights, so long as a genuine attempt to balance

[28] For example, I have not yet done a scholarly study of LGBTQ rights (or of the perspective of conservative LGBTQ individuals in restricted contexts) and therefore, do not have an educated opinion on what the universal requirements for all regimes to aspire to should be in relation to the equality and inclusion of these groups. However, my uninformed hypothesis is that *at least* some form of equivalent recognition of, for example, gay civil unions should be aspired to, with all the attendant rights that legal marriage bestows on heterosexual couples, whether or not the law or the regime formally calls this marriage. Then, whether any particular regime recognizes marriage legally will have to be decided through informal and formal deliberative democratic means. On an additional note, I personally think that there is theological room in all the major religious traditions for the equal moral recognition of gay unions and gay couples as parents, but this is just my personal opinion, not my informed scholarly opinion about political and moral universals.

conflicting rights is made. Some regimes may prioritize rights relating to welfare considerations over rights to do with the promotion of autonomy.

There must be equal citizenship for all, according to a requirement of equal concern, equal recognition, and equal inclusion that is not gradated on particularistic factors such as race, ethnicity or religion. Equal citizenship does not require identical provisions for different cultural groups. Equal status for minorities can be expressed through a differential formulation of national belonging that recognizes the equal worth and contributions of minorities, and accords them an equivalent bundle of rights and benefits.

A just regime respects the diversity of beliefs and religious affiliations. It must not penalize nor denigrate minority identities, and must attempt to minimize inequalities in the distribution of goods and benefits, such that all can live a decent life and equal concern for every citizen is maintained. Freedom of conscience and freedom of practice of all members must be protected equally and the state must not be an agent of oppression or facilitate oppression through neglect. Additional obligations may be required to protect and promote the survival of cultural minorities that have been historically oppressed by the state.

A just regime does not discriminate on the basis of gender, though equality in these respects can be maintained through differential rights and benefits in some cases. For example, with respect to differential inheritance laws for male and female heirs under Sharia law, these should be updated to reflect contemporary realities where financial support of dependents is no longer the sole responsibility of males. e.g. Turkey has equalized its inheritance laws with respect to current gender realities in this respect.

Lastly, every individual should have access to the educational and socioeconomic means that would be required for a substantive right of exit from their cultural group.

Ch 2: National identity and "national minorities"

This chapter presents a critique of Kymlicka's (1995) theory of minority rights in relation to the model of nationhood he lays out for, in his terminology, "national minorities". This critique points to the shortcomings of this model from the standpoint of colonized and racialized ethnocultural communities, and presents alternative suggestions that would take fairer account, in the first place, of the identity aims of indigenous nations, focusing on the Dene in the Northwest Territories, and in the second place, those of what in the literature have been referred to as "minorities within minorities" (Eisenberg & Spinner-Halev, 2004). In relation to the latter group, I will apply Eisenberg's (2004, 2009) identity approach as a fairer strategy to assess the competing identity claims of the Québec nation within Canada to those of the internal religious minorities within Québec, particularly Muslim women.

The chapter is divided into three parts. First, I give a brief introduction to Kymlicka's definition of national membership. Secondly, I present a critique of each part of that definition from the standpoint of Dene nationalism. The third and final part extends the critique to assess its fit within the Western liberal context, concluding with a case study of the Québec nation and its internal religious minorities.

Kymlicka's model of legitimate identity nationalism

Kymlicka's (1995) understanding of national identity is encapsulated by his clarification of civic nationalism. He corrects a common misconception about civic nationalism which is affirmed by some prominent liberals such as Habermas (1992), Ignatieff (1993) and Walzer (1992), that "a truly liberal conception of national membership should be based solely on accepting political principles of democracy and rights, rather than integration into a particular culture. This non-cultural conception of national membership is said to be what distinguishes the 'civic' or 'constitutional' nationalism of the United States from

illiberal ‘ethnic’ nationalism” (as cited in Kymlicka, 1995, p. 200 n. 15; Kymlicka, 1995, pp. 23-4). Contrary to this conception, Kymlicka (1995) rightly affirms that civic nationalisms such as that of the United States are cultural, rather than absent a culture, for, “Immigrants to the United States must not only pledge allegiance to democratic principles, they must also learn the language and history of their new society” (p. 24). On the basis of this clarification, Kymlicka affirms civic nationalism as the just form of cultural nationalism, and that which is compatible with liberal politics. On this basis, civic nationalism affirms the principle that, “National membership should be open in principle to anyone, regardless of race or colour, who is willing to learn the language and history of the society and participate in its social and political institutions” (Kymlicka, 1995, p. 23). While the nation form referenced above is the larger nation state, Kymlicka means this qualification to apply universally to any national community, including, in his terminology, “national minorities” such as the Québécois nation within Canada, and the various First Nations, Métis, and Inuit nations.

In order to maintain the qualification that anyone can integrate into the common national culture, Kymlicka argues that national cultures should exclude conceptions of the good life. This commitment requires him to make a hard distinction between the national culture and particular conceptions of the good life, where the content of the common national culture includes only the language, institutions and history of that national group, and excludes particular conceptions, doctrines and shared aims of the good life—in other words, religious and ethical values, affiliations, symbols, practices and shared ends that are conceived as components of the good life rather than of justice. This hard distinction between culture and the good presents problems from the perspective of national minority groups.

My objection here might call to mind classic communitarian arguments. For example, Michael Sandel (1998) critiques the liberal distinction between the right and the good, and the priority given to the former over the latter. In his explanation of civic nationalism as

cultural, Kymlicka not only includes the requirement this places on citizens to assimilate to a national culture, but also to a political ideology—in his case, liberal political principles of liberty, equality and justice. Sandel's critique calls into question the idea that justice (in the current discussion conceived as an aspect of national culture) can be conceived and debated in public and state forums without involving presuppositions about conceptions of the good. Charles Taylor makes parallel arguments establishing fundamental connections between culture and religion (i.e. the good) in various works. For example, in *Sources of the Self* (1989) he argues for the ontological priority of the good over the right. He explains that moral claims such as those found in basic human rights, claims which liberals ground in universal principles of justice and assert as neutral to particular conceptions of the good, are in actual fact, shaped first in the cultural background of each agent's conception of moral ontology (Taylor, 1989).

As a direct implication of their objections, Sandel and Taylor affirm a different mechanism of equal inclusion from liberals. Rather than trying to divide culture from moral justifications and conceptions of the good, their approach is to promote a shared conception of the good as the very activity of democratic debate about competing conceptions of justice and the good. They re-conceive the procedural democracy of liberals as a shared end that takes the form of a republican culture of democratic engagement. While I am sympathetic to the call for the admission of conceptions of the good into the public sphere of democratic engagement, my concerns about the liberal severance of national culture from conceptions of the good in the immediate discussion raise other problems for national minorities that this solution does not directly address, since the attachment ethnic minorities have to the moral values and traditions associated with their identities is not based on their value for sustaining a vigorously participatory republican polis based on democratic virtues and a morally

substantive public sphere, but on loyalty to a way of life and to an ethnic community of belonging.

The main difference is that liberalism and civic republicanism do not arise from distinct ethnic or national groups, but from political models that stem from competing threads of the same cultural tradition, and are raised as a debate between members of a national group that share the same broad cultural heritage. The communitarian objections in this vein do not address the concerns of many national minorities because they are raised from the perspective of those who share a broad historic-cultural background with the liberal multiculturalists, but who differ in terms of their idea of what collective choices can and should be made concerning the conception of their shared background and the scope of the public purview.

An entirely different claim situates the position of ethnoculturally distinct groups whose national identities do not find their roots and organizational principles in the philosophical and institutional traditions and historical conflicts of Western societal culture within which the liberal-communitarian debate takes place. In the case of national minority groups who do not identify with the dominant liberal democratic institutional culture in either the liberal or republican forms, there exist more fundamental differences that arise from histories of racialization and colonization, as well as those that arise from cultural differences in societal aims and the ontological grounding of worldviews. These differences often imply a different boundary between religion and culture or more often, the absence of such a distinction. These more fundamental differences become apparent in the situation of indigenous nations, a situation where the explicit thematization of culture, ethnicity, and even race in indigenous sovereignty movements present a weighty challenge from a postcolonial perspective to Kymlicka's definitions and requirements for inclusive national identity.

Indigenous modernities: Dene nationalism

In this next part of the chapter, I present a case study of the Dene Nation as documented in Glen Coulthard's (2014a, 2014b) account of the historical struggles of the Dene nationalist movement in order to expose the shortcomings of several aspects of Kymlicka's model. The Dene vision of postcolonial sovereignty necessitates a confrontation with the racialized patterns of colonization through the explicit thematization of race in relation to national membership, while Kymlicka's delineation of the legitimate grounds for inclusive nationhood on the basis of abstract liberal principles fails to adequately challenge the colonial strategies of the liberal Canadian state. I will argue that, despite his denunciation of the difference-blind approach to individual rights, Kymlicka's approach is more consonant with the historical and political employment of colonial liberal strategies under the cover of universalist values than he thinks. This is apparent in two further limitations of his model. The first is Kymlicka's conception of societal cultures as large-scale nations that are the products of the "historical process of modernization", by which he has in mind the Westphalian state—specifically, centralized "welfare states" with "modern economies" (Kymlicka 2003(1995) p. 76-6). This definition imagines an industrial capitalist economic system administered according to the social liberal model, an assumption that clashes with the alternative vision of modern economy of the Dene nationalist movement as cooperative, and decentralized. The second is more directly and explicitly colonial in character, for he argues, following Waldron (1992), that the universalist principle of distributive equality should supersede the authority of historical treaty agreements in the name of liberal justice. Additionally, Kymlicka's conception of the legitimate boundaries of national culture as precluding conceptions of the good life is in tension with Dene conceptions of oral history as maintained through direct democratic activity, that is, as taken up in the public sphere

through active participation in social and political institutions, and as drawing from Dene ontology and ways of life.

The Dene nationalist vision is given in a series of treaty proposals drafted by the Dene Nation between 1976-1981 (as cited in Coulthard 2014b) asserting their rights to self-government in the Northwest Territories. All three proposals demand exclusive self-governance institutions for the Dene people. In the 1976 proposal, this is demanded in the form of a Dene Government within Confederation, where membership would be the right of the Dene to define (Dene Nation, 1977, p. 186). In recognition of the fact that "there are non-Dene who have come to live among the Dene and the Dene wish to be fair to them", the proposal affirms the right of the non-Dene within the Northwest Territories to "self-government and the use and development of their own institutions", and adds in solidarity that "the Dene pledge their support to the non-Dene in pursuit of their rights [against the elitist territorial and federal governments]" (Dene Nation, 1977, p. 187). The proposal outlines an agreement where the Dene Nation would have communal ownership and full jurisdiction over "so much of their traditional lands, and under such terms, as to ensure their independence and self-reliance, traditionally, economically and socially, and the maintenance of whatever rights they have", where they would "have the right to practice and preserve their languages, traditions, customs and values", "develop their own institutions"--which would entail a political regime grounded on principles of direct democracy and an economic regime independent of externally initiated development consisting of renewable resource activities (e.g. hunting, fishing, trapping) and cooperative community-scale activities such as worker-controlled enterprises (Dene Nation, 1977, p. 184; Coulthard 2014b p. 162). As a result of the change from a private property regime to a communal property regime, the 1976 proposal states that "The Dene agree that all non-Dene holding lands in estate fee simple as of October 15, 1976 will not be deprived of their property rights, but after that date all lands will be

subject to the terms of this agreement" (Dene Nation, 1977, p. 187). The 1976 proposal also cites "a willingness to allow" the "few concentrated urban centres" populated by "most non-Dene… to exist outside the jurisdiction of Dene institutions" (Dene Nation, 1977, p. 184). As a result of the changes of jurisdiction, political and economic practice that would follow a formal agreement, the Dene proposed that the federal government "agree to establish new communities for the Dene [currently living in non-Dene] centres" and that "The Government of Canada will establish a regime to compensate all non-Dene who suffer hardship because of [such changes], or non-Dene who wish to leave the Northwest Territories because they are unable to adjust" (Dene Nation, 1977, p. 184, p. 187).

In response, the government of the Northwest Territories Legislative Assembly stated in a submission to Indian Affairs and Northern Development that "This is why the 'native state' concept is and always will be, totally unacceptable to the people of the Northwest Territories…[it] lacks the necessary element of universality of participation in political institutions by any Canadian who chooses to live in the Territories" (Government of the Northwest Territories, 1978, as cited in Coulthard 2014a, p. 70). Coulthard (2014a) notes in his analysis that the Legislative Assembly added in a separate pamphlet the more vitriolic comments that the thinking behind the Dene proposal amounts to a duplication of the historical policy of apartheid in South Africa, wherein "much of the territories [would] be converted into racial states along native lines", a suggestion that implies that proponents "support something that has always been abhorrent to Canadians and violates our history—separating people according to race" (as cited in Coulthard, 2014a, pp. 200-201 n. 90). The irony of this statement is exposed in the federal government's later consensus with the position of the territorial government, stating that political jurisdictions could not be circumscribed: "on grounds that differentiate people on the basis of race" except under "the

establishment of reserves on the basis of the Indian Act" (Office of the Prime Minister, 1978, p. 280, as cited in Coulthard 2014b p. 165).

This has not been an uncommon reaction to proposals for robust forms of indigenous sovereignty. The critique concerning racial exclusivity has also been raised against the recommendation in the Penner Report (1983) that First Nations governments be recognized as a third order of jurisdictional power alongside the federal and provincial orders (as cited in Abele & Prince, 2006, p. 576). This recommendation was given after hearing the testimony, for example, of the Nishga Tribal Council as well as the Assembly of First Nations, who proposed the creation of a "new order" or a "separate order" of government, respectively (House of Commons, 1983, p. 40, 42, as cited in Abele & Prince, 2006, p. 576). These more robust forms of sovereignty are what is needed, according to proponents, to end the abject poverty, economic and infrastructural underdevelopment and death of culture in indigenous communities. In the words of Chief Ahenakew, the National Chief of the First Nations National Assembly at the time of the Penner Report (sub 3:5, as cited in House of Commons 1983), "Current federal policies and institutions are operating to reinforce Indian poverty and dependence, rather than to promote self-sufficiency and self-determination. This course has taken an appalling toll in both human and financial terms" (p. 40).

Upon the NWT and federal governments' rejection of their 1976 proposal, the Indian Brotherhood drafted a second proposal in 1977 known as the "Metro Proposal", wherein they stressed that the proposal sought, as reported by Coulthard (2014b), "self-determination not only for the Dene but also for all citizens of the North and an "end to racial oppression as such, whether it be the "oppression of Dene by non-Dene, or oppression of non-natives by Dene" (p. 164). They modified the 1976 proposal to one which would achieve the same goals but present in a form more familiar and therefore, less objectionable in principle to a non-Dene perspective, where the Northwest Territories would be divided into majoritarian

territories rather than exclusionary jurisdictions, “one where the Dene are a majority, one where the Inuit are a majority, and finally one where the non-native people are the majority” (Indian Brotherhood of the NWT, 1978, p. 266, as cited in Coulthard, 2014b, p. 164). Under such a regime, the Dene proposed that the three territorial areas be represented by their own governments which would uphold the rights of all within their jurisdiction, and be constituted according to the traditions and desires of the majority constituents. The three governments would negotiate with one another as equals, and relate to the federal government in a similar manner as the provinces (Coulthard, 2014b, p. 164).

Following a rejection of this second proposal on similar terms, the Denendeh proposal of 1981 saw the Dene partnering with the Métis Association of the NWT to propose to the federal government the formation of a native “province-like” jurisdiction called “Denendeh” (Dene Nation and Métis Association of the NWT, 1981, p. 3, as cited in Coulthard, 2014b, p. 166). In this proposal, power in the territories would be split between a territorial government called the National Assembly of Denendeh, and various regional community governments, both of which would be ruled through a direct democracy approach to governance based on consensus (Dene Nation and Métis Association of the NWT 1981, p. 13, pp. 21-23, as cited in Coulthard, 2014b, p. 166). Additionally, a “senate” would be established with guaranteed Dene seats (Dene Nation and Métis Association of the NWT, 1981, p. 17, as cited in Coulthard, 2014b, p. 166). This third and final proposal set forth a “Charter of Founding Principles” that would set a standard of “harmonious relationship between the Dene and the physical environment”, as a ruling principle for all land and resource development in the establishment of a “conserver society” (Dene Nation and Métis Association of the NWT, 1981, p. 9, as cited in Coulthard, 2014b, p. 167). This proposal was again rejected in keeping with the federal government’s stance that “indigenous peoples must surrender or exchange their political rights and title as a prerequisite to reaching a land settlement” (Coulthard,

2014b, p. 168). The financial and cultural expense of the drawn out negotiation process eventually led some of the Dene nations, for example the Gqich'in in 1992 and the Sahtu in 1993, to give in to the government's "cede, release and surrender" policy to sign comprehensive land claim agreements extinguishing their political rights and title, and also led to capitalist participation of several Dene nations in diamond mega-mining and pipeline projects (Coulthard, 2014b, p. 168-169).

Coulthard, in his historical analysis of Dene nationalism, gives the background for the Canadian government's strategy during this time as one which sought to "domesticate Dene nationalism" through a depoliticization of Dene self-government rights into a subnational right to culture. That is, by breaking up the indigenous rights of the Dene into a series of "functional" considerations (economic, socio-cultural or other), the Canadian government sought to subordinate Dene governance under the existing colonial state infrastructure of the Indian Act and the government of the Northwest Territories (Coulthard, 2014b, p. 165). The background interest motivating Canada's strategy, Coulthard explains, was the state's interest in capitalist exploitation of the non-renewable resource base in the North, an interest that would be blocked by the surrendering of political control of Dene lands to the Dene, and would also allow the Dene to significantly limit or outlaw altogether the intrusion of private enterprise into the territories, in keeping with the Dene land ethic of sustainable development and cooperative enterprise (Coulthard, 2014b, p. 165). Thus, where the Canadian state speaks to the principle of universality in its objection to the "racially exclusionary" proposal of the Dene Nation above, it does not mean the serving of both Dene and non-Dene values, but the materialist benefit of Dene and non-Dene interests as defined under a capitalist value regime of exploitative development and private property rights. Put in more direct terms, universality meant universality of access to the financial benefit of non-renewable resource exploitation "by any Canadian who chooses to live in the Territories" (Government of the NWT, 1978, p.

262, as cited in Coulthard, 2014b, p. 164). Put in this way, it is clear that the Canadian state's idea of universality of citizenship is in no real sense a more inclusive ideal than that implied by the Dene proposals, given the difference in value definitions between Dene and non-Dene in the North. This value difference is borne out by the objection of the NWT Legislative Assembly's Special Committee on Constitutional Development to the Dene's proposed restrictions as violating the "inalienable right" to individual property ownership (Aboriginal Rights and Constitutional Development Secretariat, 1982, p. 30, as cited in Coulthard, 2014b, p. 167). This political background explains the reason why, in the preamble to the 1976 proposal, the Dene Nation explicitly thematizes race as a basis for membership and declares the colonial alternative to their proposal to be a cultural genocide (Dene Nation, 1977, p. 183).

The means through which many indigenous nations choose to accept new members from outside the group is either through adoption, or through acceptance by the community, of settled residents who have shown a commitment to place and community through the forming of relationships and respect for the local way of life. The Dene proposal refers to "race" not to exclude the possibility of acceptance of new members, but to expressly include those of Dene descent whose heritage was stolen from them through the colonial actions of the state, such as through the legacy of indigenous children who were taken away from their families without their consent and placed into the child welfare system to be adopted by white families. The reference to race is also importantly meant to reject colonial assertions of authority over the determination of Dene membership, which historically has meant the gendered disenfranchisement of generations of indigenous individuals. Moreover, while race is a constructed concept, many racialized groups have chosen to empower themselves by reclaiming the language of race or racial(ized) identity, in light of the fact that race has, through historically constructed communities, become a real category of community, partly

because of the ways in which the experience of racialization interacts with ethnocultural ways of life in the making of culture and the minority experience (Alcoff, 2006). This is demonstrated in the language of the Dene proposal, which qualifies membership in the Dene Nation using the language of race in order to propose an egalitarian regime that would stand against the racial oppression of all groups, Dene and non-Dene.

Kymlicka is not among those who charge statements of indigenous nationalism such as the Dene proposals with being racially oppressive, discriminatory or exclusionary. He has moved instead to identify the majority of indigenous nationalisms as part of the liberal family of just nations. His liberal theory of minority rights argues that the self-determination and cultural rights of indigenous nations serve as external protections of a national minority from the decisions of national majorities (Kymlicka, 1995, p. 109). He compares this to the rationale of affirmative action programs for racially disadvantaged groups and argues that differentiated cultural rights for national minorities "eliminate rather than create, inequalities" in cases where uniform rights do not produce equal circumstances for different groups (Kymlicka, 1995, p. 109, p. 222 n. 8). Nevertheless, Kymlicka (1995) maintains a distinction between racial qualifications for affirmative action, which aim at the full integration of racialized individuals into the larger nation-state, from cultural rights of self-determination (p. 67-68). This manner of distinguishing racial from cultural considerations fails to recognize the racialized basis of colonization, and therefore, also the interdependence of cultural aims and racialized realities for postcolonial sovereignty movements.

While it may seem politically expedient or advantageous to some to distinguish discussions of ethnocultural identity entirely from conceptions of race, and some First Nations representatives do staunchly differentiate their cultural claims from discussions of race, I think it is important not to follow Kymlicka in translating indigenous statements into 'acceptable' liberal language, but instead to take these statements seriously on their own

terms. The language of the Dene statement, on this approach, asks the reader to acknowledge the historical interconnection between racialization and a postcolonial cultural identity, particularly on the matter of reclaiming descent-dependent rights.

On a conceptual level, the thematization of descent points to an important omission in Kymlicka's understanding of cultural identity in that it assumes that cultural identity is only claimed by those already integrated into a culture. In light of this omission, Sonia Sikka (2004) points to the real and legitimate relevance of genealogical motivations for claiming a cultural identity, citing culturally dispossessed indigenous individuals as a key example. She notes that this genealogical connection is linked on a personal level to the "sense of connection", "loyalty and affection, that individuals are likely to feel for their parents and grandparents", and by extension the identity community connected with this lineage (Sikka, 2004, p. 345). Where this genealogical story also positions the individual within a minority group whose history includes colonization and oppression by the genealogical group of the larger society, Sikka (2004) notes that this sense of loyalty and connection also bars one from identifying with the culture of the larger community, and that this identity narrative as a whole is further reinforced by others, including through experiences of racism (p. 345-346). This genealogical aspect of cultural identity bears significance in the Dene proposal's references to race and membership for two reasons: one is the sense of responsibility felt by the community to those of their people dispossessed of their culture, in recognition of the potential for the genealogical story to serve, as Sikka (2004) puts it, as "an antidote to the social illnesses produced by a more recent colonial history" (p. 342). The second is likely linked to recognition that, because of the force of this genealogical story on most indigenous individuals, such individuals have an additional motivation to feel a sense of responsibility to the protection and revitalization of this community. While Sikka (2004) is careful to distinguish the genealogical significance of cultural identity from conceptions of blood

quantum and race, and rightly so, it is also the case, as she notes, that perceived ethnic and racial identity by both those within one's identity community and those outside it, plays a significant reinforcing role in this genealogical story, where social perceptions, whether just or not, circumscribe both who one is and who one cannot be (p. 348). It is in recognition of this relationship between race, culture and colonial history that the Dene Nation chooses to reclaim the language of race for emancipatory aims premised on an egalitarian framework. In doing so, they are not merely taking up a historical fiction, but recognizing the real though socially constructed significance of race to the struggle for indigenous identity and sovereignty.

Moreover, despite his arguments justifying differentiated rights, Kymlicka's approach falls short by failing to adequately recognize the extent of the historical collusion between the liberal use of abstract universalist principles of inclusion and colonial strategies of dispossession, and the extent to which this has been entrenched in the ongoing strategies of the Canadian state. The very impetus and framework for Kymlicka's model of multiculturalism—to provide a liberal argument for minority rights in order to convince liberals that differentiated rights are justified for cultural minorities—takes up from the very beginning a strategy which seeks to translate indigenous and other minority claims into the language of liberalism, on the reasoning that liberal justifications and not indigenous justifications are what "non-Aboriginal judges and politicians who have the ultimate power to protect and enforce Aboriginal rights…can recognize and understand" (Kymlicka, 1989, p. 154). As Dale Turner (2006) has argued, Kymlicka's justification is not wrong but his approach is seriously misguided and facilitative of colonial aims (p. 58-59). This is manifested in both Kymlicka's approach and his attitude. It is manifested in his approach, which makes historical arguments for sovereignty rights effectively redundant and largely substitutable with liberal equality arguments without recognizing the counterproductive

implications. It is manifested in his attitude in that he seeks to persuade through "appeasement" by appealing to the egalitarian liberal sensibilities of opponents of indigenous sovereignty (Kymlicka, 1995, p. 116).

On the latter charge, Kymlicka's approach misdiagnoses the barrier to the recognition of indigenous sovereignty in the liberal tradition, which is not a simple intellectual mistake, but collusion between the interests of power (conscious or unconscious) and the justifying doctrines of the liberal philosophical tradition. Where advances have been made in favour of indigenous sovereignty, this has been the impetus of well-timed political activism of indigenous representatives and, to use Turner's (2006) term, "word warriors" fighting for indigenous rights by demonstrating and speaking truth to power (p. 59). That is, through the teaching of indigenous ways to those willing to listen, and through the exposure of hypocrisy and the political and philosophical patterns of the ongoing colonial strategies of the colonial state and its allies. In this light, public shame is a more effective disposition to invoke in opponents to render them receptive to change than appeasement. As Legat (2012) notes, it was the anticipation of public shaming on the global stage that prompted the Canadian state to increase funding and institutional infrastructure in Northern Dene communities in order to legitimize their Northern development projects after the second world war (p. 113). However, because First Nations sovereignty movements had not yet gained the infrastructure at that time to facilitate North-South cooperation and solidarity, the government's new funding efforts manifested as a form of increased paternalism and colonial control, a fact that demonstrates the necessity of pushing for state recognition of indigenous perspectives and not only the rights of indigenous individuals and groups (Legat, 2012, p. 113-116).

Returning to the former charge, the equality argument for minority rights is based on the liberal egalitarian justification of the "importance of rectifying unchosen inequalities" (Kymlicka, 1995, p. 109). Kymlicka (1995) qualifies the scope of this equality principle in

relation to indigenous sovereignty rights by stating that, “This equality-based argument will only endorse special rights for national minorities if there actually is a disadvantage with respect to cultural membership, and if the rights actually serve to rectify the disadvantage” (p. 109-110). He also states that the historical argument from treaty rights (along with the compensatory argument in relation to historical wrongs of colonial dispossession), are partly dependent on the equality argument (Kymlicka, 1995, p. 108). Thus, in Kymlicka’s model, the historical argument (and the compensatory argument) is subordinated to the equality argument in important ways, making the force and scope of the former dependent on the qualifications of the latter. Kymlicka (1995) justifies this hierarchization of principles not only on moral grounds, but on the mistaken assumption that the historical argument will largely justify the same rights and produce the same policies as the equality argument, and that indigenous peoples are unlikely to lose their justification for sovereignty rights at any time in the foreseeable future, since “most indigenous peoples are struggling to maintain the bare minimum of land needed to sustain their communities” (p. 117, 110).

Kymlicka’s assumptions here are mistaken because his approach underappreciates the significance of the Canadian state’s historical strategies of negotiation with First Nations peoples. Up until at least the 1980’s, the Canadian state still practiced its “cede, release and surrender” policy for the negotiation of modern treaties, which required First Nations to agree to the extinguishment of all historical title to their lands prior to or upon the resolution of modern treaties (Coulthard, 2014b, p. 160). Following the publication of the 1995 Royal Commission and Hamilton reports, Canada developed new alternatives to its extinguishment requirement in order to establish legal certainty (Eyford, 2015, p. 72). But as critics have argued, international opinion points to there being no effective difference between these new alternatives and the historical “cede, release and surrender” approach (First Nations Summit, 2014, pp. 34-35, as cited in Eyford, 2015, pp. 73-74). And while some First Nations have

accepted and even endorsed the new alternatives as a way to maintain symbolic and legal recognition of historic sovereignty over their traditional lands while providing the state with the legal certainty it seeks, the new alternatives continue to be unequal in a key respect. As Eyford (2015) notes, the certainty model that the Canadian state has adopted in its new policies rejects the recommendation of the Royal Commission and Hamilton that envisioned a true partnership in that modern treaties would define with certainty "*all* of the parties' rights in the claim area" rather than only Aboriginal rights (p. 73 n. 153). The significance of this is, in the words of the Union of BC Indian Chiefs (UBCIC), that the new alternatives will mean that "Aboriginal title and rights will not be extinguished outright; Instead, they will be defined and limited out of existence", while "Canada's sovereignty or ownership of Land and resources is not challenged, Canada does not have to "prove" its title", and no legal certainty will be given in the treaties as to how Canada will practice this assumption of sovereignty and ownership (1998). As UBCIC has stated in quite accurate terms, the new alternatives simply mean that "From Canada's perspective, our Aboriginal Title has to be changed, altered, and defined in a treaty so that it fits with Canadian laws and ideas about Land" (1998). And, as noted in Coulthard (2014b):

> Although the state no longer requires the formal "extinguishment" of Aboriginal rights as a precondition to reaching an agreement, the purpose of the claims process has remained the same – to facilitate the "incorporation" of indigenous people and territories into the capitalist mode of production and to ensure that alternative "socioeconomic visions" do not threaten the desired functioning of the market economy (Green 2003, p. 52, as cited in Coulthard 2014b p. 160).

In light of the liberal colonial state's historical and continuing approach to the negotiation of indigenous sovereignty and land claims, Kymlicka's subordination of historical rights to the liberal equality argument, based on the universalist assumption that equality takes the form of liberal equality principles, limits and defines these historical rights through the authority of

the liberal tradition in a manner that directly parallels ongoing colonial strategies of dispossession. This is exacerbated by the fact that Kymlicka's (1995) definition of societal cultures, through which he understands indigenous nationhood, is circumscribed by a background requirement of consonance with liberal understandings of modernization, including the "functional requirement of a modern economy, with its need for a mobile, educated and literate work-force" (pp. 76-6). And while he allows that external protections of collective land ownership can be allowed to violate the inherent individual right to property through the internal restriction on citizens of First Nations, this is due to and limited by the equality principle, as well as liberal understandings of modern economy, rather than on the basis of a recognition of the historical sovereignty of First Nations over their traditional lands.

Not only does Kymlicka subordinate historical treaty rights to liberal definitions of equality, there are also important ways in which he endorses the colonial state's authority to limit the sovereignty of indigenous nations through his reading of the historical argument for indigenous self-determination, which affirms the Canadian state's illegitimate colonial assertions of authority over indigenous peoples and ownership of their lands and resources. For example, while he denounces the historical *terra nullius* justification for the original liberal colonial appropriation of indigenous lands, he affirms colonial authority in the present day by unilaterally recognizing the state's legal authority over indigenous land claims: "I believe that indigenous peoples continue to have certain property rights under the common law (in former British colonies), wherever these have not been explicitly extinguished by legislation" (Kymlicka, 1995, p. 220 n. 5). To provide an illuminating contrast to the claim Kymlicka asserts in this statement, Kulchyski (2013) acknowledges the overlap in justification between property rights in English common law and indigenous rights based on historical use. He draws this implicit connection by reasoning that "In a way, [indigenous

land rights] could be seen as a specific form of customary rights, rights that developed over time through repeated practice of an activity" (Kulchyski, 2013, p. 34). In this way, Kulchyski provides an argument that non-Aboriginal judges and politicians can understand, since British common law and historical European constitutional law also recognize customary rights. However, the crucial difference in Kulchyski's argument is that he bases the authority of the claim here on the historical existence of these indigenous practices, rather than, as Kymlicka does, subordinating and limiting this authority expressly to colonial state jurisdiction and legislative power. Moreover, while Kymlicka makes the scope of the historical argument dependent on an abstract liberal universalist principle of equality that is limited by distributive equality with settler Canadians, Kulchyski (2013) affirms indigenous land claims as an "Aboriginal right" understood as inherent, culturally particular and claimable only by indigenous peoples (p. 34). Kymlicka (1995) justifies the prioritization of his equality principle partly on the argument that historical agreements cannot by themselves justify self-government rights, and cannot do so for non-treaty nations, and because the compensatory argument can at best justify a right of non-interference, but not federal funding of indigenous rights (p. 220 n.5, pp. 118-9). However, these arguments conveniently obscure the fact that indigenous nations have often used a combination of historical rights and compensatory arguments (or compensatory claims alone) in order to argue for indigenous land claims and government funding of sovereignty rights, a fact that Kymlicka (1995) buries in an endnote without addressing the implications of this for the privileging of his favoured approach (Kymlicka, 1995, p. 223 n. 12). On balance, it appears that Kymlicka's approach is based primarily on colonial anxieties about loss of control over land and the displacement of Canadians, despite the fact that there has never been a historical precedent where First Nations have not fairly considered the land needs of the Canadian population in their negotiations with the colonial state. As Fanon has argued, the colonizer transposes his own

failures onto the colonized as justification for his acts of oppression (Fanon 1967). Kymlicka unwittingly facilitates the ongoing pattern of colonial dispossession practiced by the liberal state in its manipulation of egalitarian principles. On any clear view of the situation, there is every reason to prioritize arguments that tip the balance of justification in favour of indigenous rights and indigenous authority in land claims negotiations,[29] and every reason to be cautious of arguments from the colonial state to assert its authority in contradiction to the historical claims of First Nations peoples.

Contrary to Kymlicka's reading, indigenous nationalisms are not expressed in the language of liberalism, but with explicit reference to ethnoculturally particular moral traditions. Coulthard (2014b), who is a Yellowknives Dene, explains the moral ontology underlying Dene and indigenous social, economic and political practices in terms of a land or place-based ethic:

> In the Wedeleh dialect of Dogrib (which is my community's language), for example, "land" (or *dè*) is translated in relational terms as that which encompasses not only the land (understood here as material) but also people and animals, rocks and trees, lakes and rivers, and so on. Seen in this light, we are as much a part of the land as any other element. Furthermore, within this system of relations, human beings are not the only constituent believed to embody spirit or agency. Ethically, this understanding means that humans hold certain obligations to the land, animals, plants, and lakes in much the same way that we hold obligations to other people. And if these obligations are met, then the land, animals, plants, and lakes will reciprocate and meet their obligations to humans, thus ensuring the survival and well-being of all over time (Coulthard pp. 156-7).

Similarly, Legat (2012) reports the oft-repeated statement of the Dene in northern Canada that "We are from the land" (p. 2), and, "this land is like our own father and mother" (Bruno Apple, as cited in Legat, 2012, p. 122). She explains the Tlicho Dene ontology as meaning

[29] Indigenous political systems already include principles for adjusting treaty terms with partner nations in light of changing circumstances (see Tully 1995). There is no need, from a moral perspective, to supplement treaty constitutionalism with modern liberal equality principles.

that "All beings have their own place and their own trails within the dè. There are no empty spaces; human and other-than-human beings perceive the dè from the place where they belong. The place from which they see gives them their unique knowledge and perspective" (Legat, 2012, p. 198). This ontology is given through Tlicho mythological history: This chaos was ended by Yamoozaa and his brother, who came into the world from the space in the cleft of the caribou hoof (Legat, 2012, p. 43). An old man found them and raised them as his grandchildren, teaching them about the *dè* (Legat, 2012, p. 43). As adults they listened to the peoples' problems and drew on their knowledge and skills to create the laws and differentiations among all beings—birds, fish, humans, and others:

> Both brothers traveled the earth. Each had his own place, and as the brothers encountered other beings, they told those beings to remain where they were, told them who they were, and gave them their own language. Beings were no longer the same. Each being was unique. Yamǫǫ̀zaa and Yamǫǫ̀gaà told them the laws so their lives would be easier. Yamǫǫ̀zaa, who traveled in this area, said, "This is what you are here to do. This is how other beings can use you and how they will respect and use you properly if they know you. This is who you are and where you will stay." It is said, the brothers did this so that everything—humans, plants, animals, stars—would have their own place within the dè and there would be less fighting and less chaos. The brothers are responsible for languages and cultures. They taught humans what they could use and how to show respect. They taught the animals the laws and where they should make themselves available to humans and other animals. Yamǫǫ̀zaa is the one who said that berries must not be taken away from their place, that they must be used where they grow. Because Yamǫǫ̀zaa made the laws clear, everyone knew when the laws were broken. There was less starvation, and people lived well for a long time (Legat, 2012, pp. 42-3).

On the one hand, the statements of the Dene present this land ethic as an indigenous environmentalism that is relevant to the wellbeing of any resident of the North and therefore part of an inclusive value system shared with all members of a multinational Northwest Territories. In the words of Philip Blake, a Dene from Fort McPherson, "For thousands of years we have lived with the land, we have taken care of the land, and the land has taken care of us…I believe your nation may wish to see us…as a way of life, a system of values by

which you may survive in the future. This we are willing to share" (Blake, 1977, p. 8, as cited in Coulthard, 2014b, p. 157). On the other hand, it has substantive implications that circumscribe acceptable practices and individual rights, namely by restricting the right to property and outlawing exploitative and privatized resource development.

The boundary between national culture and comprehensive conceptions of the good life is also challenged by Dene culture in the aspect of shared history, which Kymlicka categorizes within national identity as open to anyone to take up without impinging on personal ends. However, this also depends on an assumption about the significance of history that is culturally dependent.

The European conception of history is based on linear, developmental time. Historical knowledge is distanced from and more easily separable from present actions and present ways of life, which can relatively unproblematically (compared to the Dene conception) displace past ways of life without disrupting access to and identification with history as cultural heritage. European history is accessed mostly through written documents and the truth of these narratives validated by empirical means that are often based on other written documents or on material evidence such as archaeological artifacts. Thus, validation and expertise can be carried out from an observer rather than participant stance, and access to history by the interested citizen is easily acquired through indirect, passive, and second-hand means. Thus, in this context, legitimate knowledge of the history of one's people can be claimed without that knowledge necessarily being directly intertwined with and activating one's way of life in the present. This relatively more distanced relationship to history is why, in Kymlicka's model, history, as an aspect of a societal culture, can be claimed as part of the national identity of anyone who wishes to join that culture without very directly shaping their choices about how to live one's life and the ends or goods they wish to pursue in the present.

The Tlicho Dene conception of knowledge on the other hand, lives in oral narratives or stories, and is meant to exist not as relics of a people's historical and developmental past, but as the living and evolving history of dwelling places. The oral medium of these stories is not a product of primitive documentation practices, as a racialized interpretation might perceive it, but a deliberately maintained medium of knowledge transmission that is carried into the modern present. It is notable that in adapting to the contemporary educational needs of the younger generation through the use of modern technology, the Tlicho chose to use aural recordings to capture the elder generation's telling of their stories so that they could be played for future generations in the course of their studies in the regional high school, or whenever they needed them to listen with in order to learn how to think through present day challenges. Legat (2012), a participant in this recording process relates that, "They also requested that we not translate or write down their recordings; future generations should listen with those who understand the "old Tłıcho language" and the ideas and concepts the elders wish to convey through it. The elders encourage those who listen to walk the place from which every story grows—where its core dwells and from whence it spreads out through being told and retold" (p. 181). Thus, oral narratives can be accessed only by listening to and with those who are knowledgeable about and have walked the trails in the places where the stories are rooted. The knowledge acquired through listening to one's elders or their recordings is not yet true knowledge, however, but a "phase "in between," where people who have heard stories do not yet know the "truth" or reality of a narrative" (Legat, 2012, p. 194). True or real knowledge of stories is only acquired as one takes action by "walking the stories" as Legat (2012) puts it (p. 174ff). That is, validation of historical narrative is direct and participatory. Walking the stories means not only following the footsteps of ancestors while thinking about their words, but at the same time observing the environment and beings within the place, and interacting with them in a respectful way,

according to the natural laws laid down by Yamoozaa, the mythological ancestor of the Tlicho, and often being guided by a living elder on the trails. In turn, one maintains access to the stories for future generations by "leaving one's footprints", that is, carrying out tasks such as hunting, trapping, foraging, building, or caretaking burial sites, in ways continuous with the footprints of the ancestors, as well as updating the stories by noting changes in the environment and patterns of the beings that dwell within the place as living entity (Legat, 2012, p. 189). One "thinks with the stories" relevant to the context of activity and place as one encounters challenges in the course of a task, and then adds one's own experience to the stories by relating present encounters, challenges and actions to the narrative, reestablishing a relation to the place and to the interrelationships of humans with the other beings that dwell within it. Moreover, interpretation of stories is collaborative, by thinking with elders and knowledgeable members of the group in order to know how best to relate the old stories and present experiences to tackle the challenges at hand. This is how one makes the footprints or knowledge of the ancestors "visible", by laying one's own footprints through actions that add one's own knowledge to the narrative, and validating those narratives for retelling (Legat, 2012, p. 179-180).

Legat (2012) explains that "footprints" and "knowledge" are often used as synonyms by the Tlicho, demonstrating the very close relationship between participatory action and historical knowledge (p. 179). She adds that "Information, then, is not to be extracted as the "content" of the story but "is the story itself"—namely, the happenings and occurrences as they are related and fit together" (Legat, 2012, p. 176). This is because historical knowledge is a grounded knowledge made up of the interweaving of grounded experience and place-based narrative. Walking stories, i.e. accessing history, is itself a constitutive practice integral to the Tlicho's comprehensive way of life that both circumscribes the paths walked and gives a protocol for how to walk: "Walking is an action that implies not being cut off, as one is in

an airplane or when one is too busy or going too fast or not paying attention to one's surroundings. Instead, walking entails carefully considering one's surroundings while thinking with the multitude of stories that one has heard" (Legat, 2012, p. 193). Legat gives different examples of the living nature of this storytelling process from the time she spent with the Tlicho. I copy two of them below as illustration of the conception of living history.

Sometimes the knowledge transmission and validation from stories is fairly functional and straightforward, as in the following example:

> In 2001, one of the fall hunting camps was located on a sand bar on ʔewaànıt'ıtì, a lake in the barren grounds. This location was selected because caribou are known to cross the lake here if they are in the area … A few days after we arrived at the camp, I was walking with Liza Jeremick'ca, Georgina Chocolate, and Dora Nitsiza.[30] None of us had been to ʔewaànıt'ıtì, but we had heard stories of the importance of the sand bar and where to find stones for softening hides. As we walked, Dora found three of these perfectly shaped stones, and she turned to Georgina and said, "It's true, what our elders have told us. It is good to follow their footprints." We were walking on a gravelly sandbar, so no trail from the past was actually visible. I interpreted her statement to mean that her predecessors had walked on the sandbar before her and had shared their knowledge through narratives so that we, too, could benefit from the resources to be found there. (Legat, 2012, p. 184-185).

Another story Legat recounts demonstrates in quite a dramatic way how the stories of ancestors need to be validated by the younger generation's experiences in order for their authority and existence as stories to be maintained into retellings in the present and future. The conclusion of Legat's (2012) story shows how the younger generation follows the protocol of storytelling in their own retelling once they have validated the story for themselves, making what was to them just an "old legend" prior to their experience, into a real history experienced by their forbears:

> In July 2002, I was with several Tłı̨cho ̨who were duck hunting. I was in a boat with Charlie Tailbone, a hunter in his late fifties, and a couple of teenage

[30] It is a crucial part of the storytelling tradition is that one tells who one was with, particularly the knowledgeable ones, where one was walking, when, and the context of activity, as the ways that the story is documented and grounded to a place.

> girls. The two young women were pressuring Charlie to take them to *ʔezhogǫghǫ̀*, an island the elders emphasize that people should stay away from in order "not to bother those who died there." … The girls pressured Charlie, taunting him, saying that he lived in the past and believed too much in the old way and that it was all "just old legends." Finally, Charlie turned the boat toward the island, saying, "I will take you, but I will not walk on the island." As he turned toward the island, one small black thundercloud formed over the island—lightning and thunder came from the cloud in an otherwise clear blue sky. The girls quickly changed their minds, exclaiming, "OK, OK, it's true—we believe the elders." Charlie once again turned his boat and headed for where the others were preparing food and tea. We joined the others. I listened while the older of the two girls told of our experience.[31] She mentioned when she had first heard about the island from her grandmother, Marie Zoe. She recounted our trip up the rapids earlier that day and how she and her friend had taunted Charlie. While telling of Charlie's final willingness to take them but not to walk with them on the island, she explained how entities associated with the lake were acting. She told how calm the lake was and how the cloud, lightning, and thunder had suddenly appeared. The elders sat quietly and then simply stated that it is right to listen to the elders—it is right to follow the ancestors' footprints. Although none of us walked on the island, the experience tied the story that originated on the island with our knowledge of why it was inappropriate to walk there. Furthermore, no one wanted to know the pain that continues to dwell on the island. Our experience brought the "truth" of the story to the present, forming a relation between the story and the locale. (pp. 181-182).

Coulthard (2014b) gives more of the philosophical background for this conception of history by explaining that place is not just the locale where history takes place, but rather, "Place is a way of knowing, experiencing, and relating with the world" (p. 156). Coulthard, a Yellowknives Dene, draws from Lakota philosopher Vine Deloria Jr. (1972/1992, p. 62, as cited in Coulthard 2014b), to explain this indigenous ontology as place-based rather than time-based as compared to the European ontology of historical development: "American Indians hold their lands – *places* – as having the highest possible meaning, and all their statements are made with this reference point in mind" (p. 156, emphasis in original). This means then, that in this ontology, time is always conceived as an aspect of place, and if places are not simply passive material entities, but living entities consisting of dynamic fields of

[31] Legat (2012) explains that "Storytellers usually incorporate the events leading up to the situation and those occurring after" as the young woman does here (pp. 192-193).

relationships and experiences connecting past, present and future, then Dene history and indigenous history in general is not separable from present actions and present ways of life without, in an important sense, cutting off epistemological access to history, and therefore to cultural identity.

On one reading, the Tlicho understanding of history and identity can be interpreted as consonant with Kymlicka's distinction between national culture and personal religion. The Tlicho's participatory approach to history can be taken as an expectation that all members and residents in the community should be willing to participate in the public institutional life of the community. This can be seen in the example of Protestant missionaries who are resident in Tlicho communities, have learned and speak the Tlicho language, participate in traditional activities, fulfill the societal duty of reciprocal exchange through Bible translation and the development of keyboard compatible Dene fonts, and whose children attend Tlicho school (Legat, 2012, p. 139). The distinction between Tlicho culture and European religion, moreover, is recognized in the fact that whether individual Tlicho choose to follow the Protestant or the Catholic faith, these choices are largely taken as compatible with knowing "who they are" as Tlicho, by maintaining the knowledge, skill, and laws that are seen as "right for Tlicho" (Legat, 2012, p. 139).

Nevertheless, Tlicho also recognize the potential conflict between Protestantism and traditional Tlicho ways and beliefs, a fact which shows that they do not see the line between religion and culture to be a firm one. This is seen in the worry of a number of Tlicho about the fundamentalist approach to religion of the Protestant missionaries, a worry that, in Legat's (2012) account, is only assuaged by the fact that those Tlicho who have taken up the Protestant faith have done so without choosing to renounce Tlicho spiritual beliefs and ways (p. 139).

Moreover, Tlicho do not distinguish between the truth of what non-natives would call mythological stories and the truth of stories experienced by more recent ancestors (Legat p. 39). This non-distinction might have the implication of making their conception of historical knowledge itself ethno-religious. The unfamiliarity of non-Aboriginal judges and politicians with indigenous ways and spiritual beliefs would indicate a significant risk that the Tlicho sociopolitical system, despite their robust respect for individual autonomy, could be interpreted as theological and therefore, as demonstrating inadequate separation between religion and state. This risk is compounded by the fact that the Tlicho leadership have incorporated Catholic references into some of their public gatherings and places in recognition of the Tlicho's historical relations with the Church (Legat, 2012, p. 139).

If we are to endorse the validity of the claims of national minorities for sovereignty and protection from the encroachment of majority culture and societal jurisdiction, as Kymlicka proposes and I believe we should, then we have to rethink the scope of legitimate ties that can be made between the national identity of these minority groups and the various aspects of the communal way of life associated with the ethnocultural traditions that form the basis of the group's national heritage. We also have to consider the extent to which ethno-religious markers of identity can be included in formulations of national identity while minimizing exclusionary consequences for internal or dissenting minorities within the group.

In this vein, Sikka (2020) provides a helpful contrast between identity and identitarianism that I appropriate as helpful for a discussion of the distinction between morally legitimate forms of national identity and oppressive or exclusionary ones: "The problem is not identity but *identitarianism,* the limiting of friendship, kindness and moral concern to those within my group, together with disregard and domination of others" (p. 15). While Sikka is discussing relations between identity groups more broadly, I see this contrast between identity and identitarianism as useful for defining the boundary between identity

nationalisms and identitarian nationalisms. That is, I argue that the main problem with incorporating religion or group specific traditions and practices into national identity isn't primarily its content, but its exclusionary or discriminatory implications.

The history of Catholic-Protestant conflicts has brought about a longstanding distinction in the West between public identities of a national scope and private identities that include sectarian ways of life. These conceptions of public identity and private identity have become naturalized into Western conceptions of national identity and religious identity, respectively, such that religious identity is perceived to be readily separable from national identity in a secular state. Groups whose identities are not grounded on this history are not likely to accept or even perceive these distinctions. They may legitimately choose an alternate strategy for establishing a just cultural nationalism from that of the secular separation of state and religion found in liberal civic nationalisms, one based on equal concern for and non-discrimination of internal minorities within their midst. They may choose a mode of inclusion that provides recognition for minority individuals as equal citizens and members of the group, without necessarily providing them with an identical mode of identification with the national identity in question. I propose that what matters more than whether internal minorities ascribe to the content of every collective value or religious or cultural symbol represented in a national identity is the sense that they are respected as valued members of the polis whose rights and contributions are recognized and who receive a fair share of collective benefits.

Religion and culture in liberal nationalisms:

The first part of this chapter demonstrates that Kymlicka's definition of civic nationalism depends on a strict separation of culture from comprehensive conceptions of the good that indigenous cultures such as the Dene may not endorse, and his treatment of indigenous rights in general is consistent with the existing colonial barriers that stand in the way of indigenous sovereignty. In the second part of the chapter I would like to make the

further argument that, with regards to Kymlicka's distinction between national culture and comprehensive conceptions of the good, it is questionable whether the liberal states which are taken to be exemplary of this ideal actually meet Kymlicka's definition of a just cultural nationalism as he describes it.

Québec is an example of a Western secular liberal national minority that complicates the definitions of culture and the good that Kymlicka wishes to maintain, through the unique significance of language for Québec identity. Québec, which has asserted itself as a nation within the Canadian state, possesses provincial jurisdiction over its citizens in a number of key areas of governance, some possessed by other Canadian provinces, but including additional powers such as control over immigration, which allows for sovereignty over the maintenance of its public culture as a French speaking society. Québec, while both formally and substantively a secular liberal regime, is not neutral to various ends of the good life, but actively aims, through various language policies, to maintain its shared end of survival as a French language society. This complicates Kymlicka's definitions, for while the national identity of Québec does not include elements outside of its history, institutional culture and language, language is itself treated as a shared end in a manner that has qualified Québec in many interpretations as communitarian, and has raised concerns from liberals about discrimination and exclusion. That language is a context for culture as well as a shared end in the Québec case complicates the distinction Kymlicka draws between culture as context, where anyone can participate regardless of their conceptions of the good life, and the divergent ends of individuals that, according to Kymlicka's neutral liberalism, should not be included in a conception of national identity, and should instead be left to the free choice of individuals.

In relation to the enmeshment of religion in national culture, it is not clear that any of the Western states maintain a clear-cut boundary on this front. Take the example of Great

Britain, where legislative policies are predominantly secular but which formally has a constitutionally established religion and a governance structure where representatives of the Anglican Church are guaranteed a number of positions in the upper house of Parliament. Or the reversed example of the United States, which in its formal governance structure is secular, but which in its customs of governance, political representatives, and policies, is intimately bound up with Christianity.

In her study of the shifting definitions of Christian symbols in public space across the boundary between the religious and the cultural, Lori Beaman (2013) traces political and juridical pronouncements on the significance of these symbols across time and context to show the constructed and changeable nature of what counts as religious or cultural, focusing on the ways in which majoritarian religious symbols are transformed through motivated discourses into universally inclusive and nationalistic values. For example, in the Lautsi II case in Italy, where a claim of religious freedom was brought forth before the courts demanding the removal of the crucifix from a classroom, one strategy for neutralizing the discriminatory charges of the claim was put forth by the Administrative Court in its dismissal of the claim:

> It can therefore be contended that in the present-day social reality the crucifix should be regarded not only as a symbol of a historical and cultural development, and therefore of the identity of our people, but also as a symbol of a value system: liberty, equality, human dignity and religious toleration, and accordingly also of the secular nature of the State—principles which underpin our Constitution (Lautsi II, 54 E.H.R.R. at \ 15, as cited in Beaman, 2013, p. 91).

The crucifix, which was perceived by the claimant as a coercive religious symbol, is repositioned in this statement of the Court as a symbol of Italy's cultural heritage and national identity that represents universal and constitutional values to which any Italian can subscribe.

Similarly, the report of the Bouchard-Taylor Commission (2008) released in the context of the Quebec secularism debates examined, among other issues, the legitimate place of religious symbols in the public sphere in Quebec. In relation to the crucifix hanging in the National Assembly, the commissioners recommended that it be removed or moved to a less prominent location. The co-commissioners' recommendation is clearly motivated by an endorsement of the kind of distinction Kymlicka makes between culture and religion. Bouchard and Taylor reasoned that the crucifix had to be moved because its positioning at the seat of legislative power "suggests that a very special closeness exists between legislative power and the religion of the majority" (Bouchard & Taylor, 2008, p. 152). In response, the Québec government immediately tabled a motion which was passed unanimously to keep the crucifix, with reasoning that positioned the crucifix as part of "historic heritage" and a symbol that should be preserved in the promotion of Quebec national identity, while affirming the inclusive and egalitarian nature of that identity: "THAT the National Assembly reiterate its desire to promote the language, history, culture and values of the Quebec nation, foster the integration of each person into our nation in a spirit of openness and reciprocity, and express its attachment to our religious and historic heritage represented particularly by the crucifix in our Blue Room and our coat of arms adorning our institutions" (Quebec Assemblée nationale, 2008, as cited in Beaman, 2013, p. 72 n. 17). The connection between the crucifix in the National Assembly and basic Quebec values is also made more directly by a witness who testified in the Charter of Values public hearings which took up the question of the place of religious symbols in the public sphere. The witness submitted his citizen's proposal that: "a paragraph must be added to this new article 14 [of Bill 60], which would say: In the adoption of this bill, the crucifix of the National Assembly will be deactivated of its cultural function beyond that of representing the three ancestral and common values of

Quebec, which are freedom, fidelity and cooperation" (Consultations, Bill 60, Denis Forcier, Jan 23 2014, translation mine).

These moves to shift the boundary between the religious and the cultural speak to the ambiguous and contested nature of religious symbols. While Bouchard and Taylor (2008) were firm in their judgment that the crucifix in the National Assembly is a religious symbol whose placement in the legislature has exclusionary connotations, they make an opposite judgment concerning the iconic and imposing cross in that sits atop the publically maintained Mont Royal in the centre of the city of Montreal:

> Certain practices or symbols may originate in the religion of the majority without necessarily genuinely restricting those who are not part of this majority. This is true of practices and symbols that have heritage value rather than playing a regulatory role. For example, the cross on Mont-Royal does not signify that Montreal identifies with Catholicism and does not demand of non-Catholics that they act against their conscience. It is a symbol that reflects a chapter of our past. A religious symbol is thus compatible with secularism when it is a historic reminder rather than a sign of religious identification by a public institution (p. 152 n.15).

Beaman's analysis notes that changes in the categorization of religious symbols and practices can be dramatic and occur within a short span of time. She cites the successive judgments of the Supreme Court of Canada on Sunday closing laws a mere two years apart. In R. v. Big M Drug Mart Ltd. [1985], the Court struck down this law as a form of religious coercion:

> To the extent that it binds all to a sectarian Christian ideal, the *Lord's Day Act* works a form of coercion inimical to the spirit of the *Charter* and the dignity of all non-Christians. In proclaiming the standards of the Christian faith, the Act creates a climate hostile to, and gives the appearance of discrimination against, non-Christian Canadians. It takes religious values rooted in Christian morality and, using the force of the state, translates them into a positive law binding on believers and non-believers alike. The theological content of the legislation remains as a subtle and constant reminder to religious minorities within the country of their differences with, and alienation from, the dominant religious culture (para. 97, as cited in Beaman, 2013, p. 84).

Yet less than two years later, the Court reversed its previous decision in the case of R. v. Edward Books & Art Ltd. [1986], denying the Christian roots of Sunday closing laws, and instead, associating such laws with those of "innocuous secular legislation" akin to the taxation act (para. 97, as cited in Beaman, 2013, p. 84).

The above examples in Beaman's (2013) analysis speak, not so much to distortions of what counts as religion and culture in majoritarian discourse, but rather to the "ambiguity and shifting meaning" of religion and culture as complex, multifaceted phenomena dependent on social construction (p. 83).

Moreover, some of the most pressing conflicts in liberal multicultural societies are exacerbated by the distinction between religion and culture or sectarianism and secularism that Kymlicka seeks to endorse, while providing no clear solutions. A key example is the debate over "religious symbols" in Quebec. The dominant framing of the debate is represented in the Bouchard Taylor Commission report (2008) as a choice between two models of secularism which draw the line between religious and cultural symbols, state sectarianism and state neutrality differently. The one put forth by supporters of the ban on the wearing of religious symbols by public servants, referred to in the report as strict or "rigid" secularism, classifies items such as the *hijab* and turban as expressions of religious affiliation that violate the neutrality of state representatives, while symbolic objects found in public institutions, such as the crucifix in the National Assembly, were classified as items of cultural heritage part of Quebec's Catholic history, and therefore, compatible with the neutral functioning of a secular state. In contraposition to this model of secularism, Bouchard and Taylor recommended a model of "open" secularism, which reasoned that religious symbols that are worn on the persons of public servants do not count as symbols of the state, or of the public servant as state representative, but of the public servant as private individual, and thus, should be allowed as a legitimate expression of the individual right to freedom of religion,

and a sign of the cultural diversity of the Quebec populace. The commissioners also recommended the removal of the crucifix from the National Assembly, which they saw as signaling an intimate connection between the state and the Church that privileged the Catholic faith above others. They assumed that immigrant and religious minorities such as Muslims and Sikhs who did not ascribe to Catholic doctrine would feel excluded as second-class citizens. The questions generated from the dominant group's framework, of whether the *hijab* and the turban counted as public or private, cultural or religious symbols, produced competing interpretations. The question, posed in this manner, could not be decided without favouring one side's terminological definitions over the other's.

The dominant framework of debate, as one over the correct model of secularism for Quebec, missed the point from the third standpoint of a critical race perspective (Bilge 2013). From this perspective, it was racialized minorities such as Muslims and Sikhs who were the true targets of the proposed legislation, which did not ultimately rest on classifications of religion and culture. For these groups, the presence of the crucifix was largely a non-issue in these communities, who had never raised any official complaint demanding its removal, despite their non-identification with Catholic religious beliefs. Muslims, Sikhs and other racialized minorities were under no illusion that they were living in a neutral secular society rather than a Christian society, and had not made any official demand for the removal of Christian symbols from public space, nor did they consider this to be a priority. What mattered to Muslims and Sikhs was that their personal identity markers, whether viewed as cultural or religious, not be denigrated or prohibited as a condition of participation in the public realm, and it was the latter gesture that signaled exclusion from the nation of Quebec.

The identity approach:

The alternative to Kymlicka's distinction between civic culture and culture as shared conception of the good is Eisenberg's (2004, 2009) identity approach. Eisenberg's (2004) identity approach provides a framework that takes the ethnocultural identity concerns of both "national minorities" and what she calls "minorities within [national] minorities" seriously. The identity approach does not rely on preset definitions such as what counts as part of a legitimate cultural identity for either the group or individual. Rather, conceptions of justice, culture, and claims for agential freedom that are up for assessment are identified from the particular conceptions and claims raised from the perspectives of the parties in dispute. The identity approach does not naively accept these framings at face value—claims (including claims as to importance) are verified against fact, but it does assess the value of culture multivalently, and in terms of the centrality of what is at stake to each perspective's professed identity concerns.

Eisenberg (2009) offers a starting definition for identity by referring to it as a group or individual's "self-understanding and distinctive way of life" (p. 3). This definition is meant to be broadly inclusive of the varied ways in which identity comes to have political relevance. Of the various ways in which different people relate to identity, she gives explicit recognition to the fact that "some people actively defend their practices because they are important to their way of life while others defend the practices of communities to which they are distantly associated even though they have no interest in actively participating in these practices, and still others follow practices like habits, without intentionally 'identifying' with a way of life (Eisenberg, 2009, p. 21).

She defines identity claims as "claims that entitlements, resources, or opportunities ought to be distributed one way rather than another because of something distinctive and

important about the identity of the individual or group advancing the claim" (Eisenberg, 2009, p. 21). Identity claims (of individuals and groups) aim at "enhancing individual wellbeing [on a collective and/or individual basis] and respecting agency" (Eisenberg, 2009, p. 24). Identity claims generally reference "particular communities, ways of life, sets of beliefs, or practices that play a central role in [individual or group] self-conception or self-understanding" (Eisenberg, 2009, p. 18).

Eisenberg outlines the background conditions necessary for the successful functioning of the identity approach within a liberal democratic constitutional state. The main requirement she names is institutional humility: recognizing that identity claims are largely made against systems that privilege the identities of certain groups over others, which necessitates a process that takes active measures to guard against unconscious institutional bias and consider alternative standards of evidence and definitions of significance (Eisenberg, 2009, pp. 10-11). She also stresses the basic requirement of respect for people, meaning recognition that people's identities are of central importance to them, rather than assuming that identity claims are merely strategic (Eisenberg, 2009, p. 10). I will add the further requirement, which is not explicitly stated in Eisenberg's approach, that a commitment to recognizing moral pluralism provides the framework that grounds and justifies these obligations from a moral standpoint.

Eisenberg's model is formulated with a juridical approach in mind. That is, her aim is to provide state institutions with fair guidelines for assessing identity claims. My own aims stem from a critical theory perspective that does not assume a top down, state-centred approach, but rather, leaves the use of the identity approach open as a critical tool that can be taken up as a framework of assessment within a variety of decision-making processes, whether juridical, mediated, or deliberative democratic, or even as taken up from a secondary perspective of critique. Eisenberg's identity approach appeals because it provides usable and

fair guidelines that respect the perspective of each stakeholder in conceiving of the claim under dispute, and because, on my reading, it requires a robust background commitment to the recognition of moral pluralism that can do justice to the perspectives of marginalized groups.

Eisenberg (2009) lays out three components for the assessment of identity claims: the jeopardy condition, the validation condition, and the safeguard condition. These assessment standards each measure the identity claim(s) under analysis according to its greater or lesser strength rather than as meeting a minimum threshold of legitimacy, making the identity approach one that lends itself to the inclusion of nuance and to versatility of use in political analysis.

Eisenberg (2009) states that "the jeopardy condition gauges the strength of a claim in terms of its importance to the identities of those advancing the claim" (p. 32). Along with measuring the degree of centrality or importance of the "practice, place, tradition or value at issue" to the group or the degree to which the claim speaks to something integral to a claimant's identity, the jeopardy condition includes an assessment of the degree and likelihood of jeopardy that the threat poses to the aspect of identity referred to in the claim (Eisenberg, 2009, p. 32). Eisenberg (2009) summarizes the significance of the jeopardy condition in her explanation that "stronger claims are those where, in the absence of recognizing entitlement or additional resources, serious jeopardy, as opposed to mere inconvenience is the result" (p. 33). The third dimension of the jeopardy condition is the requirement of openness and flexibility concerning the recognition of alternative evidentiary standards, such as indigenous oral histories as a form of historical record (Eisenberg, 2009, p. 33).

The validation condition is a measure of democratic legitimacy. Where a practice is disputed, the analysis must attend to the genesis, sources and regulation of the practice, or "the social and political processes by which a disputed practice or activity [and the processes themselves] became part of the group's identity and how it is sustained" (Eisenberg, 2009, p. 34). In other words, "The validation condition is therefore assessed partly in relation to whether decision making is democratic or otherwise considered legitimate within the community" (Eisenberg, 2009, p. 34). The legitimacy of the practice in relation to the validation condition can be weakened to the degree that the decision-making process that endorses it is controversial or exclusive (Eisenberg, 2009, p. 35). In cases where the identity claim is made against the state or larger society, the democratic legitimacy of the legal or other restrictions placed on the practice or that present obstacles to the practice must be validated by looking at whether the vulnerable group (and vulnerable members within the group) participated in processes of validation of the restriction at issue (Eisenberg, 2009, p. 34).

The safeguard condition assesses the strength of claims in terms of potential for and seriousness of harm as a result of the practice or of its legitimation (Eisenberg, 2009, p. 37). In recognition of the fact that any one standard of harm can be disputed, Eisenberg (2009) takes a broad and permissive approach to harm in terms of openness to consideration of the "different reasons, evidence, standards, and criteria by which harm is assessed" by different stakeholders (p. 38). In justifying such an approach, she points to the dangers of taking up a narrower or more determinate standard of harm. One set of dangers is that misperceptions concerning the circumstances of a practice can occur as a result of cultural difference, misunderstanding, or xenophobia. Another danger is that "prohibiting practices that communities do not themselves view as harmful can and often does reinforce cultural loyalty to them" (Eisenberg, 2009, p. 39). In order to guard against this latter danger, assessments

and interventions, must take steps to understand and recognize the "function and importance of the practice in the ways of life of people" who follow it, and take seriously the values that inform it and relate it to the group's identity, and this can be done whether or not the result of an assessment is to legitimize or delegitimize the practice in question (Eisenberg, 2009, p. 39). The measurement of harm or potential harm includes the crucial component of assessing safeguards: "In most cases, harm or the risk of harm can be mitigated by instituting safeguards… In such cases, the extent to which the safeguard condition weakens an identity claim can be measured in terms of the costs that the practice imposes through the sort of safeguard conditions it requires" (Eisenberg, 2009, pp. 39-40).

In order to demonstrate how the identity approach works, I apply it below to the assessment of Bill 21 and the Quebec secularism debates.

In contrast to the distinction between culture and religion, which produced competing definitions and implications in the secularism debates, identity was a common language across sides of the debate and renders a comparison which does engage the concerns at stake for both sides, and can accurately represent the relative threat to each side's identity in order to determine the greater violation. Supporters of the ban on religious symbols relied on the conception of French secularism as integral to Quebec identity. Religious minorities affected by the ban also made identity central to their claims against the ban, citing religious and cultural reasons. The identity approach takes into account the identity perspectives of each group rather than favouring one as a standard for all parties. It also takes up argument strategies that were already present in the public debates, while providing systematic and fair guidelines for their assessment. I apply the three standards of the identity approach in turn to this case below.

The first assessment measure, the jeopardy condition, measures the degree of threat to identity based on centrality, seriousness, and strength of evidence. On the first dimension,

centrality or integrity to identity, the characteristic of Quebec identity under assessment with regard to the dominant group is the particular conception of "laicity" put forth by the Quebec government and affirmed by proponents of the ban on the wearing of religious symbols by public servants in positions of authority. In Bill 21, passed into law in 2019, "laicity" appears for the first time as the official English translation of *laïcité*, in place of "secularism" in previous documents, likely as a means to affirm the closeness of the newly constitutionalized ideal of religious neutrality to the French model of *laïcité* in Europe, and its distance from the English Canadian form of secularism (Barras, 2021, p. 289). Laicity is described in Bill 21 (2019) as "based on four principles: the separation of State and religions, the religious neutrality of the State, the equality of all citizens, and freedom of conscience and freedom of religion" (p. 2). While these same four principles are affirmed in previous Quebec legislation on secularism, the bill is meant to enact a departure from previous legislative approaches. Bouchard and Taylor explain the difference in their 2008 Commission report, where they describe the model of "open secularism" given in the *Proulx Task Force Report on the Place of Religion in the Schools of Québec* in 1999 as putting greater emphasis on the protection of the principles of freedom of conscience and religion for individuals, which implies a more flexible understanding of the principle of state neutrality, while the model of laicity, or "rigid" secularism as Bouchard and Taylor name it, puts greater emphasis on ensuring a strict neutrality and separation of the state, which implies an allowance of greater restrictions on the exercise of conscience and religion (p. 137). With respect to national identity, Bouchard and Taylor (2008) note that open secularism treats secularism as an instrumentalist "institutional arrangement that is aimed at protecting rights and freedoms and not, as in France, a constitutional principle and an identity marker to be defended" (p. 141). In keeping with the latter, French model described by Bouchard and Taylor, Bill 21 formally instantiates laicity as a quasi-constitutional aspect of Quebec identity by amending the Quebec Charter of

Human Rights and Freedoms to include "State laicity" as a fundamental value, as well as including the explicit statement in Bill 21 establishing the "[importance] that the paramountcy of State laicity be enshrined in Québec's legal order" (preamble, s. 18-19, as cited in Barras, 2021, p. 286 n. 6). Thus, at least in terms of constitutional significance, we can weigh up the centrality of laicity to Quebec identity as not integral to identity in 1999, but integral to identity in 2019. Challenging the claim of centrality to identity is the fact that the adoption in 2019 of the laicity model in Bill 21, particularly the ban on the wearing of religious symbols, is a highly controversial one, and its legality is being challenged by ongoing court appeals. Interpreting these facts according to Eisenberg's guidelines, factors that count against the strength of Quebec's identity claim are that this formulation of identity is controversial within Quebec, and is new in the sense of its enshrinement into constitutional form. On the other hand, counting towards the strength of the claim is that the idea for this conception of laicity in the Quebec context is not new, but has been present since at least the beginnings in the 1990's of the recent debates on secularism in Quebec as a competing strain to that of "open secularism", as is evidenced formally by the many nearly successful but defeated attempts to pass this ideal into law (Bill 94 in 2011; Bill 60 in 2013; Bill 62 in 2017).[32] The context of the laicity formulation's more recent growth in popularity will be discussed below with regard to the second assessment standard of the validation condition.

The second dimension of the jeopardy condition for assessing laicity as a feature of Québec identity measures the degree of seriousness of the threat to identity if the claim is to be rejected. We must consider whether the claimed threat is real and likely, and whether the threat is a matter of jeopardy or only inconvenience to the maintenance of Québec's identity. The aim of the prohibition on the wearing religious symbols in Bill 21 is to uphold the four

[32] See also, Morrison 2019 p. 120*ff* for documentation of the historical manifestation of this recent ideal of laicity as a problematization of the presence or visibility of religion in the public sphere)

principles of secularism named above by demarking the proper comportment of parliamentary, government and judicial institutions "in fact and *in appearance*" (Bill 21, 2019, I.3, emphasis mine). Of the four principles, state neutrality seems the most relevant here, in keeping with Bouchard and Taylor's (2008) analysis: "The reason most frequently invoked for prohibiting agents of the State from wearing religious signs is that the agents represent the State and must, consequently, embody the values that the State promotes. Since the State is neutral with respect to the religious affiliations of its citizens, its representatives must embody this neutrality" (p. 149). Thus, the threat to Québec identity implied here is that permitting the wearing of religious symbols by state representatives would violate the value of laicity through the violation of the state's appearance of neutrality, and therefore, the legitimacy of its authority as a fair and impartial governing authority for Québec. The claim, if proven credible and consistent, would be a strong one. I will examine the credibility and consistency of the evidentiary standards supporting the claim below in relation to the third dimension of the jeopardy condition.

The claim of supporters of Bill 21 describes the threat to Québec identity as a threat to the social cohesion of Québec as a distinct society in the face of growing diversity, particularly in relation to Muslim immigrants. Barras (2021) points to the representative testimony of Guy Rocher, a prominent sociologist known for being a member of the Parent Commission, which gave recommendations for the deconfessionalization of Québec schools as part of the Quiet Revolution (pp. 292-293). In relation to the present question of the ban on the wearing of religious symbols, Rocher cites the threat of societal fragmentation posed by an unmanaged approach to the new religious diversity, which he claims would disrupt the peace between majority and minority groups, as well as the equal standing of the various religious minorities in relation to one another (Consultations, Bill 21, Québec, Guy Rocher, 14 May 2019). He recommends the removal of all religious symbols from the public school

context, in order that all religions are treated equally. In his reasoning, to allow some religions to be more visible than other religions within this context signifies privileged treatment for that religion and contribute to conflict between groups (Consultations, Bill 21, Québec, Guy Rocher, 14 May 2019). The risk of fragmentation cited by Rocher would be brought about by the conflict in beliefs stemming from the religious divide between the "minority religions" and the values of the majority, namely, belief in God in relation to atheist students, but also gender equality and LGBTQ rights (Consultations, Bill 21, Québec, Guy Rocher, 14 May 2019).

In the assessment of Bouchard and Taylor, this formulation of laicity in the strict form of state neutrality is not a more credible strategy to preserve the distinctiveness and social cohesion of Quebec society than the alternative conception of open secularism and interculturalism given in previous government documents. As they note in their commission report, the strategy of banning the wearing of minority religious symbols risks "community withdrawal rather than integration" (Bouchard & Taylor, 2008, p. 150). Moreover, while Bouchard and Taylor (2008) note that the hypothesis "that a student in the first cycle of elementary school has not yet developed the autonomy necessary to understand that he does not have to adopt the religion of his female teacher [wearing a *hijab*], who is in a position of authority" has plausibility, the establishment of this claim requires supportive evidence in the form of educational psychology research, which has not been brought forth (p. 150). In the absence of such evidence, it is not clear that the hypothesis has any greater plausibility than its alternative, of exposing young students to visible cultural diversity, as Bouchard and Taylor (2008) reason in the following comment:

> On the other hand, we would also have to bear in mind that young people who are exposed at a very early age to the diversity that they will encounter outside the school can more readily demystify the differences and will consequently be less likely to perceive them as a threat. Successful cohabitation in a diversified

> society demands that we learn to perceive as normal an array of identity-related differences (p. 150).

Indeed, Rocher is challenged by the Minister of Bourassa-Sauvé, North Montreal, Mdm Robitaille, on the non-existence of the threat to young students: "My county is Bourassa-Sauvé, North Montreal, so I truly have a panoply of diversities of all kinds. And there, the school board told me…there are at the same time some women who wear the veil who teach, but there is no problem, no concerns from the parents, and there is, just as you said, a respect for… the religious beliefs of everyone" (Consultations, Bill 21, Québec, Minister Robitaille, testimony of Guy Rocher, 14 May 2019, translation mine). Rocher's response is to concede that while this "may be true for the present… a law like this one is for the future", and warns against a laisser-faire approach, arguing that "uncertainty is on the side of those who accept [the idea] that religion would only enter into the school through ostentatious symbols" (Consultations, Bill 21, Québec, Guy Rocher, 14 May 2019, translation mine). Rocher supports this argument by citing the visibility of cassocks worn by teachers in the historical Catholic education system and its effect on his thinking as a teenager when considering the questions of whether God or hell existed. In this respect, he notes that the faith in God and hell symbolized by teachers wearing religious symbols "has meaning" and "is not insignificant", though he does not elaborate on the extent of this influence in his own case (Consultations, Bill 21, Québec, Guy Rocher, 14 May 2019, translation mine).

In contrast to this rather ambiguous and uncertain claim of threat to students through religious symbols stands the informal evidence from the school board in North Montreal of religious harmony in the schools and respect for religious diversity that already existed in the absence of the ban.

Since the time of the Bill 21 public hearings, more concrete and extensive evidence assessing this claim has manifested through an extensive survey in 2022 conducted by Léger

through lead researcher Miriam Taylor, Association for Canadian Studies, polling a representative sample of 1,828 Quebecers, including 632 Muslims, 165 Jews and 56 Sikhs to assess the effects of Bill 21 three years after its implementation. On the claim that Bill 21 would contribute to social harmony, the study summarizes its findings in the following statement:

> The study shows that for most of the minority religious community members surveyed, life in Quebec since law 21 was enacted is significantly less peaceful and less harmonious. Our evaluation of the hospitability of the climate in Quebec for those who identify as Muslim, Jewish and Sikh reveals negative impacts that are broad-ranging, disruptive and profound, reaching systemic proportions that are anything but moderate in four important dimensions of life: 1. Acceptability & Acceptance [prejudice, discrimination, and sense of acceptance]; 2. Hate & Safety [hate crimes and sense of personal safety]; 3. Citizenship [readiness to participate and express oneself in public life]; 4. Fulfillment, Wellbeing & Hope [perception of self-flourishing, achievement of goals, mental health and hope for children's future] (M. Taylor, 2022, p. 45, 47).

Thus, in addition to the very worrying rise in hate crimes and discrimination against religious minorities, particularly Muslim women and Sikh men (66.7% of each group exposed to hate incidents in last three years), but including all religious minorities, even those who do not wear religious symbols, the study shows a serious deterioration in level of acceptance of religious minorities in Quebec society (e.g. 78.4% of Muslim women report significant deterioration), and a withdrawal of religious minorities from public life and from the democratic activities of citizenship (e.g. 56.7% of Muslim women report significant deterioration in their readiness to participate) (M. Taylor, 2022, p. 30). Moreover, 55.9% of respondents from both the majority and minority groups agree with the statement that Bill 21 has created divisiveness in Quebec society (M. Taylor, 2022, p. 30).

Having applied the first two dimensions of the jeopardy condition to Québec identity, I will now do the same for the identity claims of religious minorities affected by the ban, before addressing the third dimension in relation to the evidentiary standards used to assess

the competing claims. In relation to the first dimension, the centrality of the wearing of the religious symbols in question is established, for example, in the testimony submitted to the Québec Superior Court in the challenge to Bill 21 brought forth by Ichrak Nourel Hak, a *hijabi* Muslim teacher, the National Council of Canadian Muslims, and the Canadian Civil Liberties Association (A.G. Québec v Hak 2019). Hak testified that she wears the *hijab* in conformity with her religious beliefs and that this practice is a part of her and makes her feel good (A.G. Québec v Hak paras. 98, 100). The court challenge included testimony by others whose careers are affected by the ban and who also cited the explicit link to religious conviction and identity, and/or to the inner strength to face societal prejudice (A.G. Québec v Hak 6.2.1). The importance of the practice and the seriousness of the threat is shown in the fact that almost all of these witnesses testified that they would choose their religious practice over their careers in Québec, either by being forced to change careers or provinces, or to refuse the requirement of removing their religious symbols for career advancement. Those who did not declare a course of action in this respect testified to the detrimental effect on their prospects in Québec society and to their mental state as a result of the bill.

The third dimension of the jeopardy condition assesses the fair consideration of evidentiary standards as applied to the identity groups in question. In the case at hand, there is inconsistency in application between the two identity groups in relation to the categorization of symbols as religious, and therefore, impermissible in public institutions, or cultural, and therefore, permissible in public institutions. Thus, while Bill 21 (2019) bans the wearing of religious symbols for public servants in authority, a provision which primarily affects Muslim women and Sikh men, it also includes a provision that expressly excludes the Catholic symbols of the dominant group that were a point of contention in the debates, particularly, the crucifix that hangs above the seat of governance in the National Assembly (s. 4.14). The continued presence of this symbol was defended in the debates as having only cultural

heritage value, rather than religious signification, despite the fact that it was installed there in 1936 by Maurice Duplessis with the express intent to mark the close relationship between church and state that defined his government, and these arguments were often given by proponents of the ban on the wearing of religious symbols (Beaman, 2013, p. 75 n. 29). While public pressure later convinced the CAQ government behind Bill 21 to voluntarily remove the crucifix from the National Assembly for the sake of correcting this inconsistency, the fact remains that the motivating impetus for the removal of religious symbols is exposed here in its intention to specifically target the symbols of the minority, and the inconsistency is retained in the wording of Bill 21.

This comparative analysis of the strength of the two identity claims based on the jeopardy condition clearly shows that religious minorities in Quebec have more to lose if Bill 21 is allowed to stand. Therefore, the identity claim of those affected by the ban on religious symbols on this condition is stronger.

The validation condition assesses democratic legitimacy, or the extent of acceptance within the community. It does so by looking at the genesis of how the disputed practice came about and whether the social and political processes by which it became endorsed are controversial or exclusionary. I will apply these considerations of the validation condition to an analysis of Bill 21.

According to Bouchard and Taylor's 2008 Commission report, at that time, open secularism was largely favoured by "the public organizations and groups from civil society" while no clear consensus prevails among the Quebec public (p. 141). The Léger study now reports 57%-63% popular support for Bill 21 in surveys done between May and June 2022, though in the same survey, only 39.2% of Quebecers agree that a public servant who does not comply with the ban on wearing religious symbols should lose their job (M. Taylor, 2022, p.

8, 32). Thus, support for Bill 21's model of laicity or rigid secularism has ranged from controversial to moderate support among the general populace.

In relation to the genesis of the model of laicity in Bill 21, specifically relating to the ban on the wearing of religious symbols, there are two claimed paths of its genesis. The first is that alluded to by Guy Rocher, who draws a connection between the cassocks worn by teachers in public schools prior to deconfessionalization and the religious clothing of teachers of minority groups today. On this account, the application of Bill 21 is simply a continuation of the secular practices established during the Quiet Revolution, now expanded to include the new religious groups whose populations have grown rapidly since the 1990's. The second path of genesis is that which focuses on the specific and recent context in which the religious symbols of the new religious groups became problematized. On this account, the main inciting event might be traced to 1994, when a thirteen year old Muslim schoolgirl, Émilie Ouimet, was expelled by the school principal, Norman Doré, who objected to the *hijab*, which was in contravention of the school dress code, as a "distinctive sign" akin to "neo-Nazi insignias" that have the power to "polarize the aggressivity of students"; eleven more expulsions of students followed that year on the same basis (Berger 1994 p. A1, as cited in Todd, 1998, p. 438; Morrison, 2019, p. 121). These incidents sparked a highly contentious public debate on the legitimacy of the wearing of religious symbols in public institutions. Doré's comparison of neo-Nazi insignias, symbols of racial violence and oppression, to the *hijab* betrays a perceived linkage between violent Islamic fundamentalism and the wearing of the *hijab,* an Orientalist theme that would persist through the successive debates on religious symbols to the present day in Quebec. The prominence of these racialized tropes were sustained to a significant extent by high profile feminist groups that were recurrent witnesses at various public hearings on anti-veiling, such as the Janettes, whose legitimacy and social influence was buoyed not only by their social, media and political capital, but also by their

use of the "insider" testimony of one of their number, Djemila Benhabib (Jahangeer, 2020, p. 123-4). Benhabib came to fame through a sensationalist tell-all book on Islamism based on her life in Algeria, France and Québec, and makes the argument in her book that the wearing of the *hijab* and requests for religious accommodation such as prayer rooms in universities are just the first step by Islamic fundamentalists in a ploy to infiltrate Quebec society (D. Benhabib, 2009, p. 23, as cited in Jahangeer, 2020, p. 126). Benhabib has toured through Québec targeting populations with little to no interaction with actual Muslims such as Chicoutimi and Saguenay-Lac-St-Jean to spread her message, stoking public fears of terrorist violence and the abuse of women (Jahangeer, 2020, p. 128). Another group, "Pour les droits des femmes du Québec" (PDF Quebec, 2016), echoes similar propaganda, arguing in a brief submitted in support of the failed Bill 62 on the banning of face coverings, that the wearing of the veil is an endorsement of practices that include the severing of hands as a legitimate punishment, the militarization of school children, and the abuse of women and girls (p. 12-15). Figures like Djemila Benhabib, who was invited recurrently to testify at public hearings on the various anti-veiling laws, including Bill 21, were given a platform in parliamentary and media forums while Muslim and Muslim feminist groups that argued against the bill were underrepresented in the public debates, despite the fact that Benhabib, for example, is highly criticized by Muslim feminist activists in Québec, who point to her alliances with Islamophobic figures, and is not viewed favourably by Algerian feminists working on the ground in her country of birth (Jahangeer, 2020, p. 127-129). Similarly, Barras (2021) notes that the witness testimony for the public consultations for Bill 21 was by invitation only, and the resultant witness list was grossly underrepresentative of those who were members of the religious groups affected by the bill (p. 294). These facts speak to the exclusionary character of the decision-making process that sanctioned the passing of Bill 21 into law, weakening the strength of Quebec's identity claim. A further factor counting against the legitimacy of the

ban on religious symbols is that Bill 21 was able to pass preliminary court challenge in the Québec court of appeal with regard to the Québec Charter of Human Rights and Freedoms only through the addition of the notwithstanding clause, which allows the law to pass in spite of violations of basic rights.

I will address the third standard of the identity approach, the safeguard condition, by applying it to the issue of harm mainly to those affected by the ban on the wearing of religious symbols, focusing on Muslim women, and the safeguards that Bill 21 offers these individuals. In this case, each side put forth different understandings of harm. In addition to the harm to Quebec identity as a whole, proponents of the ban on religious symbols mainly cited harms to women and girls in terms of the veil as a symbol and instrument of the oppression of women. This purpose is reflected in the preamble of Bill 21 (2019), which cites "the importance of the equality of women and men" as a value of the Québec nation that the bill is intended to protect (p. 1). In this account, harm is not only inflicted on Muslim women themselves, who are conditioned through veiling and socialization to be subservient to men or are subjected to oppression, but harmful also to school age girls who are faced with the implicit or explicit promotion of the veil worn by their Muslim teachers.[33] Additionally, testimony was given in the public consultations concerning the harm of being served by a public employee wearing a veil, which symbolized in this account, homophobic hatred and oppression of LGBTQ individuals by the religion of Islam.[34] For Muslim women and others affected by the ban, on the other hand, the claims of harm documented by the Léger report included loss of employment, career stagnation, economic and societal marginalization,

[33] See, for example, the arguments of Diane Guilbault, president of PDF Québec, in her testimony in the Bill 21 Consultations, May 7, 2019.

[34] See, for example, the testimony of Michelle Blanc, an LGBTQ advocate and member of the Janettes who stated in the Bill 60 Consultations that, "When I see a veil, my mental image is of all the gays that have been hung in public places in countries…in all cases, in certain Arab countries" (Jan 15 2014, p. 43, translation mine).

decline in mental health, wellbeing, and hope for their children's future, and increased exposure to hate incidents, hate crimes, prejudice, and discrimination (M. Taylor 2022).

In relation to the question of harm, Eisenberg instructs that standards of harm must not be interpreted selectively to benefit the dominant group, and assessment should expose those perceptions of harm based on misunderstandings and xenophobia (Eisenberg, 2009, p. 37-38). In this vein, studies that have been done to directly solicit the perspectives of Muslim women who wear the *hijab* and *niqab* in the Canadian context are instructive for debunking and counteracting these perceptions of harm. Bouchard and Taylor (2008) note in light of the extensive public consultations they conducted throughout Quebec that "girls or women who wear the headscarf attach different meanings to it and respond to different motivations…It is sometimes a question of submission and even of oppression pure and simple, sometimes of propriety, respectability and modesty, and sometimes of the assertion of identity, autonomy and even of feminism", and on this basis, one cannot assume that an individual is conveying any definite message to others through it (p. 235). The scholarly literature directly examining the views of Muslim women on the *hijab* affirms this fact of variation in meanings and motivations, the most comprehensive one in Canada being a questionnaire study done in the 1997-98 academic year which surveyed 129 Muslim women in ten major Canadian cities, including Montreal, half of whom wear the *hijab* and half who do not (Meshal, 2003). The study's findings illustrate the complexity of the debate over the *hijab* internal to Muslim communities in Canada. While the choice to wear the *hijab* is combined with domestic aspirations for some (40% of *hijabi* respondents), affirming traditional gender roles, for others it is combined with career-oriented aspirations (60% of *hijabi* respondents) (Meshal, 2003, p. 97). Moreover, the equation made in Western liberal society between the promotion of traditional gender roles and gender inequality is not assumed to be the case for those in the Muslim community. Meshal (2003) reports that a number of the respondents, both *hijabi* and

non-*hijabi* expressed the view that "Men and women are equal, but they have different duties and responsibilities", and many affirmed a feminist stance through the wearing of the *hijab*, which is seen to promote the *hijabi* woman as a human being with spiritual and intellectual qualities rather than as a sexual object (Meshal, 2003, p. 99-100). Notably, an equal percentage of Muslim women on each side of the debate felt overt social coercion or pressure (e.g. disapproval, ultimatums) from family or community to wear (25%) or to remove the *hijab* (27%), respectively. Despite the presence of social pressure on the issue of the *hijab,* as well as outright disapproval of the *hijab* from a third of the Muslim women who do not wear it, respondents who do not wear the *hijab* were consistent in their support of the right of others to wear it, showing that even those women within the community who disagree with the practice are against legislative action to ban it. It also shows that the internal controversy over the *hijab* is one of a live debate over an unresolved issue, and not a question of the coercion of women by men, since all respondents view it ultimately as a matter of the individual choice of women.

While Orientalist perceptions of veiling generally interpret greater coverage (i.e. covering the face in addition to the hair and body), with views and practices endorsing greater oppression of women and conservativism or fundamentalism, it is striking that studies done on women who take up the *niqab* in the West have, if anything, offered testimony that is more clearly feminist, inclusive and individualist than that on women in the West who wear the *hijab,* a further indication that the tropes about veiling are constructed through a false social imaginary rather than the real and complex situation of women and Islam. For example, Muslim women in Ontario and Quebec who wear the *niqab* revealed the following views as published in Natasha Bakht's 2020 book, *In Your Face: Law, Justice and Niqab-wearing Women in Canada.* While Bakht's sample is small, she documents her findings as consistent with studies done in Canada, Netherlands, Belgium, France and the United

Kingdom. The great majority of women who take up the *niqab* in the West cite their primary motivation as religious, specifically, "to further their spiritual journey or to become a better Muslim by deepening their relationship with God" (Bakht, 2020, p. 33). Moreover, all but one of Bakht's (2020) interviewees stated that wearing the *niqab* was not a communication to others but the manifestation of a private commitment to God and oneself (p. 35). Ayesha was the exception, but she cited the intended message not as one of religious proselytism, but the countering of stereotypes about the mobility of *niqabi* women (Bakht, 2020, p. 36). The women each saw the practice as a deeply personal choice that does not carry with it an expectation for others, particularly since it is not generally seen by these women as obligatory for everyone, but an extra step of piety, "like an extra prayer that you do", in the words of Mehreen (Bakht, 2020, p. 34). None of the women in Bakht's study associated the *niqab* with gender inequality or subservience to men (Bakht, 2020, p. 41). In fact, many *niqabi* women cite feminist reasons, such as signaling to men to treat them with respect, being protected from the male gaze, choosing who is allowed to see one's body and freeing oneself from the time-consuming activities of fashion and perfecting hair and makeup (Bakht, 2020, p. 37, 41). While it was not a theme in the interview questions, Ayesha volunteered her views on LGBTQ rights in Bakht's (2020) study to say that, "You can be gay and Muslim… there are Muslims that are LGBTQ. And then even at the Prophet's time, there were companions who were transgender" (p. 48). Bakht (2020) notes in light of the women's statements that there is no necessary connection between conservative views and choosing to wear the *niqab* (p. 48).

The safeguard condition is named for the fact that its assessment of harm includes a measurement of the extent to which potential or established safeguards can ameliorate the harms in question. In relation to the harms inflicted by Bill 21 (2019) on religious minorities, the law includes an exception to enforcement for those already employed in one of the affected positions as of 27 March 2019, the date before the bill was introduced, though the

exemption stands only so long as the individual remains in that same position (4.31). This safeguard, even for those who qualify, provides limited protection, since the exemption prevents existing public servants in positions of authority from enjoying any mobility in their careers. Moreover, as the testimony in the court challenge to Bill 21 by Nourel Hak and the other teachers and lawyers documents, those who have already invested considerably in their careers through education and training, who have not yet found a permanent position in the affected fields are not exempt (A.G. Québec v Hak, 2019). The court challenge to Bill 21 highlights the fact that Muslim women who have trained to be teachers are one of the main groups affected by the ban. Since these affected individuals are also women belonging to a visible minority, the bill compounds the systemic economic marginalization of an already vulnerable group. Moreover, it is not apparent what readily effective safeguards could be put in place to prevent the harm of the rise in hate incidents and discrimination given that it is not only the ban itself that sanctions negative treatment of religious minorities in the eyes of perpetrators, but also the public debates about the ban, which politicize and give sanction to the airing of negative views about religious minorities and minority practices, in formal and informal public forums (M. Taylor, 2022, p. 96-97; Jahangeer, 2020, p. 133-134).

In light of my assessment on all three conditions of the identity approach, the evidence shows that the identity claim against the ban on the wearing of religious symbols is stronger than the one that supports it.

In the second half of this chapter, I have argued against a liberal secular approach to the definition of legitimacy for a national culture as resting on a distinction between public culture and private religion. As the Beaman (2013) analysis shows, the line between what counts as religion and what counts as national culture is a continually shifting one that does not align reliably or consistently with a moral threshold for equality and inclusion in qualifications of national membership. Political theorists who rely on an assumption of this

alignment to identify legitimate conceptions of nationhood from illegitimate ones thus fail to adequately challenge the ways in which states and nations can act to violate principles of equality and inclusion while maintaining an official policy of secular separation between national culture and private religious ends. A more direct route to assessing questions of equality and inclusion with respect to assertions of nationalism is the identity approach, which gets to the heart of the concerns for both sides of an identity conflict without being dependent on any particular definition of religion or culture that is to hold for all cases. Moreover, the identity approach provides recognition and respect for the first person accounts of identity without sacrificing objectivity and evenhandedness of judgment.

Ch 3: Societal culture and "polyethnic" identities

This chapter examines the conceptions of culture, identity and community accruing to ethnic minorities of immigrant origin from the perspectives of multicultural theorists as compared to the perspective of ethnic minorities themselves in order to reject the dominant scholarly accounts and propose an alternate model based on first person perspectives of experience. This account leads to normative implications for a theoretical conception of the rights and needs of ethnic minorities. I will begin the discussion with a brief overview of the main approaches to an account of ethnic minority cultures in the scholarship, and then focus in on an extended critique of Kymlicka's (1995) liberal multiculturalist model of "polyethnic" minorities and its contrast to my own proposal for an alternative theoretical model.

Kymlicka's liberal statist conception of cultural identity presents an inaccurate picture of "polyethnic" identities that works against their cultural survival. The problem with Kymlicka's conception of national culture is not the model of integration that he proposes. I agree with the general idea that extensive integration into the dominant culture is necessary to facilitate equal opportunities and membership for polyethnic minorities, and that this sort of integration is in line with what these minorities themselves desire. While I fully endorse Kymlicka's assertion that "polyethnic" identities seek full membership in the larger "societal culture" through integration, I reject the notion that "polyethnic identities" do not also warrant the status of cultural entities in their own right.

The main problem with Kymlicka's conception is his narrow definition of cultures as societal cultures: the idiosyncracy of this definition in relation to how people actually think about their culture(s) from a first person perspective distortively renders the conclusion that cultural membership is exclusive (either immigrants create an institutionally complete societal culture, or assimilate into the dominant culture). This precludes the possibility that

one can be a member of more than one culture since he defines culture stipulatively as having to be institutionally complete to be a "living" culture. On my model, a culture does not need to be institutionally complete, nor even to have ownership of its own formal (read state-sponsored) institutions to have some distinct and at least partially independent politico-moral status. In other words, the politico-moral significance of ethnic minority cultures stemming from immigration is not fully accounted for by their liberal multicultural status as subnational aspects of a larger national societal culture. Moreover, that diasporic cultures are not defined by their territorial concentration does not preclude them from being cultures if the politico-moral significance of various types of ethno-communal cultures are recognized as being defined differently in relation to these types. My model recognizes three main types that are relevant to the groups Kymlicka categorizes under "polyethnic minorities"—localized ethnic minority communities, national-state cultures, and diasporic cultures. If we are to take the aspirations to cultural survival of polyethnic identities as seriously as ethnic minorities do, as I believe political theorists should, then we must begin to conceive their cultural aims beyond the scope of accommodative assimilation.

Similarly to Kymlicka's statist model of cultural accommodation, Nancy Fraser's (1990) deliberative democratic model of the public sphere, while making room for marginalized groups through her conception of counterpublic spheres, nevertheless positions the ultimate aim of these counterpublics as reformative assimilation into the larger public sphere. While she has more recently renounced the statist constraints of her model of public spheres in the face of the realities of globalization, and thereby multiplied and broadened the potential orientations of various public spheres, in some ways this modification intensifies the threats to cultural minority groups by increasing the scope of access to participation in identity publics through her globalization of her all-affected principle, which defines democratic parity more inclusively and less selectively than is conducive to the flourishing of

threatened cultural identity groups (Fraser, 2007). In this way, Fraser's transnationalization of her public sphere theory reproduces the same assimilative tendency as her older, statist model. And while Fraser has renounced an exclusively Westphalian definition of the critical target of subaltern public spheres, i.e. the state as authoritative power and therefore object of critique, she still insists on a narrow understanding of politically emancipatory action as directed at formal institutional authorities. I critique this model of identity publics and propose a model that takes transnational and diasporic identities into account while taking the survival aims of localized identity groups seriously. Squires (2002), writing from a black subaltern perspective in the American context, has proposed an alternative multitype model of subaltern public spheres in supplementation to the narrowness of Fraser's conception of subaltern public spheres exclusively as counterpublic spheres. She proposes two additional types: enclave, and satellite. However, in my view, this three type model of subaltern public spheres is still inadequate to an account of ethnic minorities of immigrant descent. Enclaves are still reactionary formations conceptually dependent for their defining nature and purpose on the dominant public sphere, and satellite publics do not describe the overlapping and multivalent way in which ethnic minority individuals of immigrant origin often see themselves and experience their lives in relation to their national citizenship as well as their diasporic culture. In my model, identity publics have multiple orientations with correspondent aims—those internal to the good of the local identity public itself, those that are integrative, reformative or resistance based in relation to the majoritarian public, whether local, national or transnational, and those that are oriented towards larger diasporic publics.

Communitarian accounts are no better. While Taylor (2004) acknowledges that nations outside of the West traverse paths of alternative modernities outside the scope of his account, he seems to retain a relatively simplistic statist understanding of modern secular liberal culture that sees its transformed cultural imaginary through the path of Western

traditions of thought and practice as fully inclusive of the perspectives of citizens belonging to religious and ethnic minorities within the pluralist liberal democratic state (pp. 1-2). In the context of this account, he seems very much to assume Kymlicka's framework in which culture and its social imaginary takes the statist form of societal culture, in which the dominant institutions of the majority society and the state are decisive in producing a shared and encompassing worldview held in more or less the same way by citizens from both the dominant and ethnic minority members of the societal culture.

Critical race theory (CRT) critiques of multiculturalism (Bannerji, 2000; Mills, 2007; Walcott 2014) recognize the perspective of racialized ethnic minorities as departing from that of the dominant group. However, they do not recognize the legitimate value of multiculturalism to ethnic minority groups. Instead, they conceive multiculturalism exclusively as a state policy designed as a strategy of diversion from popular consciousness of systemic racism. While I recognize that policy-making by state representatives is driven largely by political strategy that often parades itself as moral principles, and while I wholeheartedly agree that Canada needs to address its very serious problems of systemic racism and the harmful effects it has on the life outcomes of racialized minorities, I agree with Kymlicka's (2015) assessment that Canada's multicultural policy is still grounded on underlying moral principles of human right and democratic equality, and that ethnic minorities are not guilty of a false consciousness when they recognize this basis-- that the Canadian emphasis on promoting ethnic cultures, along with combating racism, is the strategy preferred by racialized minorities themselves (pp. 21-22). Moreover, CRT critics of multiculturalism underrecognize and underattend to the ways in which existing multiculturalism policy has the potential to be leveraged by minority groups for their own purposes, which include not only anti-racist aims, but also intrinsically valued cultural aims of maintenance, survival and reclamation, many of which require mainstream institutional

support to succeed. Even where CRT critics of multiculturalism identify these cultural aims of minorities as underserviced areas of multicultural policy, they undertheorize the ways in which minority campaigns demanding delivery on the state's multicultural promise of cultural and language support can serve as an indirect anti-racist strategy. This can instead be theorized as a first step to the aim of equality, because of the potentially less complex solutions required to, for example, support minority language retention, which has been shown in the education research to be a source of empowerment for the children and descendants of immigrants. This is also a needed complement to the externally directed, critical path of anti-racist action for many racialized ethnic minority individuals. It is this positive (re)making of the self that can serve as the reserve of energy and confidence that will be necessary to feed the sustained political action that is required to successfully pressure the state to act on the considerably more complex, long-ranging, systemic problems of anti-immigrant and anti-minority institutional racism.

In the main part of this chapter below, I critique Kymlicka's conception of societal culture, and his model of multicultural accommodation of "polyethnic minorities" and propose alternatives based on my model that take the aspirations to cultural survival of these minorities seriously. I first give an overview of Kymlicka's model and conceptual definitions. I then give a series of critiques of his account. The first critique challenges Kymlicka's claim that "polyethnic" cultures cannot or do not serve as meaningful pervasive cultures for the descendants of immigrants because these ethnic minorities are not territorially concentrated, and so cannot sustain the communities and institutions which would allow for a culture to support a distinct cultural identity and community in a meaningful enough sense to be given rights of the type national minorities are entitled to. I challenge this claim on the basis that (a) at least some ethnic minorities are territorially concentrated in the form of "ethnoburbs", (b) territorial concentration loses its central relevance as a basis for cultural identity in a

diasporic reality, and (c) "polyethnic" minorities could potentially sustain thriving and culturally distinct identities if heritage language rights were recognized as having the same politico-moral significance for "polyethnic" minorities as language does for national minorities despite the former not being entitled to official language status nor being associated with a claim to a comprehensive national societal culture entitled to full sovereignty. The second critique challenges Kymlicka's bipartite distinction of minority rights as distorting the conception of the culture and rights of ethnic minorities of immigrant origin on the basis of its (a) dichotomous distinction into a self-governance justification of rights for "national minorities" and an integrative orientation of rights of "polyethnic" minorities, and (b) on the basis of its exclusionary definition of cultural membership, such that an individual can only be said to have one cultural identity in any politico-morally meaningful sense. As part of my argument for critique 2(a), I challenge Kymlicka's moral argument against a positive right to one's heritage language for ethnic minorities of immigrant origin on a non-integrative (but not anti-integrative) justification. In the course of developing critique 2(b), I lay out my tripartite, non-exclusionary non-compulsory model of the orientations of cultural identity that should be recognized in multicultural theory as having politico-moral significance for ethnic minorities of immigrant origin, and give more detail concerning the three orientations: local, national and diasporic.

Kymlicka's definitions

Kymlicka defines the culture to which polyethnic minorities belong and have a right to claim in *Multicultural Citizenship* (1995) as a "societal culture, defined by language and history" (p. 8). Crucial to his conception of culture as societal culture is its circumscription in statist terms. A societal culture is "a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres" (Kymlicka,

1995, p. 76). By this definition, he means to tie the concept of culture to its modern state form of nationally institutionalized culture, for he adds the further definitional constraints that "these cultures tend to be territorially concentrated", and are only emergent in the era of modernization: "in the modern world, for a culture to be embodied in social life means that it must be institutionally embodied—in schools, media, economy, government, etc" (Kymlicka, 1995, p. 76).

He explicitly excludes "polyethnic cultures" from his definition, because, though he affirms the right of immigrants to maintain their ethnic language and practices within the family home and private life, through ethnic community associations for example, he thinks that minority ethnocultures cannot hope to survive unless they are used in public life, and this cannot happen without extensive government supports, which he seems to equate with the scope of an institutionally complete societal culture as he has already defined it (Kymlicka, 1995, p. 77-78). Thus, rather than forming territorially concentrated self-governing minorities, the doomed nature of polyethnic cultures means that the "[heritage culture] takes the form of contributing new options and perspectives to the larger Anglophone culture" (Kymlicka, 1995, p. 78).

Critique One: The viability of "polyethnic" cultures

Kymlicka argues that the only hope that "polyethnic minorities" have for cultural survival is assimilation into the larger societal culture of the host society, and that fair terms of integration into the host society are the only rights they can reasonably expect or legitimately claim. He gives two main categories of reasons—the first is a practical reason concerning viability, and the second is a moral argument concerning the scope of cultural rights for immigrants.

On the first point, Kymlicka argues that "polyethnic" cultures can exist only as heritage cultures, i.e. dead or doomed cultures that are likely to be assimilated into the

dominant societal culture by the third generation because of the dispersed settlement patterns of immigrants and the lack of public status of the mother tongue language. Thus, a key basis of Kymlicka's argument against recognizing polyethnic cultures as cultural entities in their own right is viability, which I will define slightly less restrictively than Kymlicka's own definition above, as the capacity for ethnic minorities to survive as self-sustaining cultural communities to the threshold of a living, institutionalized culture that can provide meaningful ways of life across a significant range of human activities (Kymlicka, 1995, p. 76).

On the first point, of immigrant settlement patterns, Kymlicka notes that "Immigrants come as individuals or families, rather than entire communities, and settle throughout the country, rather than forming 'homelands'" (Kymlicka, 1995, p. 78). As a result, "most existing ethnic groups are too 'dispersed, mixed, assimilated and integrated'" and therefore "are not sufficiently 'compact, self-conscious [and] culture-maintaining' to have the territorial and institutional prerequisites for self-government (Glazer 1983: 227,283; cf. Oliver 1992)" (Kymlicka, 1995, p. 96). He adds that "to try to re-create these prerequisites amongst already-settled immigrants would probably require coercion of half-integrated immigrants" (Kymlicka, 1995, p. 96). Kymlicka's account here is somewhat outdated, both in terms of (a) his description of immigrant settlement patterns and his claim that (b) dispersed settlement is an insurmountable barrier to cultural survival.

Concerning claim (a), immigrant settlement patterns have changed. Kymlicka's account of dispersed settlement leading to accommodative assimilation into the dominant societal culture fits a theory of settlement that was developed in the early era of urban sociology studies. Park and Burgess (1925, as cited in Harun & Filion, 2022) proposed that the dispersed settlement trajectory of immigrants from inner-city concentrations to various suburban neighbourhoods they observed in 1920's Chicago matched the assimilation trajectory of new immigrants into eventual integration in the mainstream society, for much

the reasons that Kymlicka gives (p. 2329). This proposed assimilation trajectory was in significant part accurate to the facts up to the 1980's, after which a number of factors led to the emergence of a new type of settlement phenomenon, coined "Ethnoburbs" by Wei Li (2009), which have only grown in recent decades. It is worth noting however, that the persistence of alternate settlement trajectories had already challenged this model from the beginning. For example, in the evolution of inner city ethnic ghettos into ethnic enclaves as ethnic clusters persisted even in the face of new opportunities for social mobility, and new clusters and social networks arose to meet the needs of ethnic community for the new suburban dwellers. In the field of urban sociology, these alternative trajectories began to be documented starting with the enclave model (Wilson & Portes 1980, as cited in Espinoza-Kulick et al, 2021), the multiple nuclei spatial model (Harris and Ullman 1945, as cited in Harun & Filion, 2022) and the sectoral model (Hoyt 1939, as cited in Harun & Filion, 2022), respectively.

As regards to the more recent phenomenon of ethnoburbs, Li (2009) defines this term in her book-length study in the following way, though slight variations of definition have arisen in the literature since her original 1998 article coining the term: "Ethnoburbs are suburban ethnic clusters of residential and business districts within large metropolitan areas. They are multiracial, multi ethnic, multicultural, multilingual, and often multinational communities, in which one ethnic minority group has a significant concentration, but does not necessarily comprise the majority" (p. 29). For the present study, what is significant definitionally about the ethnoburb is that the suburban area in question has a significant concentration of one non-white ethnic group such that a cluster or several clusters support a concentration of ethnic businesses, services and community associations with significant institutional scope to be more or less self-sustaining on the level of most everyday activities.

The emergence of ethnoburbs in the 1980's and 1990's stemmed from geopolitical events such as the planned return of Hong Kong to China in 1997, successive changes in immigration policy in the US and Canada from the 1960's on, as well as new flows of foreign investment, economic migrants, and media, and locally hospitable conditions (Li, 2009, p. 29-41). The post-1960's immigrant waves, particularly those arriving from the 1980's onwards, differ from earlier waves in terms of the large proportion of highly skilled and highly educated workers, many arriving with the financial capital to purchase their own homes and businesses (Li, 2009, p. 41; Edgington, Goldberg & Hutton, 2006, p. 156). The greater proportion of these immigrants choose to settle directly into suburban residential areas, and have expanded the existing ethnic clusters formed from the upward mobility of earlier immigrants from the inner-city to the suburbs, generating ethnoburbs that are large enough to often stretch across the borders of two or more suburban municipalities and continue to grow (Li, 2009, p. 41; Harun & Filion, 2022, p. 2330; Wang & Zhong, 2013). Notable examples in Canada are the South Asian-dominant ethnoburb of the Greater Toronto Area (GTA) spanning the borders of Brampton, Mississauga, Etobicoke and North York, the Chinese-dominant ethnoburb of the GTA spanning the borders of Markham, Scarborough, North York and Richmond Hill, and the Chinese-dominant Greater Vancouver municipality of Richmond, plus numerous other examples of ethnoburbs with lower concentrations of one ethnic group (15% or above), mostly in the greater municipalities of Toronto, Vancouver and Montreal (Wang & Zhong, 2013, p. 17).

As to claim (b), the lack of territorial concentration of ethnic minorities stemming from immigration has become much less of a constraint on community-building in the internet age. Appadurai (1996) described the phenomenon of transnationalism in early scholarship in terms of the deterritorialization of identity in the face of global flows of people and media. Noting that seminal accounts of the nationalization of culture and identity such as

Habermas' public sphere theory and Benjamin's national imaginary point to national identity in the modern age as constructed by collective imagination and through the conduit of mass media following the advent of the printing press, he makes the contemporary parallel to the construction of diasporic identity through today's new virtual media (Appadurai, 1996, p. 161).

New scholarship on diaspora and identity has converged on the claim that in the age of virtual media networks and transnational mobility, diasporic cultures are sustained by media more so than territory (Shi, 2005; Yin, 2015; Morley & Robins, 1995). Indeed, ethnic mass media as well as interpersonal ethnic media are becoming digitized onto the internet and mobile devices, facilitating the uninterrupted maintenance of diasporic ties on an everyday level, both in terms of participation in the ethnic culture (economic, social and political) and in interpersonal ethnic social networks, both local and transnational in focus (Yin, 2015). While older flows of diasporic communication were inhibited by time delays and geographical disjunction, the new virtual communication networks are immediate and simultaneous, often providing the lens for navigating real social space as well as replacing or multiplying these spaces with virtual ones (Yin, 2015, p. 559).

These online and mobile technologies help to partially bridge the spatial barriers to culture maintenance for dispersed ethnic groups in areas with ethnic concentrations too low to support an extensive physical network of culture-supporting institutions, and also help to bolster ethnic ties and networking activities even in areas with greater ethnic resources and infrastructure. Lee and Chen (2018) describe how Chinese and Korean immigrant mothers navigate the American school system through the linguistic, cultural and social lens of mobile media social networks such as Kakao Talk, which supplements but also supplants in-person and institutional channels of communication as the main source of school information (p. 399-400). A network of Korean mothers keep each other up-to-date on school activities and

updates, translating information disseminated in English by the school into Korean and mediating the school-mother relationship through the cultural perspective and support of fellow mothers' interpretations and reactions (Lee & Chen, 2018, p. 400).

In a study following the influence of social media on Chinese immigrant acculturation into Canadian society, Ju, Hamilton & McLarnon (2021) found that while Facebook was used by Chinese immigrants to interact with new Canadian friends and Canadian media, WeChat was used to maintain ethnic networks both in terms of homeland connections and local community. With regards to acculturation, WeChat is a daily resource with a wide scope, offering valuable information about the practicalities of resettlement, and the nuances of local life in Canada, providing networking groups for everything from apartment renting, houses, vehicle maintenance, job opportunities, Chinese translations and discussion of Canadian news articles, and making friends within the local Chinese community (Ju, Hamilton & Maclarnon, 2021). In fact, the coverage of daily networking and aid with everyday activities is so extensive that one participant laments that unmediated interactions with mainstream Canadian society by comparison become less frequent and deliberate effort must be made in order to make non-Chinese friends and improve English skills so as to attain skilled employment and enter mainstream social circles (aims for which there are considerable socioeconomic incentives, such that the vast majority of immigrants do acquire proficiency in at least one of Canada's official languages). Thus the extensiveness of ethnic social networks mediated through new technologies means that recent Chinese immigrants are acculturated to Canada through a Chinese linguistic, social and cultural lens, and their everyday activities continue to be mediated through these same perspectives to a significant extent following resettlement. For example, one participant relates that familiarization with the nuances of Canadian social and practical life is often gained from the Chinese WeChat groups, while another notes that the availability of Chinese translations of local news on the WeChat groups

obviates the need to read the original articles in English: “You would just read these news stories in Chinese…because people have already translated that news for you” (Ju, Hamilton & Mclarnon, 2021, p. 4015).

These examples show that while new immigrants are acculturating to Canadian society and institutional practices, as well as forming strong attachments to Canada, they are doing so through a Chinese Canadian lens that acts in the stead of official language status that would be accorded to members of a national minority, such as French Canadians, who are provided with French language services with which to navigate state institutions. Similarly, the WeChat networks, coupled with the local ethnic community networks, serve to immerse Chinese immigrants in a Chinese-speaking community within which much of their daily lives and social practices are carried out. One participant remarks that: “WeChat, as a platform for communication, can satisfy 90% of the needs of a person” (Ju, Hamilton & Maclarnon, 2021, p.4014). A participant from a similar study details the extent of her immersion in the WeChat world:

> When I open my eyes in the morning, the first thing I do is to check my WeChat to see if anyone leaves me any message. Then, I check my WeChat moments to see what my WeChat contacts share. After that, I will check my other social media accounts, such as Facebook, Instagram and so on. . .During my daytime, if I am available, I will definitely check my social media accounts. WeChat is the first-checked one. . .When I am about to sleep, I tend to repeat what I do in the morning. (Lala, 19, student) (Chen, Butler & Liang, 2018, p. 521).

The possibility of realistic immersion in a virtual community has only become greater in the post-pandemic era in which many business and social interactions have moved online and these virtual forums normalized as a central avenue of daily social and work life. The Chinese social networking bubble is particularly immersive due to the fact that China has

reproduced its own copycats of all the major social networking platforms, meaning that the users of these platforms such as WeChat are almost exclusively Chinese.

In conclusion, do ethnoburbs reach Kymlicka's threshold of institutional completeness? While Kymlicka's answer may be negative, my own view is that ethnoburbs are institutionally wide-ranging enough that they are sufficient to maintain micro-societies based on the dominance of at least one ethnic culture and language on the level of everyday cultural life. The above facts go a considerable way to showing how at least some ethnic communities can and do have the means to self-organize as well as live meaningful proportions of their lives in the host country in their ethnic language and culture, both in the home and in ethnic and diasporic communities.

On a third issue, let's call this **(c) of language disappearance**, Kymlicka (1995) notes that without the existence of and right to official language status for the heritage languages of immigrant communities, disappearance of the mother tongue of immigrants by the third generation is virtually guaranteed (p. 78). He explains that the reason for this is that "it is very difficult for languages to survive in modern industrialized societies unless they are used in public life" (Kymlicka, 1995, p. 78). In more specific terms, he notes that it is because of "the fact that public schooling is only provided in English", and because of "the high demands for [English] literacy in work, and widespread interaction with government agencies" (Kymlicka, 1995, p. 78). On this point, Kymlicka is accurate, a distressing fact for immigrant families as well as their children and grandchildren, who depend on the heritage language particularly as a crucial medium for developing healthy self-esteem and maintaining intimate family bonds. This issue will be addressed at several points later in this discussion in relation to the normative question of the justifications and scope for heritage language rights (languages with non-official status) involving the integration of heritage language bilingual and trilingual programs in mainstream educational institutions. For now, in relation

to the current descriptive account of language disappearance, Kymlicka's account of the reasons for and implications of this inevitability need to be examined more closely.

Firstly, Kymlicka assumes that "the language of public life" must mean the language of government institutions and of the dominant society, but if we redraw the boundaries of the public and the private in relation to the ethnic centre of immigrant community living in the context of ethnoburbs, a different picture of the extent of heritage language use in societal life appears. Here, the heritage language is the language spoken not only at home and in community associations, but in neighbourhoods, shops, markets and even workplaces, as well as sometimes with government workers hired from within the community to work at state institutions located in the ethnoburb, or via the translation of ethnic community associations set up for the purpose of mediating access to government services for those in the community who have not yet developed or are unable (either due to lack of resources or age) to develop the necessary language skills, such as new immigrants, low income labourers and the elderly. Often, elected political representatives provide political updates and community notices in the local languages prevalent in the ethnoburb, either because they themselves are members of those ethnic groups elected by the community, or because the large numbers of heritage language speakers in their electoral district necessitates this outreach if these representatives wish to make connections with their constituents in the course of their local duties, and be re-elected. Ethnoburbs have created a context of pseudo-societal cultures on a micro scale that now provide one of the two crucial environmental conditions for heritage language survival—an extensive community which can keep the language alive in everyday social practices across a range of contexts and institutions.

The commitment of allophone immigrants to invest in the difficult task of passing on their mother tongue to their children, on top of one or both of Canada's official languages, is both wide-ranging and deep, even in the face of overwhelming odds, demonstrating the

significance of mother tongue language maintenance to ethnocultural identity. The extent of material investment in language education for their children differs between families mainly along lines of socioeconomic capacity rather than importance of mother tongue maintenance and official language acquisition, which are both invested with high importance for immigrants, the former for reasons of ethnocultural identity, family ties, and future opportunities, and the latter for what is understood as the requirement for socioeconomic mobility and integration into the "host" society.

One study, conducted in the Chinese-dominant ethnoburb of Richmond, B.C., describes how Chinese immigrant parents who have the requisite socioeconomic capacity work to raise multilingual children to set them on the path to fluency in the heritage language as well as both official languages (Moore, 2010). The children are enrolled in a French immersion program at school and get additional exposure to French through storybooks at home, and with siblings and schoolmates, who use French as a secret language of communication that provides privacy from parents (Moore, 2010, p. 326-330). They get English language training from English class at school, from the wider society, from schoolmates, playmates, neighbours, and from books, educational media, and siblings at home, as well as some of the time from parents and other relatives such as aunts and uncles who live in the neighbourhood (Moore, 2010, p. 325-330). The heritage language is the primary language of the home and is spoken predominantly with parents, and exclusively with grandparents, who in many cases, live in the family home (Moore, 2010, p. 325-329). Other opportunities for Chinese language exposure and use include TV, books, various digital media, heritage language school and/or tutoring and homework from a neighbourhood parent in a small group of neighbourhood children (2-5 hours a week), Church services and Sunday school, Chinese language radio and music in the car with parents, shopping excursions in the neighbourhood with parents, interactions with local relatives and community members, and

communications with relatives in the parents' country of origin through letter-writing, email, telephone, video-calling, visitation and extended stays during the school holidays (Moore, 2010, p. 325-330).

Despite this considerable investment of ethnic minority parents into passing on their mother tongue to their children, by the time children reach school age at age four or six, or earlier, if they are enrolled in majority language preschools, they very quickly transition from monolingualism in the heritage language, to becoming bilingual and dominant in the majority language, and soon after, most become effectively monolingual in the dominant language, often as quickly as within six months to a year after entering mainstream educational institutions, regardless of socioeconomic status. This is a pattern that is well documented in the literature, and directly contradicts the widespread popular assumption that immigrant communities, particularly those living in ethnic clusters, do not acquire and are resistant to acquiring proficiency in official languages, and that heritage language maintenance threatens official language acquisition. Rather than heritage language maintenance threatening official language adoption, it is monolingual policies in public schools, coupled with implicit and explicit attitudes conveyed through the ideologies grounding such policies that, as a pattern, cause the acquisition and dominance of the school language and the loss of the heritage language in the children of immigrants, often irrecoverably.

Kymlicka comments briefly on this phenomenon and refers to it as a reason why the maintenance of heritage languages into successive generations is unviable, but it is necessary to revisit these points in order to grasp their significance.

Firstly, and to Kymlicka's (1995) credit, he rightly denounces assimilative unilingual educational policies, and makes some effort to debunk and denounce the assumptions that tend to justify them:

> In terms of linguistic integration, the goal of ensuring that immigrants learn English need not require the abandonment of the mother tongue. Indeed, there is strong evidence that immigrants are more likely to learn English if use of their mother tongue is not discouraged. ESL (English-as-a-second-language) programmes, and public opinion generally, have historically treated the desire to retain and use one's mother tongue in private life, and to pass it on to one's children, as evidence of a failure of integration on the part of immigrants. Current policy has operated on the assumption that the ideal is to make immigrants and their children as close as possible to unilingual native-speakers of English (i.e. that learning English requires losing their mother tongue), rather than aiming to produce people who are fluently bilingual (i.e. that learning English involves gaining a language, in addition to one's mother tongue).
>
> This is a deeply misguided policy. It is not only harmful to the immigrants and their families, cutting them off unnecessarily from their heritage. But it also deprives society of a valuable resource in an increasingly globalized economy. And, paradoxically, it has proven to be counter-productive even in terms of promoting integration. People learn English best when they view it as supplementing, rather than displacing, their mother tongue (p. 97).

Despite this strong statement in support of additive bilingualism, Kymlicka displays an ambivalence towards heritage language rights that falls short of proposing the requisite institutionalization of heritage language education in public schools that would be required to meet the demands of international standards of justice (See below for details concerning these standards). This ambivalence is of a type that mirrors Canada's own policies on heritage language rights.

Firstly, it is not clear from the above cited passage whether Kymlicka merely judges policies for assimilative unilingualism as regrettable and counterproductive for accomplishing state aims of integration, or if he means to assert a claim of justice in relation to the human right to one's heritage language as a part of his proposed model of multiculturalism. The explicit justice argument and its policy implication, rather than forming an integral part of the main argument in the body of the text, is buried in an endnote, and never rematerializes as a recommendation in his bipartite model of multicultural rights (Kymlicka, 1995, p. 216 n.20). This mirrors Canada's multicultural policies, whose logic Kymlicka implicitly takes as the basis for his model of liberal multiculturalism. In

Kymlicka's practical recommendations, we find these same limited state provisions for heritage culture and language maintenance in place of the more robust requirement of the institutionalization of heritage language programs within the public school curriculum.

Only as separated from the main proposal for multicultural rights, hidden in the aforenamed endnote, is he willing to state that "In so far as immigrant children are disadvantaged by the lack of bilingual education, this becomes an issue of basic fairness, since liberal theories of justice consider it a serious injustice to disadvantage people on the basis of unchosen factors like ethnicity, race, or class" (Kymlicka, 1995, p. 216 n.20). Moreover, even this more robust endorsement of language rights as a matter of justice (rather than merely enrichment) is ambiguous in that it does not specify whether bilingual education is required by principles of equality beyond those programs of transitional bilingualism that aim to support child immigrants only during the early years in which they are still in the process of acquiring an adequate level of English to allow them to transition to the mainstream monolingual classroom (insofar as current policy permits the few available bilingual programs involving heritage languages, it is largely of this sort), or if ethnic, linguistic and racial equality requires bilingual education that is available throughout a child's public school career, or at least until a solid foundation of literacy in the heritage language is achieved. Given that transitional bilingual programs are criticized by linguists as having the effect of displacing the mother tongue with the dominant language, rather than producing additive bilingualism in school age children in all but the higher grades[35], the logical implication would be that Kymlicka's statement of support for additive bilingualism has the unavoidable implication of requiring the positive right to state support in attaining (and not just retaining) bilingual literacy. However, Kymlicka's other comments, as well as the

[35] Linked to this effect, Akkari (1998, p. 117, as cited in Wu, 2005) argues that "most bilingual education programs [are transitional and so] tended to focus more on disabling than empowering students" (p. 24).

vagueness of wording of Canadian policy and practice, effectively support only the negative right of non-interference through allowing the freedom of community groups to start up their own heritage language programs, and a "benign" neglect of children's mother tongues in the public school system through monolingual language policies in the classroom. In Chapter Three of *Multicultural Citizenship* (1995), which examines the compatibility of various minority rights with liberal principles of equality and freedom, Kymlicka makes the argument that positive measures of allotting public funds to heritage language maintenance and acquisition are indeed *compatible* forms of equality measures for integrating ethnic minorities under a liberal regime, as a corrective to the inequalities of the cultural marketplace (Kymlicka, 1995, p. 38). However, in Chapter Six, in which he lays out the specific requirements of justice proposed by his model, he endorses linguistic rights for national minorities only, and speaks only of religious exemptions and "symbolic affirmation of the value of polyethnicity" as the relevant forms of group-specific rights for integrated ethnic minority groups (Kymlicka, 1995, pp. 113-115; see also p. 78).

He also can be interpreted as directly rejecting the moral justification for immigrant language rights in his statement that

> In deciding to uproot themselves, immigrants voluntarily relinquish some of the rights that go along with their original national membership. For example, if a group of Americans decide to emigrate to Sweden, they have no right that the Swedish government provide them with institutions of self-government or public services in their mother tongue. One could argue that a government policy which enabled American immigrants to re-create their societal culture would benefit everyone, by enriching the whole society. But the immigrants have no *right* to such policies, for in choosing to leave the United States they relinquish the national rights that go with membership in their original culture. Similarly, Swedish immigrants to America have no basis for claiming the language rights or self-government rights needed to recreate their societal culture." (Kymlicka, 1995, p. 96)

While, in the above passage, Kymlicka does not technically reject mainstream heritage language education on a level below the threshold required to create a societal culture (which

he has already defined as meaning a culture with national institutional scope), he also sets up the modest minority claims for partial institutional provision of language services for failure. He does this by repeatedly treating language rights in an all or nothing manner, as requiring the full scope of "public services in the mother tongue" in a form that would sustain a national culture, the denial of which leaves the reader with the impression that the only option in the face of such a denial of a national minority right to language provision is the status quo right of "benign" neglect of heritage languages beyond symbolic and ineffectual measures of support.

Moreover, subtle endorsements of mainstream opposition against instituting the more modest minority demands for the mainstreaming of heritage language provision are conveyed elsewhere in the text, providing support for the confirmation of the above reading, and legitimizing the idea that immigrant language rights below the threshold of the comprehensive recreation of an immigrant societal culture are not rights of entitlement, but democratically negotiated gifts to the larger society as a whole, as decided by the proclivities of dominant groups. For example, the passage cited below seems to imply that if public funds and resources were allocated to the provision of bilingual programs within public school curriculum for the development of heritage language literacy, that these funds would be spent in a futile effort to preserve heritage languages for the long term, since such partial institutionalization measures would only slow down but not stop the disappearance of heritage languages by the third generation, a conclusion that is empirically undetermined, given that it is as yet too early to tell whether areas in which these bilingual public school programs have recently been instituted for heritage languages will produce lasting fluency into the third and fourth generations:

> Under these conditions [in which immigrant groups are not accorded the resources to establish distinct and institutionally complete societal cultures alongside the anglophone society], the immigrants' mother tongue is often

> spoken at home, and passed on to the children, but by the third generation English has become the mother tongue, and the original language is increasingly lost. This process is speeded up, of course, by the fact that public schooling is only provided in English. In fact, it is very difficult for languages to survive in modern industrialized societies unless they are used in public life. (Kymlicka, 1995, p. 78).

This all or nothing reasoning also ignores the fact that serious harms to visible minority individuals are accrued through the loss of the mother tongue or heritage language within any generation, quite outside of any ambitions to the long-term cultural survival of the group, a fact that contributes to individual low self-esteem, school dropouts, and, through the loss of ability to communicate effectively in the parents' (and grandparents') dominant language, the weakening and severing of family bonds, increase in intergenerational conflict, and alienation from one's community.

Moreover, all groups, even those that manage, through personal effort alone, to overcome the disadvantages of the immigrant condition to achieve parity in socioeconomic status, i.e. those represented in the mainstream racialized imaginary as "model minorities" who are not visibly disadvantaged by the status quo, still suffer the majority of these same serious harms named above of cultural and language loss. Without expressly cultural rights, the promotion of rights of equality that primarily look to equalize socioeconomic outcomes will tend not to perceive or address the invisible harms suffered by these "model minorities".

And contrary to his statement that supporting the mother tongue of immigrants and their families facilitates the learning of the public language, he rhetorically positions "the spread of standardized education and the high demands for literacy [in the public language] in work" as legitimate reasons "why public schooling is only provided in English", without explicitly making this argument (Kymlicka, 1995, p. 78). In fact, these are reasons taken right from common objections to the institutionalization of bilingual heritage language programs in public schools given by those from the dominant group opposed to such proposals. The actual

merit of these arguments is not supported by the research literature. On the issue of standardized education and testing materials produced in English, besides the option of providing the same standardized materials in additional languages of instruction, the recommendation given by UN guidelines, there is another simple solution available, and that is given in the case study of a pilot trilingual Spanish-English-Mandarin public school in San Diego (UN Special Rapporteur for minority issues, 2017, p. 19; Henn-Reinke, 2012, p. 158, 160, 167). Periodically scheduled classes interspersed through the school year aimed at the preparation of students for state-wide standardized tests in English are given where the English forms of subject terminology and writing conventions (e.g. date format) required to succeed in state testing are taught (Henn-Reinke, 2012, p. 158, 160, 167). Students from the trilingual programs score on par with or above students in monolingual standard education programs in state-wide testing across the board, including in English and Math (Henn-Reinke, 2012, p. 174). This finding is consistent with those studies done on students learning in bilingual English/heritage language programs, which are more plentifully represented in the literature (see reviews of such programs in the Canadian context by Cummins and Danesi, 1990; Duff, 2008, p. 76; Dicks and Genesee, 2017).

Similarly, in relation to the point about “the high demands of literacy in work”, the literature consistently shows that those students in heritage language bilingual and trilingual programs have generally been successful at attaining a level of language proficiency in English that is on par with or outperforming their peers in monolingual school programs by grade 5 (Duff, 2008, p. 76). Based on the evidence collected in research so far, there is no reason not to presume that the students that graduate from minority language immersion, bilingual and trilingual programs are and will be able to meet the language expectations in the workplace.

Kymlicka's ambivalent endorsement of the right to heritage language maintenance and acquisition mirrors the same ambivalence in Canadian policy. The Multiculturalism Act of 1988 gives several policy bases for the state provision of heritage language maintenance and acquisition in Sections 3 and 5 (as cited in Locher-Lo, 2019, p. 104). However, the vague language in which these provisions are stated effectively allows the Government of Canada to claim to promote heritage language maintenance while investing virtually no substantive resources, rendering these commitments into mere lip service. For example, Section 3.1 of the Act states that: "It is hereby declared to be the policy of the Government of Canada to (i) preserve and enhance the use of language other than English or French, while strengthening the status and use of the official languages of Canada", but does not give any indication of what sufficient measures count towards the preservation and enhancement of Canada's non-official languages. The wording of Section 5.1 is even weaker: "The Minister shall take such measures as the Minister considers appropriate to implement the multiculturalism policy of Canada and, with limiting the generality of the foregoing, *may* (f) facilitate the acquisition, retention and use of all languages that contribute to the multicultural heritage of Canada" (Canadian Multiculturalism Act, 1988, italics mine). The historical record of the federal government's applications of these principles reflects the weakness of the above commitments. A paltry 10% subsidization of community-run heritage language programs was offered by the federal government in the 1970's and 80's, following the 1971 version of the Act, and even this funding was withdrawn by the early 1990's (Cummins, 2014, p. 1). The covert message sent by the federal government in adding these provisions to federal policy documents is received loud and clear by policy administrators. As documented by Kim *et al* (2020), a memo from W. P. Lipischak, Director of the Program Implementation and Review Branch of the Ontario Ministry of Education to Duncan Green, Assistant Deputy Minister (1987) gives the ministry's unpublicized reasons for rejecting, for the fourth time, the

proposal for legalizing the institutionalization of heritage language programs within Ontario's main public school curriculum, a proposal that, if approved, would remove the legal barriers in the province's Education Act to allow for the use of heritage languages as public school subject and/or language of instruction for select subjects, in school districts with high concentrations of non-official language communities. In the memo, Lipischak states: "'Heritage languages, and the funding therefore were introduced originally as a political ploy by the federal government and there was no long-term expectation that they should become a major education vehicle or expense. It was part of the "multicultural heritage" era.'" (as cited in Kim *et al,* 2020, p. 329). In support of his argument, Lipischak attached to the memo, the speech of Canada's first Commissioner for Official Languages Keith Spicer at the convention of the Canadian Association for Education 1986, where Spicer commented that "'multiculturalism as we know it was originally considered to be a short-term sentimental phase to calm down the insecurities of ethnic groups in the early 1970s.'" (as cited in Kim *et al,* 2020, p. 329). The policy outcome of this covert logic operating behind Canada's Multiculturalism Act and linguistic policy has been, as leading linguistic researcher Jim Cummins (2014) has long argued, that in most provinces, the implementation of language education, of ethnic minorities especially, has largely been based on ideology rather than evidence.[36] In his accounting, "No province has articulated an educational language policy that addresses in a positive way the multilingual realities of its schools…The lack of coherence with respect to policy is compounded by the fact that many of the programs and

[36] Cummins' (2014) criticisms are not limited to heritage language provision, but extend to the utterly ineffective administration of Core French programs across the country, in which 90% of French as a second language learners are enrolled, and ESL students, where permitted to study French at all, are almost exclusively represented. He says of the educational outcomes of core French programs, interpreting the findings of Harley et al (1988) and the literature review conducted by Lapkin et al: "one year of Core FSL produced equivalent outcomes to 7+ years, suggesting that core FSL during those years was not particularly effective" (Cummins, 2014, p. 2). Moreover, as Jeff Bale (2019b), among others, has argued, the country's French-English bilingualism mandate is, in certain contexts, used by Anglophones as a legitimizing cover for racist rejections of state funding for heritage languages, rather than a genuine reason advanced by legitimate concern for the protection and promotion of official bilingualism.

provisions that have been implemented are inconsistent with the empirical evidence regarding effective practice" (Cummins, 2014, p. 1). The target of this criticism includes not only the lack of support for heritage language programs, but also the outdated, disempowering and ineffectual approaches to English (and French) instruction given to the large majority of ESL students, particularly in the mainstream classroom. Across the country, meaningful state-funded heritage language bilingual programs are rare, and even in those provinces which have actively supported this endeavour, the option is only accessible to a small percentage of allophone students.

In Alberta, where such programs are most numerous and promising, publily funded 50-50 bilingual schools in English and a heritage language can be found for Arabic, German, Hebrew, Mandarin, Polish, Spanish and Ukrainian (Cummins, 2014; Aravossitas, Volonakis & Sugiman, 2022). Manitoba currently offers similar programs in German, Hebrew and Ukrainian. Québec partially subsidizes a handful of trilingual schools--one in French-English-Greek (enrolling mainly children of Greek families), and three in French-English-Hebrew (enrolling mainly native English speakers of Jewish background) are noted in the literature, though the aim of these programs as stated in their curriculum overview echo to a significant extent the Québec government's potentially disempowering justification for its PELO program (Le Programme d'enseignement des langues d'origine), which supports a small duration of heritage language course provision as integrated within or operated outside of school hours, on the instrumental justification that such programs will help immigrants become more comfortable in learning the French language and therefore, integrate more easily into the French language culture (Aravossitas, Volonakis & Sugiman, 2022, p. 742; Genesee, 1998; Genesee & Lambert, 1983). Since 2010, BC has offered a handful of publicly funded English-Mandarin bilingual programs, located in Vancouver, Burnaby and Coquitlam, though the Vancouver and Burnaby programs ban students with prior Mandarin knowledge

from enrolling, and the criteria for all three programs, under the banner of promoting international (rather than heritage) languages, discourages the registration of mother tongue Mandarin learners (Locher-Lo, 2019, p. 111). Cummins (2014) notes that, “Some provinces (e.g. Ontario) have articulated restrictive policies in relation to multilingualism by prohibiting use of languages other than English and French as mediums of instruction [in any non-language learning class, such as for Physical Education or Social Studies] except on a short-term transitional basis” (p. 1). The number of even these programs in Ontario can be counted by the handful.

The result of this dearth of effective heritage language support has been that the majority of children in Canada with a mother tongue other than English or French receive formal mother tongue language instruction for only three hours a week or less while attending community-run and community-funded language courses outside of the regular school day. Because these programs are generally poorly subsidized by the state, if subsidized at all, the instructors tend to be untrained volunteers from the ethnic communities themselves. Given these conditions, it is no surprise that the majority of ethnic minority children do not develop any sort of functional literacy in their mother tongue and many lose even oral competency in the mother tongue by the time they leave the public school system, though in many cases, this loss occurs much sooner.

In stark contrast to what has become a normalized reality in the Canadian context stand the strikingly different recommendations given by international standards detailing the right of all minorities, not only national minorities, to the acquisition of fluency and literacy in the mother tongue language. Note Article 4, particularly, 4.3 of the Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

(1992)[37]: "States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue". The latest UN guidelines detailing how this right should be provided for states as one of the central obligations of state authorities that they "implement their human rights obligations by generally following the proportionality principle in the use of or support for different languages by state authorities, and the principle of linguistic freedom for private parties" (UN Special Rapporteur on minority issues, 2017, p. 5). The proportionality principle is described in the following terms: "The principle of *proportionality* [is] based largely but not exclusively on a number of practical factors: the number and concentration of speakers of the language, the level of demand, prior use of the language as a medium of instruction and therefore availability of resources" (UN Special Rapporteur on minority issues, 2017, p. 18). To give an illustration of what the proportionality principle makes possible, the guidelines cite India as an exemplar, because its public school systems support thirty minority languages as mediums of instruction, along with the education of children in the dominant languages of Hindi and English. The offerings of languages of instruction vary depending on the province and school district in relation to the minority groups that make up the local demographics. In relation specifically to public education provision, the guidelines state that:

> Quality public education in the mother tongue should 'be extended to as late a stage in education as possible', up to and including public university education where practicable. Ideally, the instruction in the mother tongue should last for a minimum of between six to eight years – more when this is feasible. If demand, the distribution of speakers or other factors make this not feasible, state authorities should provide for the teaching of the minority language as far as is practicable. Using one language as the medium for

[37] The Preamble of the UN Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities indicates that the articles of the declaration are drafted in support of and following from the principles contained in, among other international treaties, the International Covenant on Economic, Social and Cultural Rights, Note: Articles 2.2, 13 (UN General Assembly 1966, International Covenant on Civil and Political Rights, Note: Article 26 (UN General Assembly 1966), International Covenant on the Rights of the Child, Note: Article 28.1(e), all of which Canada has ratified.

> instruction just for a few years at primary level, and then switching over completely to another language should be avoided as this may lead to high dropout or failure rates, and could even lead to low levels of literacy in both the minority and the official language. (UN Special Rapporteur on minority issues p. 18-9).
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> Where a minority language is mainly oral, or there are no professionally trained teachers or little printed teaching material in a particular language, teaching assistants from the local community and modest translation programmes produced locally have been shown to be effective at improving the overall level of school performance among minority children. Financial and other support can be provided for private educational facilities where a minority is numerically too small for the operation of public schools. Authorities must ensure appropriate curriculum development and teacher training in the minority language, and bilingual education must be developed to be responsive to specific contexts. In addition, authorities should include the teaching of the histories, cultures and traditions of their minorities in the mainstream curriculum (UN Special Rapporteur on minority issues p. 19).

In addition to providing clear guidelines for best practice in relation to the legislative and human rights standards and precedents for state provision of mother tongue language instruction for minorities, this UN document for the implementation of language rights also highlights the financial viability of instituting such programs. The document cites studies showing that such programs actually save on public education costs over the long term:

> For example, in Guatemala, the long-term cost saving as a result of first language-based education for all children who do not speak the official language was estimated to equal the cost of primary education for 100,000 students, or a potential saving of over 31 million quetzals (US$ 5 million). A similar study in Mali found that French-only programs cost about 8% less per year than mother-tongue schooling, but the total cost of educating a student through the six-year primary cycle is about 27% more, largely because of the difference in repetition and dropout rates (Patrinos & Velez, 2009, p. 597 and Dutcher & Tucker, 1997, n. 2, as cited in UN Special Rapporteur on minority issues, 2017, p. 17).

Considering that high repetition and dropout rates are also significant problems in relation to certain linguistic groups of ESL students in Canada, the relevance of such findings becomes clear enough at least to support a government-sponsored research commission on the financial practicality of implementation (Cummins, 2014, p. 4).

In the above discussion, I have provided various sources of evidence in terms of environmental conditions (local and global), legal and practical precedents, and financial feasibility in challenge of Kymlicka's account of the viability of "polyethnic" minority culture and language survival. In the next part of this chapter, I will give an assessment of the moral arguments for a positive right to heritage language maintenance and acquisition in the Canadian context. However, prior to moving on, I would like to comment on the troubling manner in which Kymlicka (1995) misrepresents the perspective of ethnic minorities in his foregoing account, which can be seen in the following passage:

> So while there are many aspects of their heritage that immigrants will maintain and cherish, this will take the form… of contributing new options and perspectives to the larger anglophone culture, making it richer and more diverse. For the third generation, if not sooner, learning the original mother tongue is not unlike learning a foreign language. Learning the old language may be rewarding as a hobby or business skill, but for the children of immigrants, it is the anglophone culture which defines their options, not the culture from which their parents uprooted themselves (pp. 78-79).

Here, Kymlicka gives a reductive account of the significance of minority language for heritage language learners, and indeed, of the personal benefits of access to one's minority ethnic culture in general. For those who have experienced heritage language loss, or did not learn their heritage language formally in public school, it is the desire to connect to one's ethnic identity, family, and community that primarily characterize their motivations to learn the language. This is documented, for example, in a qualitative study of third and fourth generation Chinese American adults (Ho 2011). In relation to the desire to connect to one's ethnic identity, the interviewees reported wanting to learn their heritage language as a deep identity need or personal obligation tied to a motivation to resolve identity conflict or legitimize their sense of claim of ethnicity. For example, Katherine says that she chose Mandarin as the language to fulfill a university requirement because "I really wanted to learn Chinese. Because I'm Chinese, but I don't know any Chinese", and Ken reports that "we feel

that we need to know [the Chinese language] because we need to know our heritage bloodline" (Ho, 2011, p. 4). Ho reports that Brian, who started learning Cantonese in late childhood in order to connect with his grandparents, "did not feel that he was whole without his ability to speak Toisanese or Cantonese. Brian regarded Cantonese as so close to his identity that it was his affective language: "[I]f I was explaining to you my emotions, I use Cantonese" (Ho, 2011, p. 8). In relation to the desire to connect with family members, for the third generation, this tends to mean strengthening bonds with grandparents through better communication, learning about their background, or a sense of duty to maintain the culture and not let it die out. For example, Brian explains that learning Chinese became important to him as an older child/adolescent despite the fact that it was not instrumentally necessary to communicate with his grandparents:

> I had the desire to keep it, the language, going in my family, or like, yeah I didn't want it to die out. So my um, that stemmed from my, um, my willingness to learn and speak to my grandma in Chinese, to make sure I kept it alive too. Even though all my grandparents are fluent in English, I try to speak in Chinese to them too, as much as possible (Ho, 2011, p. 5).

Interest in Chinese pop culture and social life was the third main category of motivation documented in this study. This interest was mediated through acquiring a peer group that was Chinese or Asian, a social connection that was often the result of a strong desire to connect with those from the same ethnic or racialized group. Ken gravitated towards those of his own racialized group and shared their pop culture interests, while Katherine "longed to feel more connected to her [2nd generation] Cantonese friends and share in their experience of talking with their parents" (Ho, 2011, p. 6-7).

And while larger scale quantitative studies on the motivations of heritage language learners report both instrumental and identity reasons to study the language, the instrumental reasons are often secondary or derivative motivations to those stemming from identity and

interpersonal bonds. For example, Ho (2011) reports that Ken wanted to learn Mandarin after learning Cantonese and Toisanese because "just in case—cause I'm an econ major, so business. So if I were to go to China to do a business trip…." (p. 7). This is despite still being a university student without an immediate need to conduct business travel in China.

Kymlicka's account does not express the perspective of the children of immigrants, but describes the viewpoint an individual from the dominant group might have towards the languages of immigrants with which they have no heritage connection. Supplanting the standpoint of minorities with that of state or majority group actors in social and political philosophy, and in policy justifications has dangerous implications. Indeed, Kymlicka's (1995) characterization of the significance of minority cultural expression as "contributing new options and perspectives to the larger Anglophone culture" mirrors in a disturbing manner a recent trend to the institutionalization of heritage language learning in Canada (p. 78-9). Institutionalized allophone language courses and programs offered under the label of heritage languages and servicing Canada's various ethnic minority communities, have, since the 1990's, been increasingly marginalized by or reframed as language courses and programs offered under the banner of "International languages", which target a demographic of monolingual Anglophone students for enrollment. As mentioned earlier, the International Languages Programs for Mandarin study finally introduced only recently in the Vancouver metropolitan area actively discourage or ban mother tongue Mandarin students from enrolling. And even in Alberta, the partially funded "Heritage Language Programs" organized by heritage language communities for the purpose of community language maintenance must be proposed and administered by the minority communities themselves, while the institutionalized "International Language Programs" offered in public schools tend to select the most globally attractive languages such as Spanish and Mandarin for offer. The discourses accompanying this shift "[counterpose] languages oriented on the past with those

of the future" (Kim *et al*, 2020, p. 329). Indeed, in the 1987 Ontario Ministry of Education memo Lipischak drafted against the funding of heritage language education, he refers to Commissioner for Official Languages Keith Spicer's statement that "all languages are equal in dignity, but not equal in usefulness" in order to argue that "the Ministry should focus on Spanish, Chinese, and Swahili (in addition to Canada's official languages) as 'the key languages of the future,' counterposing them to 'esoteric languages with sentimental value' currently supported by the HLP [Heritage Language Program]" (as cited in Kim *et al*, 2020, p. 329). Note that this contraposition of languages of dignity to languages of usefulness also mirrors the shift in emphasis in language policies from justifications of language support on the basis of the protection of the equal human dignity of ethnic minorities[38] to neoliberal promotions of languages as resources that promote Canada's economic standing in a globalized world, through the encouragement of additive multilingualism for foreign language learners, and the discouragement or neglect of additive multilingualism for heritage language learners (Ontario Ministry of Education, 2012, p. 4, as cited in Bale, 2019a, p. 126).

As has been my main argument throughout the current project, in order for theorists of multiculturalism to capture an accurate account of the prospects and challenges faced by minorities, a theoretical framework of analysis that foregrounds minority perspectives and needs without obscuring or distorting them with state and majoritarian perspectives is key.

Critique Two: Kymlicka's bipartite division of minority rights

Kymlicka's (1995) moral argument for denying a positive right to minority culture and language for "polyethnic" minorities is grounded in a reductively constructed principle of choice. He distinguishes the rights of "immigrant" minorities from those of "national minorities" on the basis of the condition of voluntariness of their incorporation into the larger

[38] See p. 6 of the UN Special Rapporteur of minority issues (2017) guidelines, "Language Rights of Linguistic Minorities" for the connection between dignity and language rights in international human rights standards and discourse.

nation state, following the distinction made by Walzer (1982) and Glazer (1983) (Kymlicka, 1995, p. 63). He argues that, "In deciding to uproot themselves, immigrants voluntarily relinquish some of the rights that go along with their original national membership" (Kymlicka, 1995, p. 96). He infers from this argument, in conjunction with his definition of culture as societal culture, that the distinction of voluntariness, defined in dichotomous rather than gradient terms, justifies the categorical difference in minority rights between those "polyethnic" rights of ethnic identity, i.e. inclusion, accommodation and symbolic expression, and those national minority rights of self-governance and institutional independence (Kymlicka, 1995, p. 63). Thus, if one falls into the "polyethnic" category, the societal culture of integration is one's culture in the strict sense, while the ethnic culture of one's origins or of one's ancestry persists only as an aspect of and contribution to the culture of integration, and an expression of self-identity within that larger societal culture. As a distinct entity, it is at best a symbolic[39] or dead culture that "[survives] only amongst a small élite, or in a ritualized form", as Kymlicka (1995) notes of the fate of immigrant languages by the third generation (p. 78). The nature of "polyethnic" rights follows from this account—one has rights to equal citizenship and to representation, visibility in the societal culture, to religio-cultural and ethno-cultural freedom of expression and association, and religio-cultural accommodations in the form of modifications of or exceptions to the institutions of the larger society. Additionally, one has the negative right to retain one's mother tongue or to learn and use one's heritage language in private life, and to limited (i.e. symbolic) state funding for ethnocultural associations (Kymlicka, 2015). In contrast, if one falls into the category of a national minority, then one is territorially concentrated, and one's culture is institutionally

[39] In distinguishing the minority demands of "polyethnic" groups in the United States in the 1970's from those of "national minorities", Kymlicka (1995) cites Gans' term of "'symbolic ethnicity', to emphasize that [the content of these demands] is almost entirely lacking in any real institutionalized corporate existence" (p. 98). In the same passage, Kymlicka (1995) categorizes the former category of claims as relating only to "recognition and visibility within the mainstream society" (p. 98).

complete, spanning the full range of social, economic, and political life. One has separate self-governing institutions, and the right to public services in one's mother tongue.

2(a) False dichotomy

Kymlicka's argument here has two related problems. The first is one I have already gestured to, which is the false dichotomy that is produced between "polyethnic" rights and "national minority" rights. In the course of my discussion so far, I have noted the following descriptive characteristics of "polyethnic" groups that challenge Kymlicka's dichotomous categorization of minority rights:

- Some "polyethnic" groups have territorially concentrated communities as noted in the literature cited above on the "ethnoburb" phenomenon.
- "Polyethnic" groups have some separate institutions, with some communities having more extensive institutional scope than others. Whether these institutions, such as places of worship, community schools, community organizations, ethnic business or professional associations, and community settlement and social services, are state funded or not (and many of these are partially funded), they meet Kymlicka's (1995) qualification of societal institutions that support meaningful ways of life across "social, educational, religious, recreational, and economic life" (p. 76).
- These institutions can be understood as spanning the scope of the "public and private spheres" if one does not insist on a definition of the "public sphere" as encompassing only those institutions commonly frequented by the dominant group, or on a constitutional liberal theoretical framework. What counts as "public" and what "private" can also be understood through the distinction between community and family life as would be the case if ethnic minority communities are understood, not only as subaspects of the national societal culture, but also as cultural entities in their own right.

The main problem with Kymlicka's dichotomous categorization of minority rights is that voluntariness of incorporation into the nation state is a gradient, not a dichotomy. Kymlicka (1995) himself admits almost as much in the passage below, and explicitly acknowledges that his dichotomous division of minority rights is a conscious simplification of the real scope of the immigrant condition:

> The line between involuntary refugees and voluntary immigrants is difficult to draw, especially in a world with massive injustice in the international distribution of resources, and with different levels of respect for human rights. If a middle-class American chooses to emigrate to Sweden, that is clearly voluntary, and very few of us would think that she had a claim of justice that the Swedish government provide her with free English-language services (or vice versa for a middle-class Swede emigrating to the United States). But if a peasant from Ethiopia emigrates to the United States, her decision is voluntary in a very limited sense, even if she was not subject to persecution in her homeland, since it may have been the only way to ensure a minimally decent life for herself or her children. Indeed, her plight may have been as dire as that of some political refugees. (This is reflected in the rise of the term 'economic refugees'.) (p. 99).

This admission prompts him to suggest that the legitimacy of his model is limited to ideal theory in that it describes "what the [rightful] claims of immigrants [would] be in a just world [where] the international distribution of resources were just", meaning that, in an ideal world, immigrants would have no plausible claim of justice for re-creating their societal, i.e. national, comprehensively institutionalized and separate, culture in their new country (Kymlicka, 1995, p. 99).

However, this qualification seems, on my reading, to deliberately obscure the point that, despite the fact that in the vast majority of cases, immigrants have never demanded to be recognized as sovereign and distinct national minorities, with the official language status, exclusive territorial jurisdiction, and a sovereign, complete and separate set of governance institutions that might come with such recognition, they have demanded and needed the more robust forms of support for immigrant communities that do quite closely resemble the

rationales and forms of some national minority rights: substantive and meaningful state support for the maintenance, acquisition, and use of minority ethnic languages (to be administered according to the UN principle of proportionality), *some* localized provision of state services in immigrant mother tongues (particularly in the crucial areas of healthcare, the juridical/correctional spheres and ESL provision) and more than symbolic protections against the majoritarian threat to the survival of the cultural, moral and ethical ways of life that sustain the psychological and cultural health of local minority communities and healthy family bonds. Instead, Kymlicka's assessment of the potentially "stronger claims" of immigrants consists of a rejection of the fabricated issue of whether immigrants should have the right to claim the national minority rights necessary to recreate a separate and comprehensive societal culture, an absurd question which immigrant groups do not raise, and is produced from on an overly rigid conception of what qualifies as a viable cultural entity for recognition by states in the modern industrialized world.

Furthermore, on Kymlicka's own account, immigrants can only legitimately be expected to give up *some* of the cultural rights they held in their origin country. Namely, he says that immigrants "leave their public institutions behind but bring their language and history, with the expectation that they will be able to pass these on to their children and maintain them in the private life of the home and in voluntary associations". At the same time, Kymlicka recognizes that without substantive state institutional support, such as bilingual (or trilingual) public school programs in the official language(s) and the heritage language, this expectation is likely to go unmet. I will now turn to the moral justifications for a positive right to one's heritage language.

The first place to look for this justification is Kymlicka's own arguments for the moral significance of language in terms of its centrality to culture. These are the arguments he uses to ground his proposal for national minority rights. In the course of examining the

content of these claims of significance, I will argue that his *a priori* unwillingness to definitively extend a proportional right to one's own language (mother tongue or heritage language) for "polyethnic" groups leads to a troubling inconsistency in his account of this significance between categories of minority group.

Kymlicka explains the centrality of language to culture by recognizing that language is not only an important component of culture, but also the very medium through which culture is accessed. He endorses Dworkin's (1985, as cited in Kymlicka, 1995) account of culture as "[involving] 'a shared vocabulary of tradition and convention' which underlies a full range of social practices and institutions" (p. 83). He stresses that "to understand the meaning of a social practice, therefore, requires understanding this 'shared vocabulary'--that is, understanding the language and history which constitute that vocabulary", thus clearly establishing the idea that, when he affirms the importance of "a shared vocabulary of tradition and convention", he is not only referring to a concept of language in the broad sense of a set of ritual gestures and references, but to actual language in the linguistic sense of the term (Kymlicka, 1995, p. 84). He adds that, "Understanding these cultural narratives is a precondition of making intelligent judgements about how to lead our lives. In this sense, our culture not only provides options, it also 'provides the spectacles through which we identify experiences as valuable' (Dworkin 1985: 228)" (Kymlicka, 1995, p. 83). Note that here, Kymlicka makes language a precondition to recognizing the very options that will allow us to make the best decisions about how best to lead the good life, which is the core rationale of his argument for minority rights.

In the task of answering the question of "[why] the bonds of language and culture [are] so strong for most people", he affirms Margalit and Raz's (1990) claim of the crucial link between culture and well-being (Kymlicka, 1995, p. 89). On the basis of this link, Kymlicka (1995) cites Margalit and Raz to argue that, "if a culture is decaying or

discriminated against, ‘the options and opportunities open to its members will shrink, become less attractive, and their pursuit [of wellbeing] less likely to be successful' (p. 449)” (p. 89). He also affirms Margalit and Raz’s (1990) and others’ arguments for the crucial link between cultural membership and personal identity:

> Cultural membership has a 'high social profile', in the sense that it affects how others perceive and respond to us, which in turn shapes our self identity. Moreover, national identity is particularly suited to serving as the 'primary foci of identification', because it is based on belonging, not accomplishment… Hence cultural identity provides an 'anchor for [people's] self identification and the safety of effortless secure belonging'. But this in turn means that people's self-respect is bound up with the esteem in which their national group is held. If a culture is not generally respected, then the dignity and self-respect of its members will also be threatened (Margalit and Raz 1990: 447-9). …Tamir also emphasizes the extent to which cultural membership adds an 'additional meaning' to our actions, which become not only acts of individual accomplishment, but also 'part of a continuous creative effort whereby culture is made and remade'…James Nickel emphasizes the potential harm to valuable intergenerational bonds when parents are unable to pass on their culture to their children and grandchildren (Nickel 1995). Benedict Anderson emphasizes the way national identity enables us to transcend our mortality, by linking us to something whose existence seems to extend back into time immemorial, and forward into the indefinite future (Anderson 1983). No doubt all of these factors play a role in explaining people's bond to their own culture. I suspect that the causes of this attachment lie deep in the human condition, tied up with the way humans as cultural creatures need to make sense of their world, and that a full explanation would involve aspects of psychology, sociology, linguistics, the philosophy of mind, and even neurology (Laponce 1987). (Kymlicka, 1995, pp. 89-90)

In summary, Kymlicka and others affirm the importance of the right to one’s own language on the basis that language is both an essential option within one’s culture, as well as the very medium of access to all other options that one’s culture provides. A healthy access to one’s culture is necessary for making intelligent decisions about one’s pursuit of the good life, and for individual wellbeing and a healthy self-identity, and this necessitates conditions where one’s culture is protected against external pressures of decay from the cultural marketplace, particularly if these external pressures involve discrimination. Such external pressures negatively affect our range of life options, our well-being and identity because our

cultural membership affects the way others perceive and respond to us, including the level of respect and esteem that others perceive our culture as having, which in turn affects the level of self-respect and dignity one is able to maintain. Some forms of cultural membership that are based on belonging rather than accomplishment are especially suited to anchoring self identity, and a key characteristic of this role of cultural membership is that it is effortless and secure. Secure access to one's culture and the options it provides allows us to be part of something that extends beyond our own mortality, and gives us agency in the creation and recreation of that culture. And lastly, having the ability and capacity to pass one's culture on to one's children and grandchildren is crucial to healthy intergenerational family bonds within the immediate family unit.

As I will show by presenting the narratives of immigrants and the descendants of immigrants below, all of these claims made in service of arguments for national minority rights hold their significance for "polyethnic" minorities as well, and this is because, the essence of what is morally and politically significant about culture is not found exclusively or sometimes even primarily in one's national or societal culture, but also in one's inherited ethnic culture. For the children of immigrants, as well as potentially for any descendant of an immigrant who is perceived by others (or themselves) as part of an ethnic group, because of racialized characteristics and/or family and community lineage, this more often than not results in a social reality in which these individuals find themselves attached to more than one cultural identity that is resistant to personal choice because it forms, in one way or another, who they are and/or who they cannot escape being perceived as being, both by members of their own ethnic group as well as the racializing perceptions of others. And while some aspects of culture can, as Kymlicka notes, be freely chosen or left behind by successive generations, there are essential components that present sticky attachments to social perceptions, one's own and others', that cannot be unproblematically detached by the effort

of an individual acting alone, but only in the course of the free and fair evolution of the culture through the cumulative and collective decisions of its members.[40] These sticky attachments include the very elements Kymlicka names as underlying the vocabulary and institutions of one's culture--that is, a presumed possession of or obligation to basic knowledge of one's ethnic or cultural history, and to proficiency in one's ethnic and/or societal language. For those that belong to religious cultures that have become ethnicized, such as Judaism and Islam, this presumed knowledge or obligation to know one's ethnic or cultural history and traditions also extends to religious history and tradition.

In relation to the question of language, which is our focal issue within this chapter on "polyethnic" rights, Kymlicka (1995) provides an answer to the question of "why…the members of a national minority need access to their *own* culture? Why not let minority cultures disintegrate, so long as we ensure their members have access to the majority culture (e.g. by teaching them the majority language and history)?" (p. 84). The analogy Kymlicka (1995) uses in his response is notable:

> …This sort of proposal treats the loss of one's culture as similar to the loss of one's job. Language training for members of a threatened culture would be like worker retraining programmes for employees of a dying industry. We do not feel obliged to keep uncompetitive industries afloat in perpetuity, so long as we help employees to find employment elsewhere, so why feel obliged to protect minority cultures, so long as we help their members to find another culture? (p. 84).

Compare this again to what he says about the significance of language for the children and descendants of immigrants:

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[40] On the basis of Kymlicka's own autonomy justification of the right to culture, this sort of cultural evolution and cultural change is unproblematic only so long as it is freely chosen by those who are given the societal conditions for a fair chance to make decisions about their culture. Indeed, preliminary research is beginning to show that attachment to language could be more important for some immigrant groups' conceptions of cultural identity than others, e.g. Egyptian v.s. Somali heritage learners of Arabic, as suggested by a study on self-reported motivations for language learning that could be semi-independent of the assimilative pressures of the external society (One study found that both groups express motivations to learn Arabic, but in comparative relation to one another, Egyptians more frequently cite instrumental uses and Somalis more frequently cite identity motivations).

> For the third generation, if not sooner, learning the original mother tongue is not unlike learning a foreign language. Learning the old language may be rewarding as a hobby or business skill, but for the children of immigrants, it is the anglophone culture which defines their options, not the culture from which their parents uprooted themselves (Kymlicka, 1995, p. 79).

It is not clear whether Kymlicka means his characterization of the significance of heritage language to be a descriptive or normative account of how the children and descendants of immigrants see (or should see) their ethnic language, but on either count, the claim not only fails, but strikes the reader as incongruous to ordinary first person understandings of the significance of their own culture(s). The source of this incongruity in this case is that this is not primarily an account of how "polyethnic" minorities born in Canada see the significance of their heritage language, but an account of how members of the dominant group might see the significance of learning these same languages (or any language to which they have no family or cultural connection). As is consistent with the perspective from which he constructs his model of liberal multiculturalism, he supplants the minority perspective with the perspective of the dominant group(s), who set the limits on the scope and nature of the integration aims of the multicultural liberal state, and bases his argument for minority rights on an idealized model of the status quo of Canadian multicultural policy,[41] as formulated from the perspective of the moral and political interests of the ruling elite.

It is on this basis that he develops his dichotomous categorization of minority rights that artificially erases the gradient parallels between the needs and concerns of "polyethnic" groups and "national minorities", and equivocates between the assimilative interests of the state and the situation and views of ethnic minorities.

[41] To see the truth of this statement, compare Kymlicka's theoretical model to his historical account of the logic of Canadian multiculturalism (Kymlicka 2015).

Rather than accepting this substitution of perspective as the starting point for a normative model of multiculturalism, I argue for an alternative which starts from an accurate account of the situation, challenges and needs of minorities, and this is best given by making a central space for their own first person accounts.

On immigrant conceptions of language as the medium of culture, I turn to Xiao Lan Curdt-Christiansen's interviews with Chinese immigrant families in Québec (2009). Curdt-Christiansen (2009) takes care to preface the findings of her study with a statement of her personal background and its "insider" relation to her research, by expressly identifying the significant commonalities she shares with her study participants:

> As an immigrant and a parent, I share experiences with my participants of the linguistic and political complexities inherent in the English/French/Chinese, majority/minority backdrop of Quebec society. Having grown up in China during the infamous Cultural Revolution, my experiences of immigration to the West provide me with an understanding of the Chinese parents' perspectives on languages and literacy, their persistence in promoting Chinese culture, and insistence on maintaining their children's Chinese language. Thus, not only are linguistic and cultural positionings shared, but also many of the educational expectations, experiences and language practices are shared (p. 357).

In support of the extension of Kymlicka's claims about the role of language as a medium of access to culture, one can cite Mrs. Qi's statement that "[Language] is like a door that enables you to reach the world" (Curdt-Christiansen, 2009, p. 367). Mrs. Qi is a Chinese immigrant parent raising her six year old daughter, Dodo, in Montreal, speaking about why she invests in her daughter's language learning in French, English and Mandarin Chinese, the languages of Dodo's culture(s) as a Chinese Canadian. Mrs. Zhou explains why it is important for her ten year old son Yuzhou not to lose his heritage language in the course of acquiring French or English: "I believe, Chinese culture is rich and deep. It [learning Chinese] is not just for the sake of maintaining your own culture; of course, as a Chinese, you have to know your own culture, otherwise, what are you going to do? The other important reason is that I think

Chinese culture, as part of a civilization, has tremendous value. If he lost the language because of French or English, he would lose an opportunity to communicate with an ancient civilization" (Curdt-Christiansen, 2009, p. 366). She points to the intrinsic value of Chinese culture, which she appreciates from having access to it through the language. Additionally, in relevance to Kymlicka's liberal concern with the significance of culture with autonomy, the primary importance noted here is not to acquire these cultural objects as a passively receptive vessel, but to "communicate with" Chinese civilization. That is, Mrs. Zhou articulates the role of language and culture as a dialectical interlocutor for identity, in the manner Taylor argues for, and Kymlicka has affirmed. Most importantly, Mrs. Zhou points to the language of Yuzhou's ethnic identity as the means to access his ethnic culture, and to this access to his ethnic culture as the precondition for him being able to take any sort of action at all. Thus, while these immigrant mothers also affirm the essential roles of English and French (the operative languages of the society in which their children are being raised) for their children's life options and cultural development, they also affirm these roles for the children's mother tongue of Mandarin Chinese, because of the essential connection between ethnic identity and one's personal options and development.

Speaking to the deep need felt by parents to pass their language and culture on to their children, Mrs. Chen, mother of eight year old Mindy, says, "It would be very disheartening, indeed, if your child grows up without identifying himself with you" (Curdt-Christiansen, 2009, p. 366). This sentiment is echoed by Mrs. Lin, who speaks not only about her own parental expectations and perceptions of her child's identity, but also about the unavoidable confrontation facing her children in the future, when they realize, through others' perceptions, that they are members of a racialized ethnic minority group:

> Why the kids have to learn Chinese? It seems such a natural thing, it's like, the children are Chinese, if they don't learn some Chinese, it will be a great

> *regret/sorrow* [遗憾]! … I think when they grow up to a certain age, they must ask, 'who am I?' For instance, they live in a society with black, white and many other different races; it is very obvious here [in Canada]. In China, such a question does not exist, you are who you are. But here, you will definitely ask this [question], who are you yourself? So when this question is asked, if you know Chinese, you have a tool, and a means, then, you can immediately get to the answer, which can deepen your understanding of yourself" (italicized words are my own translations). (Curdt-Christiansen, 2009, p. 365).

As Mrs. Lin astutely recognizes, the access to Chinese identity that language brings not only serves identity purposes through being able to appreciate the intrinsic value of knowing the culture of one's family, it can also serve as a buffer against the racialized perceptions of others in the national societal culture and therefore as a means to a healthier sense of self-identity as an ethnic minority Canadian navigating the challenges of that larger society. This is echoed by Mrs. Zhou: "When [children] grow up, they will find that their identities, values and self-esteem cannot be cut off from their yellow skin, from the fact of being Chinese. Only when you find your roots will you be able to settle down, to identify yourself with your own [Chinese] culture" (Curdt-Christiansen, 2009, p. 366).

Curdt-Christiansen's study does not give any indication that these parents expect the Québec or Canadian government to fund or mainstream their children's heritage language education. Indeed, they all send or plan to send their kids to the community heritage language schools, and are willing (and able) to pay for any personal expense in doing so. Perhaps they were simply not asked about their political views on language policy and were mainly speaking and acting from a pragmatic recognition of the reality of the constraints they live under (the study's focus was on family language policy in the home, not on political views). Or perhaps they accept some form of Kymlicka's moral argument that, in emigrating from their original countries, they voluntarily chose to leave behind their societal culture, as well as a rightful claim to the public institutional structure that would support the maintenance of

their family language. But even if they do accept this moral argument, I would argue that the freedom of their choice does not extend to their children, who likely had no say in the matter of emigrating. Moreover, on the basis of Kymlicka's own argument, these children have a moral right to institutional support for the maintenance and acquisition of their heritage language, as limited by the UN proportionality principle. The provision of a meaningful level of support for the production of additive bilingual and trilingual children of minority groups would ensure that the choice of how to define their identities in relation to culture and language will be freely their own once they reach an age of developmental maturity to make considered decisions about their identities and future, rather than the result of disempowering external pressures from their social environment as children. As Mrs Qi says, "Whatever she wants to do in future, that's her own business. But if you have already established a basis for her, then she has a possibility to explore" (Curdt-Christiansen, 2009, p. 367).

An Albertan survey of university Chinese language learners looked at the motivations of Chinese Canadian heritage language learners of Chinese (divided into mother tongue Chinese and mother tongue English groups) and Canadian foreign language learners of Chinese (those who identified as of European or Canadian descent, with no direct parental connection to Chinese) and compared them. Heritage language learners were defined as participants that declared at least one parent as having a native language of Chinese (i.e. a child or descendant of a Chinese immigrant(s) that was either born in Canada or moved to Canada as a child). The heritage language learners expressed sentiments such as: "I feel that since I am Chinese, I should know the language. Although I was born in Canada, I feel I should know the written language of Chinese because of various pressures around me" (heritage language learner with Chinese as a mother tongue), and, "All my life I have used English, even though I am of Chinese background. I feel lost when my relatives who don't speak English talk to me in Chinese and I cannot communicate with them, I feel guilty and

embarrassed that I don't know my own language. Also, I travel to China a lot and communication is a HUGE obstacle. I need to learn it!" (heritage language learner with English as a mother tongue, as cited in Comanaru & Noels, 2009, p. 148). The study authors categorize both participants' stated motivations as stemming from "introjected regulation", which they define as motivations from a sense of internalized pressures, which I note in relation to the present discussion seems to stem from the "high social profile" of culture referred to by Margalit and Raz and affirmed by Kymlicka above as a reason why culture maintenance is a deeply felt need that should be protected (Comanaru & Noels, 2009, p. 134, 139).

Another heritage language learner expressed what the study categorizes as "intrinsic motivation" in the following comment:

> Knowing the language – how to write and read – is very important to me because I am Chinese. Living in a western country does not diminish that. By learning the Chinese language, I can 'maintain' my culture in a country that allows, and even encourages, me to do so. Learning Chinese is not a means to separate myself or gain a 'higher status' within society, that's not the intent. I do not feel patronized nor do I feel as though I am subjected to a minority group – those are not my reasons for learning the language. I am Chinese, the language is an integral part of me, being able to retain it and pass it on to my children is/will be very important to me. Moreover, I enjoy learning languages (Comanaru & Noels, 2009, pp. 148-149).

Intrinsic motivation is defined in opposition to extrinsic motivation and as "based solely on interest and pleasure in that particular activity" (Comanaru & Noels, 2009, p. 134). According to the study's categories, the above comment could also be categorized as "Identified Regulation", or, "doing an activity for personally relevant reasons, such that the regulation is accepted as one's own" (Comanaru & Noels, 2009, p. 134). Moreover, this comment indicates that identity relations to the Chinese language and culture are prompted by the respondent's sense of Chinese ethnicity despite having lived in Canada since a young age and likely being a Canadian citizen or long-time permanent resident. Note that the

respondent expresses a desire to pass on the Chinese language to their children, despite not having yet attained full literate fluency because of having come to Canada as a child.

Other heritage learners expressed a mix of motivations from introjected pressures, identified motivations, and intrinsic motivations:

> I am learning Chinese because my Chinese background is very important to me. Despite being very North-Americanized and white-washed, I think it is so important that I don't lose this part of myself that is so fundamental, and easy to lose as well. [. . .] It's embarrassing to be Chinese physically and find yourself in a situation where you can no longer speak the language (especially since you were once very fluent in it) to other Chinese people. Even now, I have a hard time communicating with my grandparents because they don't speak English and I have forgotten many Chinese words and vocabulary. I suppose my reason then is because I want to. I am guilty in a way, but that is not my sole motivation. You can't really describe how it feels to learn about a language you once knew how to speak fluently, forgotten, but can still hear it and understand it. Even when I could speak it, I never learned how to read or write. It is fascinating to finally have characters and words to these sounds that I know. It's strange to only know a language orally, but I definitely love learning how to read and write. Also, I want to pass on the Chinese language to my children one day. Just because I am Canadian is no reason to lose my Chinese culture (Comanaru & Noels, 2009, p. 149).

This mother-tongue Chinese heritage language learner, who identifies as ethnically Chinese with "physical" Chinese characteristics, speaks of their Chinese background and of North-American culture in racialized terms, suggesting a connection between heritage language loss and the racialization of culture, as well as an implied connection between self-awareness of racialized identity and a need to learn one's heritage language in order to pursue their conception of the good life, a need the Montreal parents in the previous study predicted of the next generation, in contrast to Kymlicka, who links the pursuit of the life options of the children of immigrants only to the English-language culture. They also speak to the embarrassment, interpersonal difficulty, and guilt of not being able to speak to grandparents and to other Chinese people in their community. They speak of the inarticulable feeling of never having attained literacy in one's mother tongue because of having been schooled in

English, and the positive experience of gaining this missing piece through adult language study. Note moreover, that the respondent claims Canadian identity at the same time as claiming Chinese culture as their own, and expresses a desire to pass on the Chinese language to their future children.

Thus, contrary to Kymlicka's insinuation that the children and descendants of immigrants view (or should view) the Chinese culture and language as belonging to their parents rather than as defining themselves, their culture and their options, the researchers comment in their discussion that both groups of heritage language learners follow the identity pattern of their parents in addition to their non-Chinese Canadian peers:

> Our results suggest that there are virtually no motivational differences between HL learners who declare Chinese as a mother tongue and those who declare English as a mother tongue. Both HL groups indicated most strongly that they chose to learn Chinese as a means to achieve a goal that is personally important to them. To a somewhat lesser extent, they indicated that they were learning Chinese because it was enjoyable and stimulating, because it was an integral part of who they were, and in response to internalized pressures… Importantly, both groups felt equally strongly that their Chinese ethnicity was central to their sense of self. Thus, from a social-psychological point of view, these two groups of HL learners can be similarly defined (Comanaru & Noels, 2009, p. 151).

Moreover, when comparing the Chinese ethnicity group with the European/Canadian descent group of Chinese language learners, Comanaru and Noels find that while both groups reported learning motivations of Chinese language as a business or travel skill and "hobby"-adjacent motivations of finding Chinese learning fun, as predicted by Kymlicka, to only look at such motivations would obscure the difference between the two ethnic groups. The two heritage language groups identified motivations for "integrated regulation" (the most relevant category to connecting Chinese language learning to self-identifying as Chinese) and "introjected regulation" (the category that speaks to internalized social pressures to learn Chinese) about twice as much as the non-Chinese group, suggesting that even if there were a

significant portion of ethno-racialized Chinese (i.e. second to seventh generation descendants of immigrants) identifying as ethnically Canadian in the non-Chinese group, the presence of a number of European-descendant ethnics in the non-Chinese group but not in the Chinese group would still probably account for at least a significant portion of this difference, though Comanaru & Noels do not specify the proportion of European-descendant respondents in this group nor do they specify the racialized identity make-up of the group. Moreover, the study at least gives a good indication that a large number of those who immigrate to Canada involuntarily as children or are the Canadian born children or descendants of Chinese immigrants likely share adult immigrants' identification with and serious life aspirations for the Chinese culture and language for their children, since 107 of the 145 Chinese language learners examined in the study belonged to the two Chinese ethnicity HL groups, and these groups' top motivation categories were identified regulation (Chinese language learning as motivated by important personal goals) and integrated regulation (Chinese language learning as important to self-definition).

I now turn to the empirical research evidence on the harms of heritage language loss for the children and descendants of immigrants:

The research shows that language shift from the home language to the dominant societal language is the reality for the majority of immigrant families by the second generation, and that the harms of heritage language loss on the children of immigrants and successive generations are great, a phenomenon that is well accepted in the sociological literature (see Krashen 1998a for a brief review of this pattern of language shift in different communities).

Moreover, this shift occurs across socioeconomic lines, such that the pattern of language shift persists even for those families who have the resources to invest in private language learning opportunities for their children. In a study comparing two classes of

Chinese immigrant families in the US, Zhang (2010) found that the fact of language loss did not differ across these two groups, only the reasons for this loss changed. Both groups spoke mostly Chinese (Fujianese or Mandarin) at home and participated in various community activities where Chinese would be the language of communication (Zhang p. 53). For the children of the group of Fujianese immigrants from South China with low levels of formal education living in Chinatown and working long hours as manual labourers, the children limited their use of Chinese to the minimum level of communication that was absolutely necessary to interact with their monolingual parents, perceiving English to be the means to upward mobility by being able to attend college, and Chinese as connected with the hardship their parents faced and the stigmatization of their ethnic group (Zhang 2010). For the children of the group of Mandarin mother tongue immigrants, who were university-educated scholars and professionals who had English proficiency, early experiences in public school where the use of their mother tongue was discouraged both by English-only classroom policies and by social exclusion by their young peers, Zhang notes that "The adaptive coping strategy they adopted was to give up the heritage language and switch to English as quickly as possible" (Zhang p. 56). While many of the children experienced teasing and bullying, this pattern of language shift can occur even where the social exclusion is unintentional, as a result of a language barrier. Regardless, in both cases, young children typically perceive the problem as their own fault, due to their language difference from the other children, and seek to assimilate as the solution. The parent of Tracy recounts of the typical monolingual culture of North American school systems, "At the time when Tracy came here, they (the school) said, Kindergarteners do not go to ESL. Just play with the children. It will be okay" (Zhang p. 56). At the time, Tracy did not have the advanced emotional skills to tell her parents about her difficulties at school, but sometimes she would come home crying, and occasionally told her

parents, “I do not know English. Nobody plays with me. I do not want to go to school” (cited in Zhang p. 56).

In Cho and Krashen’s article, “The Negative Consequences of Heritage Language Loss and Why We Should Care” (1998), they point to previous studies as well as their own research evidence on Korean Americans that heritage language loss in the children and grandchildren of immigrants contributes directly and indirectly to intergenerational conflict and distance, due to miscommunications, language gaps and language divides (p. 32). This language barrier ranges in the examples they give from the stark and violent, to the more subtle and nuanced. For example, Sandy, a Korean American, says, “I can’t have a normal conversation with my parents. I just say my thoughts once and I repeat it constantly until they understand” (Cho & Krashen, 1998, p. 33). A violent example is cited from another study which illustrates the potentially serious conflicts that are contributed to by the fact that one of the main causes of language shift is the desire of children when they enter school to associate with the dominant language group that they perceive to have higher social capital than their mother tongue: “a mother and her 17-year-old son actually came to blows ‘when words failed them’ (Wong-Fillmore p. 344)” (Cho & Krashen, 1998, p. 32). “The mother spoke only Spanish and her children refused to use Spanish, and even ‘do not acknowledge it when their parents speak it’ (Wong-Fillmore p. 344)” (Cho & Krashen, 1998, p. 32). Cami, a Korean American, explains the more nuanced language barrier that often occurs between parent and child even when the immigrant parents have proficiency in English:

> I can say the most subtle thing to my friends and they understand the whole color of it. But with my parents, I have to literally say everything like, ‘I am sad! …This is why…’. However, with my friends I just talk about all different aspects of how I am sad and how it reminds me of the time… and how I can get over it with what I have learned. But with my parents, I am just reporting to them. It totally loses the interactive connection… (Cho & Krashen, 1998, p. 33).

Cami describes here the manner in which even smaller intergenerational language gaps can preclude the level of emotional intimacy and naturalness of interaction that one normally expects to exist with one's parents and that is crucial to personal wellbeing. Additionally, the harms of language loss also affect the psychological and interpersonal connections to the larger ethnic community, contributing to isolation, exclusion, avoidance, and also feelings of alienation, inadequacy, frustration, shyness, guilt and shame (Tse 2000; Cho & Krashen 1998; Krashen 1998).

The UN guidelines on the implementation of the language rights of linguistic minorities cite a number of studies that note the connection between the mainstream institutionalization of the mother tongue as the medium of instruction in schools and wellbeing in the following areas: "enhanced self-confidence, self-esteem and classroom participation by minority children, lower dropout rates, higher levels of academic achievement, longer periods in school, better performance in tests and greater fluency and literacy abilities for minority (and indigenous) children in both the mother tongue and the official or dominant language" (UN Special Rapporteur on minority issues, 2017, p. 7). The research in the North American context on bilingual and trilingual programs in schools concurs with these findings.

Educational scholars in the field of heritage language research and ethnic minority integration recommend that the identity profile that should be the aim of educators to support in the children of immigrants is one in which the individual comes to strongly value both their ethnic minority identity as well as their national identity as members of the societal culture (e.g. Canadian or American), and are able to see these two aspects of themselves as integrated and compatible (Ghosh, 2000, as cited in Wang, 2016).

Researchers support the UN recommendation of institutionalizing meaningful heritage language support in public schools:

Tse (2000) notes in a literature review that:

> Feuerverger (1989) discovered that programmes with HL instruction integrated into the regular school day produced more positive language attitudes than supplementary or 'afterschool' programmes. In one study that compared non-integrated and integrated programmes in Canada, she discovered that the students in the non-integrated programme did not see the HL as a legitimate school subject and had significantly lower language opinions than those in the integrated programme. Moreover, all of the students in the non-integrated courses expressed their desire to be enrolled in the integrated programme.
> It is likely that official sanction of HL teaching and the elevation of the subject to regular school subject status brings to it prestige and value that helps promote student interest in the language. It may also be the case that the inclusion of the HL in the mainstream curriculum significantly increases student attitudes toward the language and may, because of its close association to the ethnic group (Tse, 1998a), have a favourable effect on EM students' attitudes toward the ethnic minority culture in general (Tse, 2000, p. 198).

Cummins (as cited in Wu, 2005) has developed some key guidelines for the reform of the public school system in relation to the mainstreaming of heritage language support:

> Cummins (1996) states that "human relationships are at the heart of schooling" (p.1) and points out (1993) that students from "dominated" societal groups are either "empowered" or disabled" as a direct result of their interactions with educators in schools. According to him, there are four characteristics that reflect the nature of such interactions, namely, the extent to which (1) the minority students' language and culture are incorporated into the school programs; (2) minority community participation is encouraged as an integral component of the educational program; (3) the pedagogy promotes intrinsic motivation on the part of students to use language actively in order to generate their own knowledge; and (4) professionals involved in assessment become advocates for minority students rather than legitimizing the "problem" as being located in the students (p. 24).

In his study of grade six children in the K-6 50-50 Mandarin Chinese-English bilingual public elementary school program in Alberta, Joe Zhou Wu (2005) finds that this bilingual program is successful in producing flourishing students with healthy self-esteem, equal pride in the Chinese and Canadian aspects of their identities, a commitment to multiculturalism, and empathy for and friendship with diverse others. He describes the

innovative program, which has been running since 1981, and in which mostly children of first generation Chinese immigrants of various mother tongue dialects enroll, as able to accommodate students with a range of language learning needs:

> Due to the variety of different language backgrounds, the program functions in four different ways. It is, firstly, a maintenance program for Chinese minorities to keep their language and cultural heritage. Secondly, it functions as a two way bilingual program with both native Chinese and English speakers in the same class. Thirdly, it also serves as a transitional program for new immigrant children to learn English as a second language and to adapt to the Canadian school system. To many, it is an immersion program for learning two new languages at the same time. In general, it is a versatile language program with multiple functions to meet the needs of different students (Wu, 2005, p. 26).

The typical family background of the children at this school is one in which the parents do not have university degrees, indicating that they likely fit the lower middle class neighbourhood demographic in which the school is located, and therefore, are unlikely to have the time or resources to provide their children with extensive private academic support (Wu, 2005, p. 26). Despite this, the school, in which 80% of the students are enrolled in the bilingual program, consistently ranks well above the provincial average in relation to student performance on Alberta's standardized provincial achievement tests, which are given entirely in English (one study placed the school as 41st among 201 in municipal rankings) (Wu, 2005, p. 26).

Despite the fact that the children's experiences showed mixed encounters with the larger society in relation to their racial and linguistic visibility, the affirmation of their ethnic identities and language experienced through the Chinese Bilingual Program seemed to provide a strong buffer against the harms of encountering racial prejudice. Among the racist experiences they reported were "being teased about speaking "gibberish Chinese", "being insulted by a neighbor who said "Chinese sucks", witnessing his father being teased when speaking Cantonese on a public bus, and having been "often insulted…because of his

Chinese background when in another school" prior to enrolling in the Chinese-English bilingual school. And while the hospitable environment provided by teachers in the Chinese-English Bilingual Program did not eliminate racist encounters within the school, which still happened to the students occasionally when encountering non-Chinese students at the school, the support they felt within the program helped them to develop positive and empathic outlooks and social behaviours despite their negative experiences. For example, "A girl indicated that her English teacher made her feel very good about knowing different languages. She imagined she would try to make other newcomers feel comfortable by being kind to them. Another girl felt that she treated people better if they spoke another language and she had befriended a Ukrainian girl once. Most of them said that they would treat other people the same, no matter what language they spoke" (Wu, 2005, p. 27). Wu (2005) reports that

> Participants' responses to the interview questions reflect an empowering experience through bilingual education. Their comments on their negative experiences of using their mother tongue, indicate that they did encounter racism. Negative experiences inevitably affected their sense of who they are and how they relate to the world. In spite of their negative experiences, the children commented that they were proud of being able to speak their language and felt quite confident of their ethnic identity. To them, their language was a valuable asset that should be respected and even envied upon. Some even expressed that they felt special being Chinese people. There were no indications of feeling ashamed of or denial of their ethnicity. Such confidence can also be seen in how they saw Canada as a multicultural society and how they felt about themselves as being part of it. They listed diversity, equality, freedom of being different, and sharing among cultures as the characteristics of a multicultural society. These grade six children understood such complex concepts through their own life experiences and they strongly believed that they could fit in such a multicultural society (p. 27).

In relation to their self-concept, Wu (2005) reports strong identification with both aspects of their identity (ethnic and national) for all participants:

> All the students treated their ethnic identity positively. They felt positive about being Chinese, and at the same time, all tried to attain balance by recognizing their Canadian side. Factors used by the bilingual children to determine their identities were their language, culture, birthplace and their parents' ethnic origin. For example, one girl refers to herself as a Cantonese Canadian because she spoke Cantonese most of the time. A boy described himself as Chinese Canadian because he was born in Canada but his culture and first language were Chinese. One elaborated "My blood is Chinese but I am Canadian." Another said: "Chinese is the true part that's in me because I am a Chinese person, but I live in Canada so I am a part of both." In general, these statements did not give clear indication on whether they place more importance on their Chinese or Canadian side. It seems none of them overemphasized either side" (p. 28).

While this particular study did not compare these results with a control group in a monolingual program, there is some indication even within Wu's (2005) study of a causal relationship between the program and students' early reconciliation of their dual/composite identities:

> With respect to their understanding of Chinese culture, many stated that if they didn't attend the program, they might forget how to speak their native language, or would not be able to learn the Chinese language. One girl, who moved from a mainstream school to the bilingual program, felt that the program had helped her learn and value her own culture because before she only thought about the English culture. One student valued the fact that the program helped him to learn the history of China and how it changed. These opportunities to learn Chinese history were an essential part to him in understanding his Chinese roots (p. 28).

When asked about their views on multiculturalism and their sense of belonging in Canada, Wu (2005) reports that:

> The participants constantly repeated that they could get along with other people, including those from different backgrounds. A boy stated that he had Canadian friends but still did Chinese things. Some also answered that they fit in because they know different languages and cultures. One student felt good being in a multicultural country because there were lots of other kids like him who were from a different culture. As a result, he would be recognized as a good, maybe even special person… One explained that the program had helped him understand multiculturalism because it had taught him about Chinese culture, and to understand that different languages could fit into

> Canada. A boy noted that the program had helped him to be aware of how other immigrants felt about their cultures after becoming aware of his own culture. Other comments include "The Chinese Bilingual Program has allowed me to learn about other cultures, to respect them and to interact with other cultures" (pp. 28-29).

These findings present additional evidence against unfounded populist worries that may circulate in parts of the wider society, as well as in the writings of major political theorists such as Walzer and Glazer, as reported by Kymlicka (1995), that language diversification leads to the breaking apart of national identity (p. 63). Despite the fact that the majority of students in the program and the school are Chinese in ethnicity, the program does not result in "balkanization", interethnic disunity, disloyalty to Canada or dearth of substantive interaction of the students with those of other ethnic groups. This supports findings in the international context that language diversity alone is not a cause of intranational conflict. In fact, the interviews with students of the Chinese-English Bilingual Program confirm existing research that additive bilingualism and state support for multilingualism promote interethnic integration and multicultural values.

Compare the account of students in Alberta's Chinese-English Bilingual Program to the experience of Ai Mei, a Chinese Canadian girl whose narrative experiences in a Toronto public elementary school are recounted by Chan (2010). Ai Mei is an illustrative example of how token heritage language education support that is not integrated into the curricular aims of the mainstream classroom does not ameliorate the negative social pressures on immigrant children that cause them to have low self-esteem, and succumb to pressures to assimilate and reject their heritage culture E.g. Ai Mei recounts how she deliberately hid her Fujianese and Chinese identity by rejecting a Fujianese schoolmate by refusing to speak Fujianese to her, explaining, "I was trying to hide my identity" (Chan, 2010, p. 116). This was after her introduction into the mainstream monolingual English classroom where she experienced

teasing and rejection by her English-speaking classmates. In response to the question of whether she made friends in her English-speaking classroom, she said, “No not for a long time. Some people tried to talk to me but I couldn’t understand them” (Chan, 2010, p. 116). Chan proposes the explanation that Ai Mei likely associated speaking Fujianese (and Mandarin) and not speaking English as reasons why she was not accepted by her peers. This caused her to isolate herself from the one Fujianese speaking student who she could have befriended.

In addition, and despite the sincere efforts of her teacher William, the “model minority myth” expresses itself in the Canadian context through the example of William’s trust-breaking action of calling Children’s Aid on Ai Mei’s parents. William’s internalization of the “model minority myth” played a role in locating the primary responsibility for Ai Mei’s academic success on the perceived difference in her parents’ personal work ethic and priorities from his own, and failed to appropriately take account of the systemic racism that governs the immigrant condition and worked as a pressure on her parents to demand Ai Mei’s help at the restaurant, in order to succeed under disadvantaged socioeconomic conditions and immigration rules that place the financial burden of family reunification on individual immigrants.

Above, I gave an argument critiquing the first aspect of the problem with Kymlicka’s bipartite formulation of minority rights, which is that this falsely represents the nature of “national minority” rights and “polyethnic” rights as mutually exclusionary categories of rights, the former as being oriented by an aim of national self-governance, and the latter as oriented by an aim of integration into the larger national culture. I used the focal issue of heritage language rights to show how these rights and others that members of “polyethnic” minorities claim do not relate primarily to integration, but bear many of the same moral-political significances and justifications as language and other cultural rights relating to

“ national minority” status, and that a theoretical model of the rights of ethnic minorities of immigrant origin should account for this both in its descriptive accounts of cultural significance and in its normative recommendations.

2(b) Societal culture as exclusionary cultural membership

I conclude this chapter with a discussion of the related second aspect of the problem with Kymlicka’s dichotomous categorization of minority rights, which stems from the exclusionary conception of culture as societal culture. Kymlicka rigidly equates national citizenship and belonging in the state in which one claims permanent residency or citizenship, with cultural belonging, and concludes from this that any individual can only meaningfully belong to one culture. That is, his two-track model of minority rights posits that the sense of belonging immigrants and ethnic minorities feel in relation to the national society in which they have integrated cannot be held in conjunction with a parallel and overlapping identification with their ethnic culture as a living and substantive entity with significance and scope beyond that of a sub-national identity subsumed within the national identity.

In contraposition to Kymlicka’s statist and constitutional liberal approach to multicultural theory, I propose that an account of culture and the relevant questions it raises for multicultural theory from the standpoint of immigrant minorities offers two other equal and distinct orientations of cultural identity to that of national identity.

The first is the local community formed through ethnocultural affiliation. This cultural community is not primarily oriented by its relation to the larger national society, but to the independent concerns that arise for any living cultural community, which include, but are not limited to, the struggle for integration and representation in the national societal culture. For example, the concerns of local ethnocultural communities go beyond access to, and identity expression and representation within the larger national culture. Kymlicka’s juridical formulation assumes that all identity concerns of such communities are mediated by a claim

on the state or larger society that aims at equal inclusion and participation in that society. However, the claims of the local ethnic community are broader than this, and include internal matters local to those communities that cannot rightly be called "options" for the wider society as a whole, and for which the relevant democratic activities may or may not involve or be exercised best by a claim on or the involvement of the state. And while other issues, such as access to language programs that are effective for producing a meaningful level of bilingualism (or trilingualism) in minority children in the heritage and official language(s), does involve claims on the state, the moral significance of heritage language education does not appear for these communities only at the point at which it necessitates that claim, nor is the primary motivation driving such an aim necessarily one of integration into and representation in the larger society. The theoretical framing which draws its significance in these terms derives from the perspective of the majority society, rather than the perspective of minorities. Rather, the most deeply felt need which makes sense of the aim of language maintenance relates to minority cultural survival and intergenerational and community bonds. If we do not foreground the first person significance of minority aims and concerns in our theoretical models of multiculturalism about minority rights and options, we risk ignoring or marginalizing the actual needs and preferred solutions of minorities.

Ethnocultural groups also have a second alternate orientation that connects them to belonging in a diasporic community of concern. For example, the orientation of Muslim Canadians to the larger global *umma* (religious community) is not inherently dependent on a sense of Canadian belonging, though connections to the national identity can and are often made. For example, when Ukrainian Canadians appeal to the Canadian government to intervene in the recent Russian conquest of the Donbas region, they do so, partly in recognition of the fact that their diasporic interests are morally relevant to the Canadian state, because they are Canadian citizens. At the same time, Ukrainian Canadians have also donated

and contributed directly to the defense of Ukraine's borders through direct private means and actions, as well as through contributions to international NGO's. Some Ukrainians, as well as non-Ukrainian Canadians acting in solidarity, have even gone to the extent of going abroad to fight directly on Ukraine's behalf. Finally, the diaspora community has its own public sphere, which in turn may or may not, depending on the issue, relate to the larger global public sphere, or entitle global actors to always claim participatory parity with those most affected, as is assumed in, for example, Fraser's public sphere theory.

Because of racialized double standards, non-Ukrainian Canadians do not consider these diasporic actions to mean that Ukrainians are sojourners or terrorists in Canada, as they might when Chinese Canadians travel abroad for extended periods, or when Muslim Canadians engage in social justice activism concerning the human rights situation in Palestine, respectively. This is because the larger society also recognizes that ethnic identity is a distinct cultural orientation that is compatible with national belonging and integration in Canada. While Kymlicka does not condone this racialized double standard, his definition of "polyethnic" rights as rights of integration, and his definition of "polyethnic cultures" as contributing options to the larger society that can be enjoyed by the societal culture as a whole, does contribute rhetorically to reinforcing this racialized double standard.

While the three orientations of ethnic minorities--local, national, and diasporic--have significant and shifting overlaps, and not every minority individual will claim all three as personally relevant to their identities or lives, they are also distinct forms of cultural belonging with clear differences of concern that are not readily subsumed into the category of citizenship in the nation-state (nor of the wider global community, as in some versions of cosmopolitan theory).

It is possible that Kymlicka does not mean to exclude the local and diasporic forms of cultural belonging in making his statements about the implications of belonging in national

societal culture. Nevertheless, as I have been demonstrating throughout this chapter, the omission of these forms from his discussion is not a mere implication of the scope of his philosophical project, since his accounts of minority membership in the societal culture include statements that are at least in tension with, if not distortive of the accounts of belonging experienced by members of local and diasporic ethno-cultures and the needs and rights that accrue to this fact of belonging.

Section II: Agency and its political implications

The theme of Section II is individual agency. On one hand, I take up the conventional contraposition established in the liberal multiculturalism literature that poses group rights and the normative cultural practices of a minority group against individual rights and individual agency. On the other hand, my acceptance of the conventionally posed tension in multiculturalism between minority groups and their "internal minorities" is an opening step in an analysis that will, in the course of exploring the interaction between non-liberal modes of agency and cultural practices, complicate this tension, aiming to add nuance, complexity, and alternatives to the dominant framing of agency and culture as conceptually distinct and the relationship between them as an opposition. While classic or first-generation communitarian critiques of agency also challenge this dominant framing, for the most part, such critiques have tended to neglect the political question of the potential and real harms faced by vulnerable individuals within a group in relation to the power differential in which the greater proportion of power is held by a dominant group elite. I offer an exploratory analysis of non-liberal definitions of agency that foregrounds the perspectives and concerns of women, as one of the most vulnerable members of minority groups. In this way, the analysis pursues my first motivating aim of rejecting liberal moral hegemony in political philosophy by expanding conceptions of agency beyond that of liberal autonomy. The analysis pursues my second motivating aim of decolonizing and democratizing multiculturalism by taking up a feminist democratic approach to the treatment of agency, consent and empowerment of women navigating identity, sexism, racism and choice in non-liberal and hybrid cultural contexts, with a focus on the private and informal realm of everyday life.

Chapter Four gives an account of three alternative forms or modes of individual agency to that of liberal autonomy, thereby expanding the moral account of agency beyond

the liberal account of autonomy. This conceptual expansion of agency serves to foreground the first person perspectives of cultural minorities by recognizing the moral and personal aims and agential actions of individuals, focusing on vulnerable individuals who do not identify with a liberal account of the self, and whose choices could come into conflict with liberal standards of choice and freedom.

Chapter Five attempts to give a more inclusive standard for consent to cultural practices in light of the alternative modes of agency identified in Chapter Four. The standard of consent as reflective endorsement is proposed as a more inclusive modification of Marilyn Friedman's influential standard of procedural (instrumental) autonomy. In some cases, a standard of instrumental autonomy for legitimizing cultural practices may still be decisive, but it is nevertheless important for political philosophers to explore alternative models of legitimacy. These can serve as options to consider in the activity of developing ideas for reform that can preserve non-liberal values that may be chosen by women if they weren't faced with the dilemma of choosing between liberalism or oppression. At minimum, engaging in such an analysis serves to correct liberal conflations of moral and practical justifications of liberal political recommendations.

Chapter Six explores the relationship between the expanded account of agency and questions of unequal power dynamics through the development of proposals from feminist theory on relative agency and democratic empowerment that bracket liberal solutions to the treatment of unequal power and women's empowerment.

What is agency?

I define individual agency as the agent's capacities to act or choose in service of what she has cause to value, where 'cause to value' is identified through the perspective of the agent as situated within and defined by a particular political, cultural and moral context.

There are at least four key characteristics of agency on this conception: (a) its definition as a capacity or capacities, (b) the requirement of reflective endorsement broadly construed, (c) its plural rather than liberal universalist formulations, and (d) its evaluative function as a relative rather than absolute measure.

In defining human agency in terms of (a) capacity(/ies) or power, I follow feminist critical theorists Saba Mahmood (2005) and Elizabeth Pritchard (2006) in their endorsements of the ordinary definition of agency as "active force", a broader alternative to the liberal definition of human agency as autonomy (Pritchard, p. 264). My version of a capacity approach to agency is in line with Amartya Sen's understanding of agency as the ability to pursue values, achieve goals and honour commitments that are defined by that agent's conception of the good (Sen, 1985, p. 203). Sen links agency and the good because of his insights that agency and wellbeing are mutually dependent, and that wellbeing is necessarily linked to a particular conception of the good life.

In contrast to Sen, who endorses a procedural liberal account of capacities, my pluralist approach expressly aims at a conception that is more expansive than a liberal model which validates what an agent has cause to value either procedurally or perfectionistically by the capacity for autonomous choice and action. In the current account, the agent's choices and actions are considered agential if they are oriented by the (b) reflective endorsement of the agent, where the conception of reflection is divorced from the framework of autonomy and broadly construed as defined by its first person perspectival character rather than by the independence or 'authenticity' of its exercise.

Crucially, in my conception, the manifestation of individual agency and the aims that define it are not universal. Agency draws on different capacities depending on the relevant moral and cultural frameworks of reference that are constitutive of the goals, values and commitments that shape and have authority over the agent. Similarly, in his model of human

capabilities, Sen leaves open the precise definition and weight of a capability set, and in doing so, rejects Martha Nussbaum's universalist grounding of the capabilities approach for a (c) pluralist one (Sen 1985, 1993). While I make the connection here to Sen's conception of agency rather than his conception of wellbeing (capability), I share his intuition that, in a pluralist world, a universal set of priorities for societal goals of freedom and wellbeing is inappropriate. Taking this into account, the second implication of my 'capacities' approach is that a pluralist model of agency as capacities entails that different agents develop, possess, and pursue different capacities depending on the specific moral, cultural and societal conditions in which they find themselves situated.

It follows from this pluralist and localized approach that, absent a universal measure of capacities, agency is measured (d) relative to the standards achieved and pursued within a particular community or set of communities, specifically, by measuring the agency of groups within that community relative to others in that community. This approach of analyzing agency as a relative measure is drawn from Pritchard and espouses a progressive democratic vision of equality by bringing into focus the gap between the agency of those who belong to a disadvantaged gender, sexual orientation, class, race, or ethnicity and those of the privileged elite.

I draw the structure of this section from Monique Deveaux's statement intimating three key functions that a broader account of agency in this vein can provide. Such an account has descriptive, normative, and prescriptive functions. First, Deveaux (2006) notes that agency has a wider descriptive scope than autonomy, for it is not limited to a description of "the formation of coherent life plans, but directs us instead to look at individuals' own complex and myriad responses to social customs", both in the moment, the everyday, and in terms of a broader pattern of behaviour (p. 179). Through this wider descriptive scope, an account of agency expands the narrower focus on choice v.s. coercion, to speak to the greater

nuances found in the manner in which inherited practices and beliefs are accepted, deferred, subverted, revised, reinvented and negotiated, and not only whether they are resisted or submitted to (Deveaux, 2006, p. 179).

However, since Deveaux's broadened account of agency is still one that takes procedural autonomy as the standard for assessing legitimacy, what is first needed in such an account is an expanded typology of alternative modes of agency to autonomy. I present two key models of non-liberal agency in contribution to such a descriptive account in the first chapter of this section, through Mahmood's (2005) model of self-cultivation, and Herr's (2010) model of heteronomous agency.

The second function of an account of agency is normative. The broader account of agency provides a thicker resource base for deriving "a picture of the normative validity—or lack thereof—of particular practices and arrangements" (Deveaux, 2006, p. 179). The second chapter of this section assesses and critiques both the dominant liberal standards of normative validity as well as the more minimal procedural standards of autonomy proposed by feminist theorists such as Deveaux (2006) and Friedman (2003). A pluralist approach to assessing multiple modes of agency according to standards adapted to them is explored. In particular, Pritchard's model of relative agency serves the task of constructing standards adapted to the cultural particulars and modes of agency preferred in non-liberal communities.

The third function of an account of agency is prescriptive. In the third chapter I take up Deveaux's account of democratic agency and the suggestions of other feminist theorists of deliberative democracy to give a theoretical account of the potential avenues of democratic prescription, which, on the critical democratic rather than liberal juridical model of democratic prescription, takes the form of directions and examples of democratic empowerment that can be uncovered through the broader account of agency. As Deveaux

(2006) notes in relation to her own account, “in attending to individuals’ complex responses, it can also suggest creative strategies for reinventing customs”, one that, rather than being imposed juridically from the top down, draws instead from women’s own indications of their preferences, whether explicit and formal or implicit and revealed in more nuanced ways through the pattern of their everyday actions and choices (p.179; Williams, 1995).

Ch 4: Individual agency beyond liberal autonomy

Kymlicka (1995) takes a liberal approach to multiculturalism in asserting autonomy as a highest order principle. The justification in the context of multiculturalism is to protect the choices of groups who are disadvantaged with respect to the majority, and individual members within those groups who are vulnerable to domination and coercion. Yet the principle of autonomy is not only employed paternalistically through a juridical approach, but also defined *a priori* according to a particularized understanding of agency. Thus, beyond a certain scope of cases, it risks disempowering the very individuals it is designed to protect. This is because liberal definitions of autonomy fail to give adequate recognition and respect to the perspectives of minorities, and notably, to the perspectives of vulnerable members of minorities, as autonomy gives a narrow understanding of agency and choice that can come into conflict with the moral choices and agency of the marginalized. Moreover, translating minority practices into liberal terms also fails to question the assumed rightness of the normative dominance of liberalism and the liberal state in shaping the language and outcomes of democratic exchange (Deveaux, 2006, p. 172).

The main problem with the liberal approach, pointed out by Bhikhu Parekh (2006), is that autonomy depends on a culturally specific theory of individuation that is connected to a specific moral framework of values and conceptions of selfhood. For this reason, liberal autonomy cannot legitimately ground a universal moral standard of individual consent to cultural practices. An alternative definition of agency is needed that does not specify a Protestant conception of interiority, a Kantian definition of the individual as the purely rational will, or an expression of the authentic self, but locates choice or assent more broadly with the first person perspective, making room for an analysis of agency and assessment of the capacity for consent that can recognize the agency of minorities and vulnerable women

who may understand their own choices and actions according to a liberal view or may instead situate their choices and actions within an alternate moral framework.

I argue that one cannot reliably identify the form that agency takes (and therefore also its boundaries) without a substantive engagement with a lived moral framework that gives a particular instance of agency its sense. One cannot understand what an agent 'desires' without grasping the relevant account of agency in play.

This chapter prepares the ground for the successive chapters on consent and democratic empowerment. It does so by distinguishing choice and agency from liberal models of choice and autonomy which are based either on an independence, self-governance, or an authenticity ideal. This makes way for an alternative formulation of a minimum standard of consent to group practices, for which it is necessary to distinguish consent and choice from self-governance as the making of one's own laws. Beyond establishing a minimum standard of consent, a democratic approach aims at empowerment of vulnerable agents. Democratic empowerment distinguishes agency from autonomy. Agency does not mean comprehensive control over one's own life or the realization of an authentic self that is distinct from the socialized self, but the capacity to impact one's situation according to one's values and aims.

Autonomous v.s. heteronomous choice

A key manner in which liberal autonomy is culturally particular, is that the liberal theory of individuation has its roots in Protestantism. This has consequences for how the conception of the self is constituted in relation to religion and to choice in general. The particular formulation of the moral agent that Kymlicka articulates betrays this cultural specificity, though Kymlicka (1995) himself seems unaware of this: "The first [precondition] for leading the good life is that we lead our life from the inside, in accordance with our beliefs about what gives value to life…Hence the traditional liberal concern with individual

privacy, and opposition to 'the enforcement of morals'" (p. 81). Here the self is defined in its mental or spiritual aspect of the solitary rational mind as opposed to its corporeal embodiment and social dependence. The conception is drawn from a Protestant understanding of the self's relation to religion and conception of the Good as centrally sourced in belief as opposed to practice, though Kymlicka's application of the ideal is not quite as narrow as this Protestant formulation. His understanding of religious freedom accommodates non-Christian forms of practice that give the body a more central place. For example, he rejects a French Republican understanding of secularism in the public sphere and understands the accommodation of religious dress to be a matter of equal citizenship. Moreover, he makes room, as Rawls does not, for cultural identity, a socially dependent concept, as a primary good. Nevertheless, Kymlicka retains the core aspects of this Protestant conception in defining the moral agent: the location of the self as interior to the individual,[42] the notion that life choices are made through some significant measure of independence from other people and reflective distance from the ends that are tied to the 'outside' world, and the notion that moral value is conditional upon the holding of autonomously chosen beliefs.

While in the Protestant conception of self, the self is constituted by private belief, in Confucianism, moral value is not constituted by private belief. Rather, the good life is sustained by healthy relationships, the parent-child relationship being the most central and constitutive. To maintain this bond is fundamental to personal flourishing, and takes precedence over personal choice.

The concrete implication of taking this difference seriously in the context of a collectivist culture with a Confucian structure, where the self is constituted by its heteronomous relations, is that one cannot protect the individual's interests without

[42] This aspect will be addressed under the next heading, which critiques the authenticity conception of autonomy.

considering her ties to her family and the culturally specific way in which she maintains those ties through filial piety and hierarchical role differentiation. Kymlicka's liberal multiculturalist approach would tend to include Confucians in the category of the 'liberal majority' of citizens who identify with the institutional culture of secular liberal societies, in an uncomplicated fashion. However, as Parekh (2006) has cogently argued, this approach is not so much a gesture of inclusion as one of reduction, for Kymlicka homogeneously reduces various cultures into liberal versions of themselves (pp. 107-108). While it is true that many members of minority groups do self-identify as liberal, Kymlicka overestimates this number at the same time as he glosses over the more nuanced and complex ways in which many individuals appropriate liberal values into non-liberal worldviews, and vice versa. Heteronomous agency cannot simply be assimilated into a liberal theory of autonomy without distortion, a distortion which risks harm to the sense of personal integrity of the collectivist self, a point that will become clearer through the analysis of Confucian agency below.

Both reflection and choice in the Confucian moral system may operate heteronomously. The parent-child relationship is hierarchical but reciprocal. Filial piety is a central moral value where the ideal of personal decision-making is deferent to the parents' wishes. This ideal of deferent decision-making has a rational justification: To think that one's elders have acquired wisdom through life experience, that parents have one's best interests at heart, that one's intimates are apt to know one's temperament and history well in order to make particularized judgments, and that there is a debt of respect and deference owed to parents who have devoted a central part of their lives to one's welfare and care are all rational reasons to adhere to this relational structure.

Before examining the contemporary practice of Confucianism, it is worthwhile to provide a brief account of Confucian classical theory as the moral standard of this model. Doing so serves to reject the conflation of Confucian moral authority with self-serving

political appropriations of it by Chinese and other authorities that have instrumentalized the teachings of Confucius to support authoritarian regimes. Notably in this vein, Confucius did not in any context advocate moral coercion, and explicitly discouraged the exertion of pressure on others to conform to moral standards. He denounced any approach that would aim to produce moral conformity through self-righteous judgment. The moral ideal espoused by Confucius was to lead by example in order to inspire virtue rather than command forced conformity. In other words, it is essential to stress that voluntari is central to the Confucian ideal, which values individual responsibility in taking up Confucian virtues and one's specific role responsibilities.

Additionally, a reflective and active form of individual agency operates out of individual virtue to check and maintain the virtue of the larger unit: Within the parent-child relationship where deference to the parents is a higher order principle, there is room made for individual agency and rational choice. One of the major disputes in the Confucian tradition is whether it is ever permissible to disobey one's parents if they are in the wrong, and the scholarship tends to favour the interpretation that makes room for disobedience where moral rightness is at stake. However, even within the school of interpretation which forbids disobedience absolutely, blind obedience is not a virtue. Instead, where one's parents are in the wrong and dishonour themselves through their actions, it becomes of utmost importance for the child to coax the parents into right action through the practice of remonstration. While this practice of remonstration favours a deferent demeanor with a gentle manner, soft tone of voice, and reverent expression, the substance of the practice is to oppose the parents' wrong actions and persuade the parents to change their course, through moral, rational and emotional appeal.

While one's will and one's opinion are distinct from one's parent's will in this practice, moral agency here fits very imperfectly with the liberal notion of autonomy. In the

school of thought where disobedience is forbidden, it is the parents' will that is ultimately decisive. In the school of thought where disobedience is permitted, one disobeys one's parents for the sake of the parents' moral wellbeing, or in order that one not violate moral propriety, but one is not morally free to disobey in order to express mere personal preference, or one's independent aspirations. Neither does one posit a moral law that follows purely from the autonomous rational will; one follows a tradition of propriety that is inherited. This moral system operates on a model of heteronomous governance rather than self-governance, where one does not make one's own laws for the good life.

Mencius, a prominent Confucian of the classical period, tells a story of the sage king Shun's rightful disobedience of one's parents that comes closest to the contemporary Western understanding of autonomy in terms of choosing in terms of one's personal preferences, as well as making the marriage bond rather than the parent-child bond central to the good life. Shun's father was abusive and murderous towards him, and would have forbidden him to marry. Knowing this, Shun broke from ritual propriety and married without telling his father. Mencius justifies Shun's defiance of his father and the rites because marriage is "the greatest of human relationships", which he would have had to forego if he had told his father (Bloom 5A2). This reasoning appears to the contemporary Western ear as Mencius justifying the prioritization of personal happiness and choice over parental authority and tradition. However, this is not how Mencius justifies Shun's actions. The reason that foregoing marriage would be bad in Mencius' judgment is because marriage continues a family line, which creates new relationships of care and ritual propriety, and propagates humane virtue in the world. Secondly, Shun's choice is not justified by Mencius on the basis of it being Shun's personal preference, but on the basis that to deny oneself such a crucial relationship would produce resentment that would ultimately be destructive of the parent-child bond that is central to personal happiness and moral flourishing. Thus, rather than arguing for the pursuit

of personal preference against parental authority and tradition, Mencius argues that Shun's actions express filial piety and the continuation of the values undergirding the tradition of ritual propriety.

Liberal multiculturalists might categorize this Mencian doctrine of the good life as quite comfortably liberal, and as an expression of autonomous choice, since the choice to follow Confucian values is voluntary in the Confucian ideal rather than enforced, and does not condone placing parental authority above individual will. But this would distort the inner logic of the Confucian rationale undergirding the Mencian choice, misrecognize its value from the perspective of Mencians, and draw the scope of choice in its moral ideal differently, since it is not one's will that has ultimate moral authority in this conception, but the virtue of humanity [*ren*], which is defined and circumscribed by relational duty, not by the dignity or personal preference of the autonomous reasoner.

A moral system such as Confucianism operates on a collectivist sense of self in key areas. Here, the flourishing self is not a highly individuated agent but operates as part of a family unit through certain collective aspirations and achievements. I will describe collectivism in relation to contemporary practices of East Asian immigrants rather than the classical tradition of Confucianism.

Parental preference is a key factor in deciding attitudes towards achievement and academic and career choices for the children of many East Asian immigrants, who defer to their parents' wishes to a significantly greater extent than their white peers (Dundes, Cho & Kwak, 2009). Choice for these individuals is heteronomous rather than autonomous, and the self is understood in a collectivist rather than individualist form, where success is seen as promoting family honour and repaying parental sacrifice rather than as serving personal satisfaction (Dundes, Cho and Kwak, 2009).

The contemporary attitudes of a great number of East Asian immigrants reflect the traditional Confucian emphasis on filial piety, while at the same time reflecting the pressures of modern global capitalism as well as the racial inequality that accompanies the immigrant experience:

> Among a sample of Asian medical students, there was universal recognition that the decision to pursue medicine was a response to parental expectations that they enter a field that brought prestige that was deemed necessary for immigrant families to ease the immigration process and to 'establish their credentials in the host society' (Akins, 2007)…This phenomenon of pushing their children to achieve higher levels of educational success than occurs among whites, common to Asians across many diverse cultural backgrounds and countries of origin, has been called the 'Asian Americans' conscious strategy to overcome racial discrimination and achieve upward mobility' (Goyette & Xie, 1999, p. 33). (Dundes, Cho, & Kwak, 2009, p. 145-146)

The Confucian immigrant outlook prioritizes success over happiness: what is important to these families is achievement of educational and career success, acceptance in the host society and social status over emotional fulfillment. The aim here is a collective one for social status rather than an individual one for personal fulfillment: "While white students are more apt than Asians to attribute their academic performance to their own aspirations (Asakwa, 2001), Asian students' performance reflects directly on the family, where it is a matter of family honor or family shame" (Dundes, Cho, &Kwak, 2009, p. 146). These findings reflect the expression of traditional culture in the host society as modified by contemporary global capitalism and the pressures felt by racialized immigrant groups.

While this moral outlook may often be asymmetrically shared by parent and child, with the parent's preference being the dominant one, both duties and benefits are substantively reciprocal. Both parent and child contribute significant energy and sacrifice to the collective aim of the success of the child:

> Types of sacrifice include moving to a good school district, setting up special study times, asking children to do extra homework problems from workbooks bought outside of school, restrictions on watching television, paying for private tutors and categorical financial support for academic expenses… Korea, where sometimes mothers seek a job simply because they want to fund their child's private, after-school education (Chung & Choe, 2001)…. A family in Korea may spend up to 30% of its budget on private education (Lartigue, 2000) (Dundes, Cho, & Kwak, 2009. p. 146).

Because the achievements of the child reflect on the identity of the whole family unit, "Parents are expected to be involved in their children's lives and, as Abboud and Kim (2005) state, parents owe their children their 'utmost devotion and assistance' in helping their children achieve academic success" (Dundes, Cho, & Kwak, 2009, p. 147). Moreover, while the woman of the family is generally the one most involved in the child's education and in the running of the household, it is also the woman who is generally the decision-maker in the family, determining how money is spent and making choices for the whole family (Dundes, Cho, & Kwak, 2009, p. 144).

The collectivist mentality of the parents is passed on to the child through socialization practices at home: "This sacrifice is part of the Asian culture's collective mentality contrasting with American individuality. There is less separation of adults from their children who in the United States, are socialized to be more independent, live their own lives and make their own mistakes (and learn from them)" (Dundes, Cho, & Kwak, 2009, p. 146). Moreover, the difference contributes to the adaptation of the parents' preferences and choices in contrast to white American parents: "In Schneider and Lee's (1990) study of Asian parents, the authors found that only about 20% of white parents would be willing to make the same sacrifices characteristic of Asian parents" (Dundes, Cho, & Kwak, 2009, p. 146).

No doubt the prioritization of success over happiness has detrimental effects that require a reassessment of these practices: "the clash between individual fulfillment and parental expectations can result in emotional distress. When compared with whites, Asian

Americans' comparatively greater problems with lower self-esteem, anxiety and depression are well documented (Abe & Zane, 1990; Lorenzo *et al*., 1995; Greenberger & Chen, 1996; Okazaki, 1997; Castro & Rice, 2003; Oishi & Sullivan, 2005; Hovey *et al.*, 2006)" (Dundes, Cho, & Kwak, 2009, p. 148-149). But the response[43] to such harms must still take into consideration the basic cultural differences, and acknowledge that the conventional liberal response espoused by Kymlicka's judgment that all children in a liberal society must be given a broad liberal education in all matters may guide school teachers and counselors to actions and advice that would exacerbate the challenges faced by these students. For example, the potential response of encouraging these students to develop and assert their individuated preferences and autonomy may not be the approach that meets the needs of these students under pressure, and if the cultural basis of these students' situations is ignored, may even produce additional harms by increasing familial conflict that may have destructive and alienating effects on the individual's sense of self, connection to her family, and wellbeing:

> Breaking from the 'acceptable' careers (medicine, engineering and business) has implications not just for their professional life, but also for family relations, so closely linked to sense of self. Students who move away from their family's expectations can experience a feeling of failure. Living their parents' dream by prioritizing status over happiness is deeply ingrained; their parents prioritize academic achievement while social concerns are secondary. Perceived academic underperformance is expected to be remedied by studying harder, not by changing directions. The journey to find a major or career that fits the individual is more consonant with cultures emphasizing individualism rather than collectivism. Making sacrifices to enhance the family's status is honorable. Instead of emphasizing what makes them unique, and encouraging them to forge their own path, counselors must help students achieve a balance in which they can respect their parents' recommendations while also exploring their interests, such as dual majors, interdisciplinary majors or combinations of majors and minors that incorporate their own and their parents' goals (Dundes, Cho, & Kwak, 2009, p. 152).

[43] In accord with Deveaux's conception of democratic activity, which I affirm as a central principle of my theory of critical democratic multiculturalism, and explain in Chapter Three, the context of the relationship and interaction between counselor/ teacher and student *is* a political one, if we affirm the feminist principle that the personal is political, which I do. This means that the "response" I am referring to in this sentence is a *political* response.

At the same time, the attitudes of the parents on this front are not immoveable, and conflicts with their children do spur adaptation and compromise, demonstrating the sincerity of the underlying motivations of love and caring that prompt the stringent demands these immigrants make on their children's lives.

> Yang and Rettig indicate that Korean mothers recognize that the adherence to obedience is not as well accepted among American children, an element of acculturation that they must reconcile: 'I think we [Korean-American parents] need to listen to them. However, we were not raised in that way. We just obeyed parents…. I should change myself … I know it is right but difficult' (2004, p. 61). Acculturated Asians report lower conflict (Chung, 2001) (Dundes, Cho, & Kwak, 2009, p. 150).

According to Deveaux's concept of democratic activity as including everyday informal and personal or social interaction, which I take up in this project and explain in Chapter Six, the complaints (implied or explicitly expressed) of Korean children in these contexts and the response of the Korean mother(s) in Yang and Rettig's study (as cited in Dundes, Cho, & Kwak), is a form of democratic activity in itself. It involves deliberation, understood on Iris Marion Young's (1997) broad sense of deliberative democratic speech acts as including extrarational acts of emotional expression and rhetoric. This example of democratic activity works where a heteronomous relationship is valid and at least minimally well-functioning, where the person with greater power in the relationship, i.e., the mother in this case, genuinely loves and has concern for their child. If these conditions of validity and minimal good function hold at least minimally, then the child's democratic activity will have the potential to succeed in improving their situation and life for the better, but the *direction* of the child's democratic response will be up to the democratic choice of the child, and the democratic *decision* will be up to the deliberation between child and mother. Note that the democratic response of the child could go in a liberal, Confucian, hybrid, or other direction. A further condition, as will become clearer through the argument in Chapter Five, is that the

child *consents* to the final decision. More will be said about the validity of heteronomous relationships later in the discussion.

I return now to the descriptive aims of the current chapter. Referring back to the classical Confucian standard I described earlier, I suggest that these parents' accounts of their experiences raising American children has brought to light the ways in which traditional Confucian teachings have been distorted by the authoritarian practice of their own parents' reductive adoption of Confucian values, and that the solution might not be complete assimilation into liberal modes of socialization, but could also be a retrieval of the moral examples in the classical Confucian tradition and creative incorporation of these to fit contemporary realities. A remonstrative approach drawing from the Confucian tradition, if adopted by the American children of these immigrants, could garner a more promising reception from East Asian parents to adapt their ways precisely because it draws on a moral authority with which the parents self-identify, rather than a liberal value system which is seen as belonging to the host society that is not endemic to their own worldview. In contrast, a homogenizing liberal educational model which assimilates all cultural traditions erases these avenues for reinvention and leaves the definition of tradition in the hands of the parental figure who would assert their lone authority to define its content, in many cases on reductive authoritarian terms.

In the remainder of the discussion of heteronomous agency, I will explore the potential problems this model raises for liberals and possible alternatives to liberal standards of assessment that could respond to dangers of abuse.

Under the autonomous model of agency, the boundaries of the self are defined by liberal theorists according to an ideal of independence. This ideal constitutes the understanding of the nature of agency, through the notion that free choices are made through

some significant measure of independence from other people and reflective distance from the ends that are tied to the 'outside' world, and the idea that moral value is conditional upon the holding of autonomously chosen beliefs. As a consequence, liberals have trouble distinguishing heteronomously chosen lives where the individual defers to the authoritative judgment of respected figures in deciding certain life choices, from lives lived under coercion and oppression, and tend to run these together. In reference to the independence ideal, the notion that individuated reflection could take a heteronomous form seems to liberal theorists to be a contradiction in terms.

A representative example is John Christman (1991), who defines his account of autonomy in contradistinction to the heteronomous self by making it conditional upon the principle of self-governance, which he defines as "being guided by forces which are self-imposed" (p. 345). He then gives a hypothetical example of an individual whose choices would not qualify as autonomous because of a failure to develop the requisite capacities for individual autonomy, which he parses as an absence of positive freedom:

> …people can be manipulated and conditioned in relation to the very makeup of desires and values. Imagine, for example, a woman who is raised in a culture which fiercely inculcates in her the idea that women should never aspire to be anything but subservient and humble domestic companions to their husbands, no matter how unhappy this makes them or how abusive their husbands are. Imagine further that this person is suddenly placed in a new culture where opportunities abound for women to pursue independent activities. She nevertheless shuns these opportunities and remains married to an oppressive husband from the old culture… She simply does not wish to act in any other way, turning a deaf ear to the reasons people give her to consider a less subservient posture. (Imagine that her husband abuses her but tells her she can leave him any time she wants, and she continues to want to stay.) …such a woman is unfree, and precisely because the processes by which her character and values were developed were themselves oppressive (Christman, 1991, p. 344-345).

Problematic assumptions arise through the construction of evaluative conditions of real world cases which are dependent on the *ad hoc* imaginings of theorists, and Christman's thought

experiment above is a case in point. In this example, it is the assumption that culture is the enemy of agency that constructs the paradigm limit case in a manner which encourages a distorted analysis of what is at stake in real world cultural conflicts. I know of no existing ethnocultural tradition that inculcates in women the idea that they "should never aspire to be anything but subservient and humble domestic companions to their husbands". Even the most patriarchically restrictive societies in the world today allow for or even encourage women's aspirations in other areas. The only example I can think of that might fit this description is the religious doctrine of conservative sects of Fundamentalist Latter Day Saints, whose *founding* and *primary* doctrinal tenet as attributed to the founding Prophet Joseph Smith, is, on one interpretation, polygynous marriage as a celestial reward for men.[44] But even in this example, there is first, a difference between Scriptural doctrine and how the religion is lived by FLDS societies in which women have significant though restricted agency. Note that culture as I define it in this project is ethnocultural and therefore could have various sources. Where religion is an aspect of the ethnoculture, as it is in the case of polygynous FLDS communities, religious culture has both social and Scriptural sources. For example, in the community of Bountiful B.C., where polygyny or celestial marriage is still a central tenet of official theological doctrine, the lived practice of polygyny is limited to a handful of families, and its felt centrality to the community's way of life, according to anonymous interviews with women conducted in 2008 and 2009, is on the decline (Campbell, 2013, p. 30). Campbell (2013) reports that according to some of the women interviewed, "more relevant

[44] See details on this doctrine and how it is lived in the edited collection, *Polygamy's rights and wrongs: perspectives on harm, family, and law* (2013), which includes perspectives and contributions from Mormon women themselves. According to Angela Campbell, who contributes a chapter to this edited collection, "Original Mormon theology rationalizes polygamy not only through adherence to scripture but also in other factors that reflect pragmatic and spiritual concerns. First, although Joseph Smith taught that plural marriage was essential to celestial exaltation, not all men were deemed righteous enough for entry into the celestial kingdom. Because those who were considered worthy of inheriting the celestial kingdom were a minority, women were encouraged to marry them, even polygamously, so that they, too, could achieve exaltation and heavenly existence. In this way, the practice bestowed "reproductive privilege" on men who were considered especially deserving or orthodox, allowing them to populate communities with their own family lines" (p. 25).

[to their faith] than the actual practice of plural marriage is one's openness to the possibility of polygamy, either in one's lifetime or upon entering a kingdom of heaven", and that they were taught, according to one participant, to "Live your life planning not to be a polygamist but leave that open" (Campbell, 2013, p. 31). Other of the women report that polygyny is not fully endorsed by many believing citizens of Bountiful, either for ideological reasons, or for more practical ones. For example, practical concerns such as financial cost deter many men in the community from actively practising polygyny (Campbell, 2013, p. 31).

Additionally, social meanings of polygyny develop out of the lived experiences of women who experience it within a web of relationships. According to Rebecca Johnson (2013), a descendant of a polygynous family, the practice of polygyny is not about women serving men, but about community in general: "Polygamy is not just about relations between husbands and wives, but about relations between wives and wives, between parents and children, between cousins, and between larger communities of people" (Johnson 2013, p. 99).

Where plural marriages occur in Bountiful, women report that the framework for its practiceis constrained by social (moral) rules about how it should be practiced: For example, it is not morally condoned in Bountiful for a married man or couple to go seeking a second wife; the potential second wife must be the one to approach the man and couple, and all parties must consent (Campbell, 2013, pp. 31-32). The existence of such moral standards implies that, at least among those who endorse them,, abuses of women are *not* considered morally valid parts of the culture, and would be perceived as falling into the realm of a culture of abuse within a tradition that is otherwise endorsed. Whatever I or anyone else may think of these beliefs and practices, women from this community see significant value in their culture and exercise their democratic rights partly by protesting against morally unsanctioned abuses. Reliable and comprehensive information about women's views and the scale of abuse in more widely practicing polygynous FLDS communities is scarce, due to the secrecy that

tends to be an effect of the illegal status of polygamy, but scholarly and first hand reports do offer valuable reasons for why these women affirm polygyny, such as help with childcare, a network of women's support, and religious fulfillment. Additionally, while I have not heard of this suggestion being proposed, it is at least conceivable that this religious doctrine could be made gender equal in the future, through a religious, moral and political revolution which would affirm the idea that women, in their own right, are subjects of moral righteousness deserving of celestial reward and encouraged to propagate their own celestially sanctioned family lines as maternal clans.

The problem is that Christman's imagined case runs together culture and abuse in defining the conditions that negate the capacity for autonomy. For example, while the FLDS community of Bountiful, BC is a religious society that is highly patriarchal, it is not a cultural society of abuse, or at least not a comprehensive cultural society of abuse like the FLDS sect that was headed by Warren Jeffs. While I affirm the notion that protections for positive freedom are extremely important, it is crucial in my view for such a principle to distinguish between abuse that includes psychological harm as severely limiting a person's positive freedom, and culture in the sense of a recognizably *moral* tradition that conditions its members into forming certain values that shape the direction of their agency. Whether one agrees with these values or supports the choices individuals make is a separate question; the question here is that of autonomy and agency. Thus, the relevant distinction relies on the idea that abuse fundamentally damages a person's psychological capacities as an agent, while culture instills values and capacities that constitute and direct a person's agency. While it is possible to speak of cultures of abuse that straddle both categories, rape culture in Western and other societies being a good example,[45] this distinction is analytically important in that it

[45] Note that in the current project, which defines culture primarily as ethnoculture, rape culture is not in the strict sense a culture, though cultural societies which have rape cultures as constitutive elements *are* ethnocultures or cultures in the strict sense.

separates abuse and cultures of abuse conceptually from culture in the sense in which the borders of a culture are defined by ethnic and religious association. Ethnic and religious cultures are constituted by both morally authorized traditions and informal social norms that have a broad span encompassing every aspect of life for members. While cultures of abuse may exist within or across ethnic or religious or societal cultures, the distinction serves to discourage the definitional equation of restrictive or patriarchal social conditioning in ethnocultural groups with abuse. To do so would, first, bring about the counterproductive and unjust consequence of negating the agency of women in a grossly overencompassing manner—there certainly exist a large number of women who affirm patriarchal values and use these values in service of their agential aims, even as the patriarchal framework denies them gender equality and constrains their agency in other ways (Pritchard, 2006, p. 279). Secondly, this would deny alternate forms of agency valued by some women in drawing from non-liberal traditions that do not take an autonomous form; not all forms of agency and choice draw on an ideal of independence as Christman and some liberals assume. My argument concerning the need to reject liberal boundaries for defining agency and moral choice speaks to both points. Ranjoo Herr (2010) offers an alternative conception of agency that she terms valuational agency to account for choice of moral values in heteronomous societies. Drawing on Taylor's conception of 'hypergoods'[46], she defines valuational agency as "the ability of persons to wholeheartedly embrace certain values/interpretations as their hyper-goods and to make qualitative choices regarding elements of comprehensive doctrines in accordance with hyper-goods in a consistent manner" (Herr, 2010, p. 246). Though Herr limits valuational agency to heteronomous choice of hypergoods, I read valuational agency as also applicable to the heteronomous choice of lesser but important life goods.[47] Examples are

[46] According to Taylor (1989), hypergoods are defined by second-order qualitative distinctions which "provide the standpoint from which other goods must be weighed, judged and decided about" (p. 63).
[47] On this basis, I choose to refer in general to moral values rather than hypergoods and lesser goods where either would apply in the discussion, or where it is not clear which of the two is appropriate. In explanation of

the choice of career path or university major in Confucian families, and consensual arranged marriage as opposed to love marriage in some South Asian families.

For the classical liberal, a hypergood is to be chosen autonomously because it is directly valued by the individual herself, who has reflected independently in adopting that ideal. The key liberal hypergood is autonomy itself, i.e. the ideal of autonomy as the guide post for a life worth living. In contrast, as Herr (2010) explains, "For members of many non-liberal cultures in the world, the essence of human agency is to wholeheartedly embrace the moral truth that has been transmitted to them from a higher external authority and to live in accordance with it against all odds" (p. 251). While I would caution against Herr's blanket attribution of a singular view to entire world cultures, I endorse the point that classical liberalism, which takes autonomy as the ruling moral value, cannot account for some religious agents in both the West and non-West who see the good life as a matter of revelation rather than autonomous choice as the making of one's own moral law. Thus, recognition of valuational agency as a form of agency that can affirm the life paths of such individuals as sufficiently endorsed is crucial to cultural equality.

Substantive liberalism has been left behind by many contemporary liberals who take a procedural approach to autonomy such as Christman. Procedural liberals are concerned that the most important choices that direct one's life path be made through autonomous reflection, such as the choice of a hypergood, but depart from the substantive ideal in allowing that the object of choice, even as a hypergood (somewhat counterintuitively in the latter case I may add), could be a heteronomous ideal, provided that self-governance is demonstrated through autonomous endorsement of this ideal. In contrast, while reflection is central to the choices of

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this last point, Taylor's theory of hypergoods fits ambiguously with certain traditions, such as Confucianism—it is not clear whether filial piety, for example, should be read as a hypergood—since it orders elements of the comprehensive doctrine, or a lesser good—since it is in the Mencian analysis, itself ordered by the higher virtue of *ren* or humanity, or merely a virtue of human relationships that constitute the mode of pursuit of the hypergood, *ren*.

valuational agents, Herr explains heteronomous reflection as differing from autonomous reflection in that it does not presume an individual authority to self-govern in the sense of making one's own laws. As is apparent from earlier comments, Herr is specifically concerned with religious cultures which are fundamentally heteronomous in that they defer to divine authority and their sanctioned representatives rather than relying on a Humanist form of autonomous reasoning. A second example that is not clearly religious on the Abrahamic model might be filial piety in Confucian cultures, where adult children and mature minors defer to the judgment of parents and elders, who have final authority on decisions that affect the family. For those who endorse an inherited moral value that is heteronomous, such as submission to God's will or filial piety, maturity of the self does not consist in transcendence of one's reliance on the external source of that value. Rather, dependence on and deference to external authority is a constitutive relationship of the moral self.

Thus, the reflective endorsement required by Herr's model takes a different form. The divine authority or other authoritative figure is reflectively evaluated by the agent as a worthy source of the good imparted, and this takes the place of a direct reason to accept a moral value. Herr (2010) states with reference to hypergoods: "The mere fact that she received hyper-goods from actual persons or abstract entities that she considers to deserve her sustained love, admiration, or respect, and whose authority regarding hyper-goods she therefore accepts voluntarily, would suffice as good reason for keeping them" (p. 246). This difference is particularly crucial since the direct choice of a ruling hypergood may then be placed outside the scope of individual choice, a concept that departs significantly from the liberal ideal.

Importantly, Herr clarifies that the evaluation of the worth of the authoritative figure is dependent on an account of that authority *qua* moral authority. That is, as Herr (2010) clarifies, where "authority is attributed to actual persons, it is in relation to their role as

transmitters and teachers of hyper-goods and not as persons with particular 'interests, needs, and preferences', which may not have any relevance to a person's hyper-goods" (p. 248). One might add to Herr's account by noting that, in relation to Confucianism and families structured through similar hierarchical decision-making, the collectivist responsibilities of the head(s) of the family involve not only duties involving the education and transmission of values, but also a decision-making role that bears the responsibility of acting for the sake of the family rather than for personal gain. In terms of an example of heteronomous choice of other life goods, such as the heteronomous choice involved in arranged marriage, the choice of marriage partner made by the parent is legitimated by it not being made out of selfish interest, but out of legitimate concern for the wellbeing of the family unit and the happiness of her son or daughter, as well as respect for the daughter-in-law as an equal member of the family who will have her own interests in independent pursuits outside of familial duties. Where parents do not live up to the heteronomous moral ideal in this arrangement, criticism is warranted, and where serious abuse occurs, external intervention is necessary. Moreover, the agreement of the son or daughter to be married must be wholly voluntary. Implicit in such an ideal is the notion that the authoritative figure loses authority over the charge where selfish, abusive or disordered demands take the place of requests that are in service of legitimate needs and interests. Following Herr (2010), this provides us a distinction between moral deference which qualifies heteronomous choice from a servile form of deference that may be morally problematic (p. 248).

Herr (2010) adds that often the mature moral agent graduates from heteronomous deference to authoritative persons to taking "abstract and symbolic entities" as directly authoritative; she is thinking here especially of the ideal of divine authority that is transmitted by human authorities (p. 248). Though she does stress that those individuals who do not make this transition can still be said to exercise valuational agency and legitimate

choice, Herr's understanding of agential development retains a bias towards autonomy in the sense of social independence that blurs the conceptual boundaries between these two modes of agency—heteronomous choice and autonomous choice. In my view, in mature heteronomous reflection, one does not necessarily trade deference to the authority with independent reliance on abstract entities or moral ideals which grant that authority. This brings valuational agency closer to the liberal conception of autonomy, in terms of its connection to reflection on the model of Protestant humanism. And while such a model is inclusive of certain forms of culturally specific agency, such as the modernist understanding of direct Scriptural interpretation attached to the Islamic Revival movement, it excludes others, such as filial piety on the Confucian model. The relevance of direct reference to the moral ideal of heteronomous relations in cultures such as Confucianism is rather that part of the reflective evaluation of the authoritative figure in heteronomous agency necessitates competence in the tradition of moral reasoning inherited in the framework which bestows this authority, but the ideal remains one of reverence of the authoritative person, not to a mere abstraction. In Confucian reasoning, abstraction is not superior to actuality but inadequate to it. And while the valuational agent may develop the moral competence to question the rightness of a decree of the authoritative person in specific instances, this reflective activity does not symbolize a graduation of attribution of authority permanently to some higher or socially independent source, but a capacity to compare present decrees to historical exemplars, through a mode of reasoning in which both present and past cases are modified and act upon one another as mutually authoritative.

Feminist critics might still object here to the unequal burdens of caregiving that are placed on women in patriarchal societies that affirm a moral ideal of gender equality through gender complementarity, including in some sectors of contemporary liberal societies. Indeed, where the burden of duties in the family unit is not distributed equally, I agree that this is a

problem of gender equality. But while certain feminists responding to some patriarchal traditions advocate for the abolishment of role-differentiated gender duties - for example, liberal as well as Confucian feminists - other feminist camps responding to traditional norms insist that role-differentiated moral traditions are not inherently incompatible with gender equality. Where roles are differentiated, it is not only duties that differ between the man and the woman of the household, but also benefits and privileges. For example, in the traditional Muslim family, the woman is generally the primary parent; that is, she is expected to be primarily responsible for childcare. However, even here, this might not entail a moral rule of unequal distribution of family duties. On the other hand, any income she earns is her own, whereas the husband bears the sole financial responsibility for the family's expenses. Many Islamic women choose to advocate for the honouring of Islamic women's rights under this model as opposed to endorsing liberal alternatives. What enables the empowerment of these Islamic women, who might very well not self-identify as feminists, is the reflective agency that they gain from access to Scriptural study within patriarchal traditions, and to the advice of female religious leaders (*daiyat*), such that they are equipped to distinguish between Scripturally inscribed religious obligations or Sharia law, and selfish, disordered, and abusive demands from patriarchal agents employing cultures of abuse to their benefit.

What about examples of patriarchal communities that affirm deference in the problematic immoral sense, i.e. communities that do not honour a clear distinction in recognized norms between a moral ideal of deference and absolute deference? The standard of the worth of the authority can still be reflected upon by the agent (and here, genuinely moral cultural traditions,[48] including non-liberal ones, could be a constitutive source of this reflection), and this can serve as a universal standard where a local one is not circulated in the

[48] By genuinely moral cultural traditions, I mean cultural traditions that have the real (rather than ideal) potential to be transformed into fully or generally morally legitimate and democratically endorsed traditions that respect human rights. By cultural traditions, I mean ethnocultures, i.e. culture with both textual and formal, as well as informal social sources.

localized community. In cases where the authority figure deferred to is selfish and abusive, this would indeed negate capacity to consent, though in relation to cases of psychological abuse, successful intervention on a practical level still requires consideration of the victim's readiness to exit the situation and willingness to cooperate.

I explore this alternative mode of reflective endorsement, not to replace but to supplement the test of autonomous endorsement, by expanding this test to include alternative standards under a pluralist framework of agency. In meeting this goal, I have described Herr's account of heteronomous reflection as an example of a mode that serves this function of expanding what counts as reflective endorsement. Reflection may consist, as in the liberal ideal, of evaluating reasons to act or choose directly through one's independent critical faculties, or it may consist in evaluating the worthiness of the external authority from which one receives one's hypergood or directions to act.

Additionally, it is important to note that different modes of agency may be exercised by the same individual or group. For most people, reflection involves both autonomous and heteronomous reflection, but the weight of each differs between cultures that prize autonomous reasoning and those that may place a higher value on heteronomy. Cultures may even take one or the other as a hypergood.

This is to say that heteronomous agency is a universal mode in almost all societies to different degrees, with the implication that a reliance on authority is a normal and rational component of choice. In Western society, deference is given to trusted figures in private contexts; and in public contexts, to public intellectuals, experts and authority figures. Another example is the ideal of solidarity, for example in the #believewomen movement, where women and allies have affirmed this ideal through siding with victims of sexual assault and granting default trust in their unconfirmed testimony out of a gesture of support, which amounts to a kind of deference to firsthand experience of those who are perceived as

vulnerable or isolated. Expanding the conception of agency not only allows for a deeper recognition of moral and cultural pluralism, but also reveals another dimension to the ideal of agency in the West as it is actually lived.

The authentic self, the religiously prescribed self, and the ethic of responsibility

A second way in which the liberal theory of the individual is culturally particular stems from an alternate definition of liberal autonomy from that of independent choice. This definition of the self takes the Protestant conception of interiority and elaborates it with Romantic Expressivism. In this understanding, the essence of the individual is located in an 'authentic' self. The identification and expression of this self becomes, in the ethic of authenticity identified by Charles Taylor, the path to the good life, the barriers to which are the pressures to "[surrender] to conformity with a model imposed on us from outside, by society, or the previous generation, or religious or political authority" (Taylor, 2007, p. 475). Consequently, the measure of autonomy attached to this theory of the individual is a standard of self-definition.

This conception is alive in contemporary liberal definitions of autonomy, and notably, in Kymlicka's understanding of the self who chooses from the inside, as noted also in the previous section. As Parekh explains, the notion of living life "from the inside" evokes a quintessentially Protestant conception of interiority as defining what constitutes the essential self (Parekh, 2006, p. 106). The model of authenticity has been in popular use in contemporary liberal theory as an alternative to the model of the rational, independent mind. As Taylor (1994a) describes the ideal of authenticity, "We might speak of an individualized identity, one that is particular to me, and that I discover in myself. This notion arises along with an ideal, that of being true to myself and my own particular way of being" (p. 28). Diana Meyers (2004) gives an articulation of this standard of autonomy as self-definition within feminist theory. She gives a definition of autonomy that, in her view, serves to "highlight the

need for an account of the difference between doing what one wants and doing what one *really* wants. The autonomous self is not identical with the apparent self; it is an authentic or "true" self: autonomous conduct expresses the true self" (Meyers, 2004, p. 3).

Recently, feminist theorists Saba Mahmood (2005), writing from an Egyptian context, and Jeanette Jouili (2015), writing in Europe, have detailed the contrastive form of agency of Muslim women in the transnational piety movement as defying this model of self-realization on the authenticity ideal.

This alternative mode of agency follows an ethic of responsibility rather than an ethic of authenticity. One's actions are the responsibility of the individual—to take up the self-project of piety is the individual's decision. But to take it up is neither seen by her as a choice among different doctrinal options nor as true to her inner self. It is a choice between taking up one's responsibility as a Muslim or failing in this. Moreover, adoption of this self-project at first feels inauthentic. Mahmood (2005) explains the modality of action involved here in contrast to the authenticity ideal: "instead of innate human desires eliciting outward forms of conduct, it is the sequence of [prescribed] practices and actions one is engaged in that determines one's desires and emotions" (p. 157).

Under the liberal conception, following received prescriptions that are experienced as inauthentic would be seen as denying one's freedom of agency or inhibiting one's innate capacities. Under the pietist conception, taking up the responsibility of this self-project opens up a new range of possibilities of agency due to the capacities that are developed. This contrasts with the liberal understanding of the agency of the pietists, where it is only the capacity for autonomy that is reduced without any agential gain.

Following from this difference in agential definition, choice and rationality must be identified differently: Individual free choice is evident in the effort and persistence involved in staying on this path of self-making which includes engaging in a complex set of ascetic

and ritual practices, a retraining of one's embodied, mental, and emotional habits and attitudes in line with a pious character, regular attendance at mosque and meetings with religious helpers [*dā'iyat*] who aid in interpretations applying the sharia to one's personal situation, and most notably, the daily, continuous self-monitoring and self-scrutiny to ensure the correct execution of the above activities. Mahmood (2005) gives an account of this self-monitoring in relation to a specific conflict faced by some of the women in her study, of "living with an impious husband", a situation that, because of the authority of the husband over the wife and realities of sharing a household, "compromised her ability to live by acceptable standards of virtuous conduct" (p. 185). The women had two choices in keeping with pious conduct available to them, either of divorcing the wayward husband or remaining with him and doing one's best in a less than ideal situation. Each option entailed its own set of effortful practices required to honour one's religious obligations: According to one *dā'iyat,* Hajja Asma, asking for a divorce could only be morally justified after one had attempted a full range of "techniques of persuasion, both oral and embodied, to change the immoral ways of the husband", and been fully honest with oneself in assessing one's own efforts in this regard, "since no one else can make such a judgment" (Mahmood, 2005, pp. 187-188). The other option, of remaining with the husband, required that, "such a woman must constantly watch that she does not use her husband's behavior as an excuse for her own religious laxity" and accept the additional burden of counteracting the influence of her husband's impiety on her children's developing moral constitutions while carrying out her regular duties to raise her children according to standards of piety (Mahmood, 2005, p. 188).

The significance of this effortful activity is that it is evidence of a high degree of commitment to a pious life, which speaks to individual endorsement through a substantive engagement of one's agency. This evidence rests on the assumption that if the individual were not fully committed, they could not persist in such a difficult endeavour, for their

conflicting aims, desires and values would quickly derail such a project. In contrast, on the authenticity ideal, effort and struggle is often interpreted as a denial of the self and what it 'truly' wants. Moreover, racialized understandings of non-liberal traditions tend to assume that women who conform to patriarchal norms do so through an absence of resistance that is passive. In recognition of this tendency, attending to women's perseverance in carrying out their prescribed roles, as in the case of the women diligently seeking out and following Hajja Asma's advice, allows for the alternative interpretation to challenge the notion that their actions reflect a lack of agency.

Secondly, reasoning competency that is indicative of individual agency can be identified through attending to the ways the pietists navigate everyday decisions regarding the practice of their normative commitments within contexts that may present novel circumstances, challenge or conflict. For example, Jouili (2015) recounts the experience of a working professional woman named Sevim in Germany, who underwent a learning curve in terms of adjusting her newly taken up Islamic prohibitions against physical contact between the sexes to the highly politicized context of social interaction in public and professional space in Western Europe in the post-9/11 era:

> At the beginning I wanted to do everything hypercorrectly, and I thought, oh God, now I must not shake hands anymore. And this was really difficult with my family, the family of my husband. They always shake hands, and of course they kiss all the time [*laughter*]! In the beginning I absolutely refused to shake hands, and I received very aggressive reactions from my family. But I was not very consistent. Sometimes I did it, sometimes not. I was still in the phase of finding myself.[49] I was not very diplomatic back then. And then, I did not explain it to them, and this was wrong.
> Nowadays, when I have contacts at the company, mostly with men, I shake

[49] Sevim, being German as well as a pietist, uses a mix of moral language, some of which might borrow from or even draw on the vocabulary of authenticity because this is the moral language of the society in which she lives. While this may mean that she sees her navigation of this challenge as the reinventing of a rule, it does not necessarily mean that she does, She may see herself as adjusting her application of the rule to imperfect real world contexts and/or to a real world context that simply differs from that in which the rule was originally written. Moreover, there are certainly possibilities of choice that taking up her responsibility of following the prescription rule out (such as rejecting the rule completely as having no authority, ideal, literal, or in the spirit of the rule).

> hands. I accept handshakes from German men more easily than with Turkish and other Muslim men. It also feels different with German and Turkish men; they don't do it because they want physical contact. The Muslims, they should know. With the Germans, it is also difficult to explain each time, and if they don't understand, they will feel insulted and say, ah, this Muslim woman. I don't want that, but it's tricky (p. 169).

Sevim's reasoning and learning process goes through three phases, beginning from strict, non-negotiable adherence with a minimum of reflection, to a phase of inconsistent adherence in which conflicting pressures generate psychological conflict, uncertainty, defensiveness and adjustment, to the final phase of reflective resolution in which the application of the rule to fit the situation exercises creative problem-solving. In this instance of conflict, Sevim honours the spirit of the prescription (refraining from physical contact with men whose instigation of it would be more likely to suggest sexual intent) while accepting that honouring the letter of the prescription may not be advisable where it may produce unintended and harmful results (refraining from physical contact with all men and generating misunderstanding, offense, and racial tension).[50]

Sevim's conflict is particularly notable because of its quotidian scope. It shows that even the practice of straightforward behavioural prescriptions on as small a scale as an interpersonal greeting can generate situations that necessitate a process of reflection on the part of the agent. Creativity and adjustment is needed to honour even simple prescriptions within the context of everyday modern life in a globalized world. While it might be argued that Sevim's reconciliation of her faith within a secular liberal context demonstrates the individualism that is the mark of autonomous choice, it could alternately be argued that adjustment was the most prudent course of action to take in order to ensure her faithfulness

[50] Notice that this arc of reflective problem-solving demonstrates a mode of reflection which is embodied, experiential, and involves the negotiation of emotional equilibrium, rather than being simply intellectual. This is a point concerning the general nature of reflective agency, liberal agents included, that will become relevant in the final part of this chapter.

according to the requisite ordinations in the long-term, since disharmony within the family unit, or professional and racial friction would create additional barriers to adhering to her religious obligations in a social environment in which Muslims are already under suspicion and scrutiny. Autonomy is not the only ideal with which agents may identify. In the alternate interpretation, the ideal of personal responsibility may be more representative.

From a contemporary liberal point of view, the example of Sevim might be considered unproblematic in that it is consonant with liberal pluralist conditions conducive to the exercise of autonomy. Sevim's reflective opportunities are mainly instigated through intercultural exposure and pressures to adapt to a wider liberal societal context. The more problematic case for many liberals would be that of conservative communities who conduct their affairs with a minimum of close association with non-members. It is a common suspicion, often warranted, that such communities attempt to discourage reflective questioning of practices. Thus, while the example related by Jouili concerns the navigation of a conflict between the prescriptive tradition and the larger culture, an example from Mahmood demonstrates the commonplace reflective opportunities instigated by conflicting prescriptions and competing authorities within a tradition. That such opportunities arise through the manifestation of inevitable internal conflicts serves to partially refute the assumption that substantive levels of intercultural engagement are needed in order to prompt reflective reconsideration of community norms. Indeed, in their critique from a pluralist perspective of Amartya Sen's reliance on procedural autonomy in his capabilities approach, Argenton and Rossi (2013) point to evidence proffered by James C. Scott, Lila Abu-Lughod and Anne Phillips to demonstrate the point that the liberal assumption that broad exposure to other cultures is necessary for agents to garner the capacity to formulate and act on reformative, revolutionary or divergent plans of action in the face of a repressive traditional regime is empirically unfounded (p. 141).

Mahmood (2005) describes the case of conflict faced by women in the piety movement whose husbands opposed and obstructed their efforts to live a pious life: “In order to remain active in the field of *da’wa* and sometimes even to abide by rigorous standards of piety, these women often had to go against their male kin, who exercised tremendous authority in their lives, authority that was sanctioned not only by divine injunctions but also by Egyptian custom” (pp. 175-176). Abir, a woman who had taken up activities in the *da’wa* or piety movement late in life, was experiencing considerable friction with her husband, Jamal, a lax Muslim whose central aspiration was for upward professional and social mobility. Abir’s new activities, including the adoption of the full face and body veil and refusal to help entertain his male friends and colleagues at home caused Jamal to notify his wife that he wanted her to halt what he thought of as her “backward” activities and take up the role of the “worldly and stylish wife who could facilitate his entry into a class higher than his own” (Mahmood, 2005, p. 176). Abir’s substantial reasoning capacities are shown in her efforts to become proficient in religious argumentation through her enrollment in training to become a *dāʿiyat.* Through this training, Abir was able to employ a modern interpretation of *da’wa* duties in order to justify her participation in these activities to her husband, the argument that “*da’wa* was no longer considered a collective duty [taken up representatively by religious leaders], but an individual duty that was incumbent on every Muslim to undertake—a change that had come about precisely because people like Jamal had lost the ability to know what it meant to live as Muslims” (Mahmood, 2005, p. 179). In response to Jamal’s threat that he exercise his Muslim right to take a second wife if she did not reform herself in keeping with his wishes, Abir used a religious argument that had the moral force to silence Jamal in the moment: “You keep insisting on this right God has given you[to marry another woman]. Why don’t you first take care of *His* rights over you [referring to his neglected religious duties]?” (Mahmood, 2005, p. 177). This, along with more gentle

strategies of persuasion, such as using humour to lubricate tense situations, instigating moral embarrassment by taking the higher ground, engaging in vocal pleas for forgiveness from God for Jamal's ways and praying aloud for his salvation through reform, invoking Jamal's fears of death and damnation in the Hereafter in order to motivate him to fulfill his religious duties (Mahmood, 2005, pp. 177-178). Abir's creative strategies and proficiency in religious argumentation were eventually partially successful in dampening Jamal's efforts to pressure her to discontinue her *da'wa* studies, as well as motivating him to give up alcohol and X-rated films in the home, pray and attend mosque more often (Mahmood, 2005, p. 177).

Importantly, Mahmood (2005) points to the shared normative structure rather than the expressions of the autonomous self as having force within the dynamic of struggle between Abir and Jamal: "The force of Abir's persuasion lay partly in her perseverance, and partly in the tradition of authority she invoked to reform her husband, who was equally—if errantly—bound to the sensibilities of this tradition" (p. 178). Mahmood's analysis of Abir's efforts also supports the argument that a liberal model of resistance may not always be the most appropriate nor the most effective approach to an individual's efforts to expand her agency and aspirations where these are shaped by non-liberal values. In relation to my argument, this is also key to the political argument that autonomy should not be assumed in all contexts as facilitating empowerment, since the moral authority she invoked was not her sovereign self as an autonomous agent, but the religious authority through which she finds empowerment through heteronomous agency (Hafez, 2021). As Mahmood (2005) comments, "Paradoxically, Abir's ability to break from the norms of what it meant to be a dutiful wife were predicated upon her learning to perfect a tradition that accorded her a subordinate status to her husband. Abir's divergence from approved standards of wifely conduct…[was] enabled by the capacities that the practice of these norms endowed her with" (p. 179).

Even in certain cases where a liberal framework is centrally relevant to the interpretation of a life narrative, to reduce this interpretation to its liberal components may seriously distort the aims and choices of the agents represented, thereby undermining the liberal project of supporting individual agency. Mahmood (2005) gives the example of Zaynab Al-Ghazali, the pioneering figure of the women's *da'wa* movement, and a leader of the Muslim Brotherhood in the 1950's and 60's (pp. 180-184):

The possible influence of liberal and women's rights discourse on al-Ghazali's Islamic activism can be seen in, for example, her belief that "Muslim women and men are equally called upon to serve God", prominently through her "position that Muslim women should play an active role in public, intellectual, and political life", and in service of the movement for women to take up these roles, and more clearly in the use of the language of women's rights in arguments for women's access to sacred knowledge (Mahmood, 2005, pp. 70-71). Nevertheless, while this liberal feminist discourse supplies some of the language and socioeconomic opportunities for al-Ghazali's positions, it is Islamic discourse that provides the valence, scope, and logic for her positions. For example, al-Ghazali's claim that women are equally called upon to serve God does not imply that she believes they should be given equal standing and authority to male religious workers and leaders (Mahmood, 2005, p. 71). Similarly, she makes women's right and responsibility to participation in public life dependent upon the fulfillment of their domestic kinship responsibilities, and does not advocate for women's general rights to equal employment with men (Mahmood, 2005, p. 70). And as Mahmood (2005) demonstrates through a more detailed analysis of Islamic jurisprudence, the cases in which al-Ghazali dissents from male authority figures in her personal and public life take their justification and scope from established principles and precedents within the tradition, while her public statements show repeated moves to distance her activism from the aims of the women's rights movement which she denounced as signs of

a colonial mentality (p. 182, p. 70). Regardless of whether one agrees with al-Ghazali's positions, it is evident through the above analysis that the representation of her aims and values within a monological liberal interpretive framework would seriously misrepresent her aspirations and those of her followers, and risk undermining the exercise of their agency (Mahmood, 2005, p. 183).

The difference between the two models of agency—that of authenticity and that of responsibility--is demonstrated clearly in the contrast of the relationship between agency and the virtue of modesty for liberal Muslims and the pietists. The liberal Muslim interpretation of modesty, which accords with the authenticity interpretation of autonomy, is typified by the perspective of the Egyptian public figure, Muhammad Said Ashmawi, where modesty "is a characteristic of the individual's interiority, which is then expressed [outwardly] in bodily form" (Mahmood, 2005, p. 160). In keeping with this understanding of the self as an authentic expression of an inner virtue, Ashmawi makes the veil superfluous and unnecessary, and on this basis rejects the constraint of particular prescribed forms of attire.

In contradistinction to this liberal interpretation, the pietists perceive their journey as the shaping of the self according to a doctrinally prescribed, externally given model rather than as an internal discovery of an essential self that is given expression. Whereas in the Romantic theory of the individual, there is an essential interior self that may be expressed on the outside through symbols, such as a religious symbol, like a crucifix, a verbal profession, or a style of dress, the theory of the individual undergirding the self of women in the piety movement may take the veil, and modest public comportment as 'exterior' or bodily aspects of the self that produce the individual from the outside in, inclusively (Mahmood, 2005, p. 158). Here, the self is realized from the outside in, as remade through a prescribed and received form, by the efforts of the individual in adopting a particular form of embodiment that integrally includes the veil. Since the interior self is not valorized through an ideal of

authenticity, then, "the mosque participants did not regard authorized models of behavior as an external social imposition that constrained the individual. Rather, they viewed socially prescribed forms of conduct as the potentialities, the "scaffolding," if you will, through which the self is realized" (Mahmood, 2005, p. 166). And crucially, as Mahmood (2005) notes, "While wearing the veil serves at first as a means to tutor oneself in the attribute of shyness, it is also simultaneously integral to the practice of shyness: one cannot simply discard the veil once a modest deportment has been acquired, because the veil itself is part of what defines that deportment", through its particular prescribed form (p. 158).

Charles Taylor (1994a), in analyzing the ethic of authenticity, complicates the simple opposition between externally imposed socialization and the modern ideal of the authentic self through his conception of the dialogical self. In his analysis of the claims of minority groups in secular liberal societies, identity politics arises out of the confrontation between the ethic of authenticity and the claim to social recognition. He explains identity as necessarily constituted through a relational dynamic rather than as a solitary activity, as in the independence ideal: "…my discovering my own identity doesn't mean I work it out in isolation, but that I negotiate it through dialogue, partly overt, partly internal, with others (Taylor, 1994a, p. 32). In this way, Taylor expands the monological ethic of authenticity to accommodate socially dependent identity and the moral values associated with such identities. The ideal at the core of this reconciliation, however, remains the authenticity ideal, which is apparent in the fact that Taylor's (1994a) account of authenticity focuses on the role of love relations not primarily in terms of the "fulfillments of ordinary needs", but in terms of their role as "the crucibles of inwardly generated identity" (p. 36).

Taylor's account of identity is an insightful account of how, for example, liberal Muslims who have adopted a modern liberal framework for interpreting their religious culture might incorporate an ethic of responsibility into a larger ethic of authenticity. Many

Muslim women chose to take just such an approach in the debates over religious symbols in Québec. For example, in the public commission hearings over the now implemented government proposal to ban the wearing of 'conspicuous religious symbols', Samira Laouni, president of COR, an organization that works toward the socioeconomic integration of minorities, and herself a *hijabi* Muslim woman, expressed the significance of the veil for herself using the language of identity and liberal rights: "It's part of me. It's mixed in with myself, with my identity, my spirituality, my freedom of conscience and I would feel bullied to have to choose to work or not work in order to keep this…It's a fundamental right" (Laouni Jan 14, translation mine). Moreover, her testimony demonstrates that she has adopted Taylor's language of recognition as a framework for identity:

> Know that I need the perception of the other in all their dimensions for me to feel myself, to be recognized? I need this other. However, the other is not called to become identical to me and to wear the headscarf like I do. And I should respect the other in all her diversity, whatever colour of skin, origin, sex, sexual orientation, language, religion, no religion, I should respect who he is. But I need him to recognize myself, as myself, and to be proud of who I am (Laouni Jan 14, translation mine).

Nevertheless, she explains an ethic of responsibility as an integral part of the practice, where this ethic departs from the paradigm of individualistic choice on a more Expressivist model of contemporary religious practice, in which beliefs may be patched together from different sources according to how best they express the inner self. Rather, she describes her choice to wear the *hijab* as a choice to take up a spiritual obligation that is prescribed by a received tradition, an obligation which is just one aspect of a set of prescriptions, and in which following the authorized form of the prescription is essential:

> It's a religious prescription…There are many prescriptions in the religion. There is not just one, but many. But when we follow a religion… when we take the path into religious spirituality, we choose, we make choices. I have a sister in Morocco, and she did not make this choice. And she is my sister, she will always be my sister, But me, I made the choice, I wear it freely, freedom of conscience, but spiritually, as a certain spiritual obligation because I believe

> in it (Laouni Jan 14, translation mine).

Jeanette Jouili (2015) explains that authenticity within the alternate framework of an ethic of responsibility is understood differently as authentic to the tradition rather than to the self (pp. 30-37). Thus, in a hybrid formulation, the secular liberal understanding of sincerity may be reconceived as opening oneself to and putting the effort into embodied daily practice and acquiring the understanding and dispositions requisite to sincere practice (Jouili, 2015, p. 54).

On the other hand, for Muslims who reject a liberal or an identitarian framework outright, the move to assimilate the ethic of responsibility or the ethic of piety into an identity framework misrecognizes their aims and their agency, with potentially harmful consequences. Specifically, because the identity model does not challenge the cultural particularity of the norm of authenticity, it will not be able to recognize the moral commitments of women who do not accept the authenticity ideal, who are in a position of transition into the pious self-project. These women are likely misrecognized as setting aside their authentic desires for the sake of the desires of their relations rather than as exercising moral agency in service of their self-professed aims. Recognition of and respect for the perspectival agency of these individuals requires recognizing the ethic of responsibility as belonging to a distinct modality of agency from that of the authenticity seeking self.

For the pietists, the politics of identity is at best a marginal rather than a central concern. One takes up one's received responsibilities, not primarily out of a search for one's authentic identity, or to attain recognition of this identity from the state and the larger national society, but in service of a project for the cultivation of religious virtue that retrains and reshapes what may initially be experienced as one's authentic self. Seeking state recognition of identity may be instrumental to the larger purpose of putting into practice a specific social and moral order rather than intrinsically valuable in itself (Mahmood, 2005, p.

193). For this reason, the appropriation of their aims into the framework of authenticity is a distortive representation of their agency in the mode in which it is lived for these women.

Not only is this a matter of misrepresentation and cultural homogenization, but it can produce assessments with serious harms. According to Mahmood (2005), the pietists are hostile to the identity conception of being Muslim not only because it turns religion into political ideology but also "the mosque participants are in fact strongly critical of the nationalist-identitarian interpretations of religiosity because these views treat the body primarily as a sign of the self rather than as a means to its formation…the body is not apprehensible through its ability to function as a sign but encompasses an entire manner of being and acting in which the body serves as the developable means for its consummation" (p. 166). For the pietists, unlike for the liberal Muslims, the veil does not signify one's identity, and its banning is not just a matter of misrecognition of that identity, though these are already serious harms, as it is an attack on the very personhood that constitutes the pietist self as integrally sound. The threat is not only assimilation of identity, but disintegration of the self.

One might also recognize the relevance of something akin to this alternative modality of agency in other cultural contexts. Sonia Sikka (2004) refers to the experiences of the adult children of immigrants to discuss the central factor of ethnic descent on identity. Her discussion is relevant to mine in that ethnic descent is an inherited dimension of identity that is not only not chosen, but can feel fundamentally inauthentic to adopt, even as individuals feel an equally great responsibility to take up inherited ethnocultures as their own. Sikka (2004) cites Howard Ramos' experience as a Canadian-born individual of Ecuadorian descent: "it feels fraudulent to think of myself as anything but Canadian… Just because my father was born in another country seems an odd reason to consider that country a part of my identity and experience, but it is equally strange not to think of it as a part of me" (James &

Shadd, 2001, pp. 108-110; as cited in Sikka, 2004, p. 344). As can be seen from Ramos' account, authenticity cannot resolve the sense of internal conflict here concerning his identity, since both choices—claiming an unhyphenated Canadian identity, and adopting his father's ethnoculture, seem equally strange or inauthentic. Ramos explains that this reckoning with his ethnic heritage causes him to take up a course of action in order to become more Ecuadorian: "I have managed to learn about some of the foods and dishes that are traditional in my father's country, like *fritada,* plantains, or uca, and try to include them in my regular diet" (Sikka, 2004, p. 344). Ramos' chosen course of action in setting about to become more Ecuadorian by incorporating traditional foods into his diet, as well as learning about the country's history and stories, and corresponding with an Ecuadorian cousin, cannot be fully explained without recourse to something akin to the ethic of responsibility described by Mahmood in the prior context. Interestingly enough, Ramos' self-project, like the pietists, includes an aspect not only of interrogating his authentic self on the Romantic-Expressivist model, but also of a retraining of the body and habits through diet and social affiliation, as motivated by a sense of obligation that is received rather than clearly chosen by some authentic self.

Sikka (2004) cites another example in the language used at a 1998 conference of indigenous peoples, and published as the "Declaration Affirming the Principles for Indigenous Education and Self Government", in which this call to reclaim collective agency is found: "Indigenous peoples have the responsibility to learn their world view, language, and consciousness" (Neil, 2000, p. 279, as cited in Sikka, 2004, p. 343). The conference delegates used the language of responsibility to formulate this call, directing it to indigenous individuals who had been deprived of their cultural upbringing through the legacy of colonialism. For indigenous peoples, this call to responsibility in the words of Carolyn Kenny (2000, as cited in Sikka, 2005) means "knowing who you are", where "knowing who

you are means knowing where you come from and knowing who your people are" (pp. 343-344).

The phrasing of her words is reminiscent of Taylor's, though the meaning is reversed. Taylor (1994a) explains identity in the following way: "Consider what we mean by identity. It is who we are, "where we're coming from." As such it is the background against which our tastes and aspirations make sense. If some of the things I value most are accessible to me only in relation to the person I love, then she becomes a part of my identity" (p. 33-34). In contrast to Taylor's model of identity, where many indigenous individuals come from is not the background against which their tastes and aspirations make sense, since their cultures are ones that they do not yet possess in terms of competency with its languages and affinity with its sensibilities. Rather, they are being asked by the conference delegates to take up a call to acquire this background precisely because where they come from—their cultural communities-- are not yet something that shapes their consciousness and worldview (Sikka, 2004, p. 344).

Similarly to the liberal Muslim example, Taylor's account of the dialogic self could be interpreted as accommodating an ethic of responsibility within the model of authenticity. An inherited set of values may be received from others and reconciled in the dialogue with the self: "We define our identity always in dialogue with, sometimes in struggle against, the things our significant others want to see in us" (Taylor, 1994a, p. 32-33). In an expanded conception of the true self, "where we're coming from" may not be a qualitative background we already possess, but one we are compelled to reshape ourselves to acquire, in light of an identity that is inherited rather than chosen, and which is compelled upon us by our community or family (Taylor, 1994a, p. 33). Alternatively, the struggle may be with those outside one's ethnocultural community, which may compel a responsibility to represent one's ethnocultural group that is externally motivated by the racialized perceptions of others.

Such an interpretive accommodation, however, brings with it an ineluctable tension because part of the imaginary of authenticity is its opposition to externally imposed norms. As Taylor (1994a) notes, “By definition, this way of being cannot be socially derived, but must be inwardly generated” (p. 32). Recognizing the ethic of responsibility as a distinct modality of agency allows for recognition of this tension, as well as recognition of the actions prompted by an ethic of responsibility as agential rather than imposed.

The authenticity ideal also has an assimilative effect on other agential goods. For example, it poses an even larger problem for the aims of indigenous nations in that it has provided a seductive language for the Canadian state and policy theorists such as Kymlicka to assimilate indigenous sovereignty concerns into an identity framework. This ideal, in which what is sought is recognition of cultural identity, does to the modality of agency as (group) independence what the authenticity ideal does to the ethic of responsibility, but here, it carries with it colonial implications. The good primarily sought by the agents in this case—sovereignty-- is marginalized and reduced to concerns about cultural recognition. As Glen Coulthard (2014a) argues, indigenous self-determination cannot be parsed through cultural recognition because recognition is a colonial relationship through which it is impossible to experience equal belonging.

The liberal self, alienable property, and indigenous relationship to the land

Another way in which the liberal conception of the individual is culturally particular stems from the manner in which the individual is understood as the bearer of property rights. Here, property is an extension of selfhood through individual labour, making the liberal right to property dependent on this Lockean theory of individuation. This can be reconciled imperfectly with a certain range of doctrines that do not share this understanding of property, but not others. For example, as Bhikhu Parekh (1992) points out, in light of the traditional Muslim duty of hospitality, a portion of each individual’s property might be conceived as

belonging, not to oneself but to others in need, and this conception of individuation would deviate from the Lockean version that holds that each man's property is entirely a product of his own effort, owned privately rather than publically (p. 170). This difference between the liberal and Muslim theories of the individual in relation to property is relatively unproblematic in the sense that these can be reconciled through conceptual extension. For example, the liberal could reason that such a duty of hospitality could still be practiced between willing Muslims within a liberal society in which the right to property takes its traditional liberal definitions, and a Muslim could argue for a consonance between the Muslim duty of hospitality and a social democratic politics that gives greater priority to social provision of material welfare than does liberal democracy. It should be noted, however, that though these two are reconcilable, the theory of individuation and the ethic that accompanies it changes the scope and nature of the reconciliation in significant ways.

On the other hand, the liberal view of property fundamentally controverts indigenous understandings of the relationship between the self or the community, and the land, through its alienable status. As Laguna Pueblo author Paula Gunn Allen explains:

> We are the land. To the best of my understanding, that is the fundamental idea embodied in Native American life and cultures. . . . More than remembered, the earth is the mind of the people as we are the mind of the earth. The land is not really the place (separate from ourselves) where we act out the drama of our isolate destinies. It is not a means of survival, a setting for our affairs, a resource on which we draw in order to keep our own act functioning. It is not the ever-present "Other" which supplies us with a sense of "I." It is rather a part of our being, dynamic, significant, real. It is ourselves, in as real a sense as such notions as "ego," "libido" or social network, in a sense more real than any conceptualization or abstraction about the nature of human being can ever be. The land is not an image in our eyes but rather it is as truly an integral aspect of our being as we are of its being. . . . Nor is this relationship one of mere "affinity" for the earth. It is not a matter of being "close to nature." The relation is more one of identity, in the mathematical sense, than of affinity. The Earth is, in a very real sense, the same as ourself (or selves). (Allen p. 191, as cited in Peetush, 2003, p. 296).

A similar understanding of the identity between the people and the land is echoed in other indigenous conceptions, such as that of Ojibwe elder, Alex Skead, who says, “this is my body when you see this mother earth" (Royal Commission on Aboriginal Peoples p. 435, as cited in Peetush, 2003, p. 296). The crucial difference between these two conceptions of individuation and agency is that, on this indigenous conception, unlike the liberal conception, one’s relationship to the land is not within the scope of individual choice. It cannot be treated as alienable property or as a commodity with mere instrumental value; the appropriate ethical relationship to the land is one of responsible use, spiritual respect, and stewardship. The liberal accommodation of this difference has been a modification of the individual right of property to a communal right of property. Indigenous peoples have accepted and sometimes endorsed this framework so far as this right places indigenous territories within indigenous control, which recognizes indigenous sovereignty as well as facilitating cultural self-determination. On the moral level of the spiritual relationship of the community to the land, however, the notion of land as mere property is, in a fundamental sense, irreconcilable with indigenous cultural self-determination, for it creates not only the option, but also the economic pressure, given the realities of the globalized industrial economy, of treating the land as a commodity in order to survive and thrive as viable communities. This is a form of relationship that undermines or is at least in tension with their traditional spiritual aims, and therefore also their cultural self-determination. The conception of land as mere property does the further injustice of rendering subject to the choice of the democratic majority, the moral obligation indigenous peoples see all peoples as beholden to, in terms of respect for the land through its sustainable use and protection. As Tully (1995) has argued, recognition of the moral language of the agent is an underrecognized first step of justice (p. 24). Along these lines, and as a conclusion to this chapter, we might adapt another of Taylor’s formulas: Taylor (1985) argues that understanding a cultural practice requires understanding the agent

for whom a moral value makes sense. In absorbing this lesson, I stress the need to diversify our accounts of agency beyond the monological promotion of autonomy. We begin to do this by taking the perspectives of non-liberal agents seriously. In service of this aim, this chapter has taken up something of a reversal of the above Taylorian formula to stress the notion that understanding diverse agents requires some understanding of the various cultures within which the moral values of agents make sense. Only if we seriously embark on such an understanding can we begin to promote the agency of marginalized individuals and work towards the protection of individual interests and rights.

Ch 5: Consent as reflective endorsement

This chapter gives my alternative definition of agency for a political standard of assessment of the agential power/degree of consent to/endorsement of cultural practices of individuals.

I take reflection, broadly conceived, to be a necessary component to agency. In doing so, I affirm the liberal supposition that reflection is what qualifies actions and choices as agential, and is therefore, a requirement for validating consent to cultural practices. This requirement is conducive to my pluralist model since there is reason to believe that some version of reflection is universal to a wide range of cultural conceptions of individual agency. Where I depart from liberal theorists of autonomy is in challenging the idea that what reflective endorsement validates is necessarily the authenticity or independence of the choice, act or value in question. In my model, the conception of the reflective agent who consents does not predetermine a culturally particular theory of the individual as an independent, self-governing mind, or as an authentic or deeper self that does the endorsing. The endorsing is done by the individual, which we can pick out without assuming a theory of its essence or constitution.

Reflection in the context of non-liberal frameworks of reference might alternatively assess the moral validity of the choice, act, or value in reference to the culturally particular moral values, relationships and aims according to which the agent orients herself. The individual perspective of the agent, i.e. her reflective endorsement, matters in this process of validation in the sense that the framework of reference and its specific directives must appear moral and worthy of aspiration from the perspective of the agent herself. This is not the same as autonomous endorsement because the endorsement of the agent here is less an act of authorization as an act of recognition.[51] In the latter case, the endorsement of the agent

[51] I mean here recognition in the ordinary sense of the word, not in the politics of recognition sense.

validates because the act or choice is rationally apprehended as good; it is reflectively perceived by the agent as making good sense within the shared world of meaning in which she finds herself, regardless of the source of authorization for its goodness, which may be a hierarchically revealed prescription rather than the direction or mediation of some independent or innermost self. That is, the agent actively participates in the relevant reflective activity, but the agent is not necessarily the one who makes or authorizes the moral law that gives the logic and direction of that reflective activity. What reflective endorsement does on this model is to confirm the relevance of the good in question to the individual agent's standpoint rather than to submit the validity of the good to her will. Relevance in this sense speaks to the particular agent's needs and actualization of good rather than spanning the scope of individuated desire. On the other hand, the agent's relevant needs are not limited in definition to the normative account of cultural authorities. Rather, needs are recognized in my model as deriving from the exigencies, personal reality or endorsed commitments of her particular situation (which can only be identified by giving importance of place to the agent's first person accounts), and may manifest in the form of normatively recognized needs but could also include forms that may challenge or modify the norms prescribed by authoritative elites. Below, I develop my account of reflective agency further through a constructive critique of a feminist procedural approach to liberal autonomy.

Assessing Friedman, Part I: Setting a standard for agential capacity to consent to cultural practices

Feminist theorists sympathetic to the cultural claims of women in non-liberal cultural groups have taken up a procedural approach to autonomy in order to recognize the agency of women who affirm traditional values. The procedural approach makes this possible by divorcing reflective autonomy from the affirmation of liberal values, specifically, relational independence. The main theorist to draw from in terms of influence is Marilyn Friedman,

whose proposal for a version of procedural autonomy is based on an account of agency as reflective capacity.

Friedman (2003) defines procedural autonomy as a consistent pattern of behaviour that reflects a "perspectival identity", in which what matters for autonomy is a person's "wants, desires, cares, concerns, values, and commitments", i.e. what matters to her from her perspective (p. 11). Perspectival identity is a term Friedman (2003) coins to distinguish reflectively chosen identity from trait-based identity, which refers to "facts about [one's] birth, biology or ancestry" (p. 10). While an agent can affirm ascribed identity features as autonomously chosen traits that are therefore part of her perspectival identity, traits that are not affirmed by the agent do not count towards perspectival identity or autonomy.

Friedman's (2003) account of agency is based on the authenticity ideal, where agency is identified with the "deeper" wants of "a distinctive identity as an enduring self" (p. 7). Her reliance on the authenticity ideal is motivated partly by the conceptual need to find a substitute for the independence condition of autonomy, in which one's choices are made through socially independent reflection, and activities undertaken self-sufficiently. Instead, she recognizes autonomy in women who choose subservient norms and roles in which they are socialized to be deferent and restricted in their activities, so long as these choices are coherent with and proceed from their "deeper wants and commitments", where these deeper wants and commitments are identified as such either through explicit and honest affirmations of them as issuing from perspectival identity, or implicitly through their manifesting as consistently representative of their emotions and attitudes over time (Friedman, 2003, p. 24). In the latter case, her understanding of reflection is grounded by a connection between rationality and identity, or in Friedman's (2003) phraseology, intentional activity that amounts to "coherent rational patterns amounting to concern" in which rationality is parsed as self-coherence (p. 9).

Both the explicit and implicit affirmations are conceptually dependent on an assumption within the authenticity model of agency, the assumption being that the only "true" values are ones that are found to be attuned to some internally located "deeper" self, or consistently manifested over time and therefore emblematic of the agent as defined by an enduring identity.

Such assumptions create a challenge for recognizing self-projects in cultural contexts in which the authenticity ideal is foreign, as in the transformative project of the pietists, particularly in its initial stages of adoption. This is a problem since Friedman (2003) names the need to make a definition of autonomy more inclusive as her primary motivation for her account (p. 24). For the pietists, the model of the self is given by an external authority rather than discovered as what is most attuned to the "deeper" self, and is defined by the task of transformation of the existing self through the self-disciplined breaking down and rigorous reconstruction of ingrained bodily and mental habits and inclinations according to a received model. This externally received model then remains an authoritative standard heteronomously directing the initiant far beyond the initial stage of transformation. What matters in this conception is not authenticity to the self, but authenticity of supplication to God, a stance that is taken up through an attitude of openness to being (re-)shaped by the normative precepts of the tradition. This conception of self-realization is at least in tension with the model of authenticity—how does one identify the initiant's desire/commitment to take up the project of piety as "authentic" if the commitment before her is given by an external authority, prescribes a total transformation of her emotions and attitudes, and the practitioner initially experiences the transformations that are set out for her to undertake as inauthentic to her existent self? How does one identify the agent's "deeper" self when the spatial ontology underlying this reference is culturally dependent? (Parekh, 2006, p. 106). For example, rather than terms like 'inner' and 'outer' or 'inside' and 'outside', Jeanette Jouili's

(2015) interviews with Muslim women present a spatial ontology in which agency is understood with reference to the agent's navigation of the conflict between a higher spiritual self and one's lower native inclinations (p. 77). While the temptation may be there to assimilate this spatial ontology to equate the 'higher' with the 'deeper' self in Taylor's map of the authentic agent,[52] there is something too easy about this spatial equivalence since 'deeper' references an interiority of the self that corresponds clearly with self-identity whereas Jouili's (2015) description of the conflict is of a higher self that "pulls you up" towards God and a lower self that "pulls you down" (p. 77). It is not clear in the latter depiction how one would assess these alternatives on the criterion of self-authenticity. The risk of not recognizing the cultural particularity of the authenticity conception of autonomy manifests in these attempts to make the above translations of the conditions of authenticity to cultural contexts in which this ideal is foreign and finds an imperfect fit.

The cultural particularity of Friedman's (2003) conception of agency is further confirmed in the fact that Friedman explicitly bases her definition of autonomy on "folk" understandings in the western liberal consciousness, such as "being "true to myself," doing it "my way," …thinking "for myself," and…being one's "own person"" though she does not seem to realize that the "folk" for whom these understandings arise are particular to a specific time and culture (p. 3). Taylor, in his well-known account, *Sources of the Self* (1989), has provided a convincing philosophical anthropology of the ideal of authenticity as an account of the self that develops specifically out of Western modernity, and that, though it is globalized to a certain extent, is still limited to moral agents with a particular sensibility and perspectival reality that coincides with the ideals of liberal modernity.

[52] One might refer his theory of the authentic self to his discussion of the higher self defined in terms of Frankfurt's second order desires in his essay, "What is human agency" (Taylor, 1985, pp. 33-34).

My critique of Friedman reveals a foundational problem with the authenticity account of autonomy in that authenticity does not, in the end, divorce itself from autonomy as independence. If authenticity is definitionally opposed to socialization, then this account of autonomy does not depart from a basic principle of social independence, but merely formulates this independence differently, in terms of independence from the background influence of one's significant others in terms of socialization norms, rather than directly from their immediate demands and opinions. This is highly problematic since all agents are constituted by socialization and do not exist transcendentally as atomic selves, and this includes agents that identify as autonomous selves. Since we are always constituted through our social context, the question of the relationship between agency and socialization should not be whether we make decisions at least partly based on our socialization, but whether the socialized choices and practices promote capacities and goods valued by and beneficial to the agent.

The two critiques are linked, for it is because Friedman does not recognize the cultural particularity of the ideal of authenticity that her account retains the ghost of the transcendental agent that plagues classic liberal accounts of autonomy. The authentic self is that part of the self untouched by socialization. In other words, the authentic self is both the original and the enduring self, which suggests a connection between agency and the eternal.

Mahmood, in *Politics of Piety* (2005), rejects the narrowness of traditional liberal feminist analyses, which focus on identifying women's agency only in activity that involves resistance to or subversion of traditional or normative practices. Rather than treating agency as resistance, Mahmood is interested in exploring agency more generally as a mode of action. She draws from Foucault to conceptualize agency "in terms of the capacities and skills required to undertake particular kinds of moral actions" (Mahmood, 2005, p. 29).

As noted in the previous chapter, Mahmood's (2005) work is centred on a case study of conservative Muslim women in the mosque movement in Cairo, Egypt. She identifies a specific mode of non-liberal agency engaged in by the women in this context that is a mode of producing a particular pious self. In this mode, repeated actions engaged in by the subject work as a creative force of agency through a program of self-cultivation that produces a certain kind of self that did not exist prior to agential action. This description of agency is contrasted with that belonging to the ideal of authenticity, where the agency of the authentic self is seen in action that is the expressive product of an originating self (p. 157).

Mahmood (2005) points out that the foremost critics of the liberal conception of autonomy as independence retain the transcendental grounding of the autonomous subject in their revised accounts of agency (p. 13). This includes feminist theorists such as Benhabib (1992), Young (1997), and Friedman (2003) who emphasize the relational and embodied character of agency, as well as communitarian theorists such as Taylor (1985) who critique the atomist character of the liberal subject. While Mahmood takes up a poststructuralist approach to an alternative account of agency, she also criticizes the poststructuralists, namely, Butler (1993, 1997, as cited in Mahmood, 2005) for affirming Foucault's (1980, 1983, as cited in Mahmood, 2005) presumption of a paradox of subjectivation. Nevertheless, as Elizabeth Pritchard (2006) argues, Mahmood does not escape this paradox in her own approach since she affirms the notion that agency is the product of a prior subordination to power.

Pritchard (2006) rejects the presumption of the independent or authentic agent that transcends socialization, pointing out that: "If 'ownness' remains the test of agency and consent, then our task is quite hopeless—there is no way to wipe off all traces of our socialization in order to find the 'real' self who consents" (p. 276).

The first modification of Friedman's account I would make, then, is to detach the perspectival condition from the narrow requirements of an identity framework as based on the autonomy conception of ownness. A first-person perspective may or may not fit with a conception of the good life in which one's guiding life objective is the expression of an authentic self. It follows from this that her conditions for defining reflective endorsement must be expanded, by rejecting the narrow scope she defines for reflective rationality as limited to coherence understood in terms of identity with the authentic self over time.

Friedman parses her central concept of self-reflection in two ways: The first sense of self-reflection is that typified in liberal definitions of autonomy as involving reflective reconsideration of one's socialized wants and values. The second sense of self-reflection is where choices and actions mirror the agent by mirroring its values, commitments and aspirations by promoting them or aiming at the attainment of their objects (Friedman, 2003, p. 5). For Friedman, both conditions need to be met for a choice or action to count as autonomous. While I affirm the second condition as genuinely inclusive of non-liberal agents since choices and actions can mirror wants, values, or commitments without reference to an authentic or "deeper" self (i.e. the pietist agent can be said to have made a choice regardless of whether it is the higher or lower self that did the choosing), the first condition obviously violates this condition in its stated form.

In my modification, the first condition of reflective consideration must reference a broader range of self-reflection than that of the authenticity ideal. For example, in the case of the pietists, acting effortfully and open-heartedly on one's commitment to one's received responsibilities, according to an ideal of the pious self that is prescribed rather than discovered within, can demonstrate reflection on a self-concept that is not based on the liberal authenticity ideal, since, as argued in the previous chapter, purposive exertion and a receptive stance can signal a considered commitment and self-conscious willingness of an agent in

relation to a chosen course of action. Rather than striving for authenticity to some deeper self, the pietists seek to transform the native self to one that is authentic to a received ideal of piety which they affirm, upon reflective consideration, to be good, and to which they aspire. I see no reason why this latter form of self-reflection is less indicative of agency than reflection which affirms socialized wants and values as authentic to one's sense of an inner self, when this sense of identification may not be universal.

In another model of reflective agency, where the mode of agency is heteronomous, the object of reflective endorsement may not be a choice, or value, but the authoritative proxy, who is evaluated by the heteronomous agent as worthy of her trust.

Friedman's second condition takes up a second sense of reflection as reflecting an agent's wants, values, and commitments. These wants, values, and commitments are those that are affirmed or would be affirmed in the first condition.

Monique Deveaux gives a modification of Friedman's second sense of reflection that reflects the modification I have made to Friedman's first condition, though our aims in doing so differ. Self-reflectiveness is parsed by Deveaux (2006) as entailing voluntary actions that "reflect or help to secure something the person has cause to value", i.e. the actions reflect the person's identity, [*or*] needs or values, either directly or instrumentally (p. 178). Deveaux rejects Friedman's coherence requirement in the first condition as overly demanding. Her main motivation is to be inclusive of the reality of pragmatic choices women in restrictive social contexts often make, where the choice is not so much in favour of a practice that is intrinsically valued as a way to affirm one's distinct identity and autonomously chosen ideals, but instrumental in favour of a larger bundle of goods that includes an otherwise undesired practice (Deveaux, 2006, pp. 170-171). The example Deveaux (2006) gives is the situation of South Asian women going along with an arranged marriage for the bundle of goods that

includes the acceptance and support of one's parents, and the opportunity to marry and have a family (pp. 170-171). While Deveaux's modification is intended as a way to accommodate such pragmatic instrumental compromises by recognizing them as procedurally autonomous choices, this lifting of the coherence requirement also serves my purposes by extending the definition of choice to include moral choices related to self-projects that are not connected to the authenticity ideal, as in the case of the pietists. For neither Deveaux's instrumental choosers nor Mahmood's pious aspirants is the choice in harmony with a coherent, enduring and original self. Rather, the modification recognizes that choice can occur in the face of substantial conflict with the self, where the conflict is not resolved by asking which aspect of the self is truer or deeper for one's identity, but by reflection, broadly and minimally defined, that gives a reason that has moral or ethical value, or pragmatic benefit to the individual as affirmed from her perspective through the first condition of reflective endorsement.

A conceptual implication of the lifting of the coherence requirement is that the test of choice and consent, in the case in which an authenticity ideal is not endorsed by the individual, relies more heavily on the broader definition of rationality to externally assess the reflectivity of assent. The definition of rationality is given by Friedman (2003) herself: A rational reason for choosing or consenting to a practice is parsed here in terms of either a subjective belief that is coherent with the perspectival identity of the individual, or with an objective fact of rightness or goodness (or benefit) for the individual: "a reason for someone to act in a certain way is either a belief by someone that that action is right or good, or some fact in virtue of which it is right or good" (p. 9). In the latter case, then, the validity of choice and consent is explicitly measured not solely in terms of "internal" beliefs, but also in terms of facts in the world. These facts in the world are not strictly empirical facts, but involve moral and ethical judgments that necessarily implicate evaluations of cultural context and socialized judgment. And as I argue in this and other chapters, recognition of moral pluralism

means that what defines the rationality of a reason cannot be determined without engaging with the relevant moral framework that situates the perspective of the agent in her cultural world. This is not the same as accepting the account of moral legitimacy given by the dominant group in that cultural context. On the contrary, the frame of reference must take account of the range of perspectives of those situated similarly to the agent within the culture in question. Where the agent is of the subordinate class within the group, rationality should be measured in comparison to the range of views within this subordinate class.

Pritchard (2006) provides a conceptual tool for a contextually and culturally dependent assessment of the rationality of a reason to consent. Pritchard (2006), drawing from Elaine Scarry, defines the normative dimension of consent as the mutually beneficial constitution of institutional power and the human subject (p. 276). In other words, within the relevant moral framework, implicit consent to normative socialization (or simply, socialized choice) can be assessed as to its rationality by reference to Scarry's measures of wounding and making. Making is signified by the "tool" which acts without injury or pain, for the purpose of "making sentience shareable", that is, for the constructive purposes human agents have in the course of building meaningful lives in association with others, and this includes the molding and educative functions of socialization (Pritchard, 2006, p. 272). The key characteristic of agency as making is that it is facilitative of agency and contributes to its expansion. In contrast, wounding is signified by the "weapon" which acts on the sentient human body to inflict harm. It represents "an antagonistic relationship whereby power/agency in one location is signified by pain in another" (Pritchard, 2006, p. 272). The key characteristic of agency as wounding is that it is destructive or restrictive of agency and contributes to its suppression. Thus, according to my argument in Chapter Four, one might say that wounding is the mode that cultures of abuse, and not simply ethnocultures, employ, though this is, strictly speaking, a heuristic distinction, since ethnocultures and cultures of

abuse overlap and for that reason, ethnocultures also wound. Applied to the pietists, one might note that these women are wounded through their socialization into the acceptance of gender inequality, but also that they gain a capacity for making, through expanded relationality and access to spiritual fulfillment. Thus, where the agent's reflective reasons for consenting reference or endorse a capacity for making—particularly where capacities for wounding are also recognized, but cited as weighing insufficiently against those for making, this speaks to the rationality of the consent.

Deveaux's account removes Friedman's requirement for self-consistency, thus distancing autonomy from the culturally specific authenticity ideal. Her motivation for this conceptual modification is to make the standard for validating autonomous action less demanding and thereby inclusive of a greater number of women. She makes this argument within the context of a political (rather than juridical) argument that focuses on the concrete end goals of a democratic negotiation. She defines agency broadly as "any activity or expression that signals a response to a prevailing social norm, custom, role, or arrangement", then elaborates that, "At the core of this broader understanding of agency that I propose to sketch here lies a procedural account of autonomy which emphasizes degrees of reflection about one's values and attachments, but does not insist that central aspects of one's identity must be submitted to significant critical scrutiny" (Deveaux, 2006, p. 173). On her first point, I affirm Deveaux's redefinition of the "test"[53] of agency as reflective activity that is at least partially determinative of the agent's behaviour, and as divorced from liberal perfectionist accounts of the self as formulating independent ideals or as motivated by an authentic self.

[53] I put this in quotation marks to give some semantic indication of the fact that I have moral problems with the very conceptual terminology of a test of consent, insofar as it originates from, is generally used in the context of juridical arguments, and insofar as it implies the favouring of a juridical approach to the political empowerment of women or "internal cultural minorities". By juridical I mean, following Melissa Williams (1995), arguments and approaches that favour or foreground a top-down, state-imposed approach to the empowerment of "internal minorities". The paradigmatic example of a juridical approach is that of liberal democratic constitutionalism (Dryzek, 2002).

However, I find problematic Deveaux's (2006) elaboration of this broader account of agency as having a form of autonomy at its core and as gradating the degree of reflective agency outward from this core.

Moreover, Deveaux's (2006) approach might be criticized for naturalizing the liberal regime of freedom in her conception of agency by framing the accounts of minority women's agency primarily in the liberal language of resistance and subordination, and doing so without substantive engagement with the moral languages (i.e. moral or textual traditions) in which at least some of the women in the cultural groups understand their own agency. For example, Deveaux (2006) makes reference to tracking activities of acceptance and rejection of cultural traditions such as "subverting a cultural tradition from the inside", and "the myriad ways in which women in traditional cultures challenge, revise and reaffirm aspects of cultural practices and arrangements" (p. 173). The problem here, drawing on Mahmood and Pritchard's work, is that a breadth of scope of agency is affirmed in terms of degrees of liberal autonomy but not kinds of agency, i.e. culturally particular capacities or powers (p. 173). While this helps to focus the discussion on the political aim of emancipation in ways that the women in her study affirm, the danger is that the activity and aims of non-liberal women will be prematurely misrecognized and categorized as lesser or even immature expressions of autonomy, or missed altogether.

Other attempts to broaden the analysis of autonomy to include non-liberal forms of agency do little better in this regard. For example, Saharso (2000) claims procedural autonomy is accommodative of South Asian upbringing that is based on relational autonomy. She refers to Ewing's conception of intrapsychic autonomy: "It means that 'in many South Asian families, individual family members do in fact act in an autonomous fashion intrapsychically, while . . . accepting the demands for conformity within the family' (1991: 139)" (Saharso, 2000, p. 15). Intrapsychic autonomy, as the content of Saharso's conception

of relational autonomy, does not turn out to be a different form of agency so much as a different location for autonomy as independence—in thought rather than in choice of action, this different location amounting to a different scope for autonomous capacity, that is, one is autonomous in thought where circumstances prevent autonomous action. This account describes a liberal self trapped in an illiberal society.

Additionally, Saharso identifies intra-psychic autonomy closely with self-esteem, an identification that in my view, risks conflating the two. She defines intrapsychic autonomy through Ewing (1991, as cited in Saharso, 2000) as "'the ability to maintain enduring mental representations of sources of self-esteem and comfort…'" (p. 15). Liberal agents conceive self-esteem as a resource for autonomous capacity, a view expressed by one of Mahmood's (2005) interview subjects, a liberal Muslim named Sana: "Self .... esteem makes you independent of what other people think of you. You begin to think of your worth not in terms of marriage and men, but in terms of who you really are, and in my case, I draw pride from my work and that I am good at it" (p. 172). As Mahmood (2005) explains of Sana's outlook, "For Sana the ability to survive the situation she faced lay in seeking self empowerment through the cultivation of self esteem, a psychological capacity that, in her view, enabled one to pursue self directed choices and actions unhindered by other people's opinions. In this view, self·esteem is useful precisely because it is a means to achieving self directed goals" (p. 172). While I agree with these accounts that self-esteem is a key measurement of an individual's healthy psychological capacity for agency, it is important not to define it exclusively in terms of liberal independence and the personal aims it generates. For the pietists, self-esteem can also stem from one's faith in one's unconditional worth as a child of God, and this version of self-esteem has a different manifestation—not immunity from pain

that protects one's personal aspirations, but voluntary submission to God's will and the commitment to live that submission with strength of character (Mahmood, 2005, p. 172).[54]

I distinguish my account of perspectival agency from proponents of procedural autonomy by problematizing the transcendentalism and narrowness of the liberal definitions of agency as autonomy that ultimately ground these accounts, and instead affirming a constitutive connection between particular definitions of agency and the cultural frameworks of morality in which agency manifests. In doing so, I locate perspectival agency explicitly within a moral pluralist ontology that necessitates substantive cross-cultural engagement of moral values in political theory. The implication of this position is that practical assessments of the capacity of individuals to consent to cultural practices cannot rely exclusively on liberal definitions of autonomous reflection, but must give recognition to the moral frameworks in which agency is exercised by attending substantively to the perspectives of marginalized groups and their most vulnerable members and engaging these in open-ended negotiation with internationally agreed upon human rights minimums.

Assessing Friedman, Part II: Background conditions for establishing the minimum for agential capacity for consent to cultural practices:

The standard of consent to cultural practices is defined minimally, so that the threshold for top-down intervention (by the larger state or an international governance body) into internal group affairs is set high. The primary mode of cultural change and reform is democratic and internally-led. The role of state and external actors is supportive and secondary.

[54] Alternatively, some psychological studies on collectivism have noted that members of collectivist groups score low on self-esteem but correlatively high on group esteem. That is, their sense of self-worth, rather than being tied to individual characteristics or achievements, is tied to their participation in and belonging to the group with which they identify—the achievements and standing of the group raise their levels of esteem. (Hernandez & Iyengar, 2001)

Liberals, including those sympathetic to the values of multiculturalism, have generally given three types of background conditions for validating the agential capacity of individuals to consent to cultural practices. Friedman (2003) gives a representative account that covers all three of the most common conditions that I will address.

The first condition is non-coercion. Friedman (2003) articulates this as the condition that "[individuals] be able to make their choices relatively free of coercion, manipulation, and deception" (p. 188).

While I affirm a standard of consent as non-coercion, coercion can sometimes be defined overbroadly. Uma Narayan (2002) critiques Friedman's version of this standard along these lines, and offers a useful conceptual clarification between "literal coercion", where individuals are subjected to a cultural practice completely involuntarily, and "situational coercion", or the involvement of strong social pressures and the threat of serious social consequences in bringing about consent (p. 425, p. 429).

Narayan gives two parallel examples to illustrate what she means by situational coercion, that of veiling for Pirzada women, who belong to a conservative Sufi community of Old Delhi, and make-up for American women. For Pirzada women, there is a considerable amount of social pressure and social force in policing the obligation to veil, in the form of the expectations and enforcement of family members, and serious consequences to not veiling that may include the threat of being ostracized from family or community. For American women, the sense of necessity felt to 'veil' themselves with make-up is constructed by comparable pressures which include considerable manipulation and deception by the beauty industry, sometimes intensive levels of peer pressure and societal expectation, and serious consequences that can include the loss of employment opportunities and advancement in

certain professional contexts for women who refuse to conform to beauty standards (Narayan, 2002, pp. 428-429).

Where the standard for state intervention is defined with this broader interpretation of coercion in mind, this has the harmful effect of further denying the already limited agency of individuals in restrictive social situations so as to compound the disempowerment experienced from within their family or community context with state-mandated measures that invalidate their remaining choices. I follow Narayan (2002) in recommending that, in defining a standard for state intervention, coercion be limited to the narrower definition of literal coercion. I add, however, Monique Deveaux's (2006) elaboration of this narrower definition of coercion as including physical force, the threat of physical harm, and the presence of physical and/or psychological abuse as conditions which invalidate consent to a social arrangement or practice. While strong social pressure can become excessive to the point of psychological abuse in certain cases, there is a significant moral difference between the two that can serve as a useful guideline for assessing the capacity to consent. In the simplest terms, psychological abuse causes trauma that harms an agent's psychological capacities as an agent, while social pressure applies social force to influence an agent's specific choices. On a practical level, qualified medical experts with the relevant cultural experience can be consulted to make diagnoses of psychological abuse in relation to actual cases. In situations of abuse, successful and appropriate state intervention still requires attention to the abused individual's stated desires and psychological readiness to accept intervening assistance.

As should be clear from the above discussion, "situational coercion" does not qualify as actual coercion if coercion is understood as precluding choice, for, as Narayan argues, even women under highly restrictive social constraints do not simply comply by surrendering their agency. In articulating a standard for protecting women's agency, recognition of the

actual scope of the exercise of agency is crucial. Women demonstrate active agency by "bargaining with patriarchy", negotiating their compliance with patriarchal structures within whatever space they can make available to themselves (Narayan, 2002, p. 422). They sometimes make calculated choices in order to secure genuine stakes they have in cooperating with certain undesired cultural practices or arrangements in a given context. What they choose in such instances is the "mixed bundle" of goods that participating in their cultural community offers (Narayan, 2002, p. 422). Consent under such circumstances arises out of the exercise of instrumental compliance for the sake of identity and value commitments as well as practical benefits and goods. The relevant compromise may be to certain socially mandated obligations or prohibitions that are accepted as part of an endorsement of the larger values and cultural identity to which they are committed, or the compromise may be for practical benefits—social status or professional advancement as in the above cases, or in the case of arranged marriage, access to a socially sanctioned route to sexuality, having children and a family of their own (Narayan, 2002, p. 424; Deveaux, 2006, p. 171).

Such compromise choices should be recognized as genuine consent to otherwise undesired cultural arrangements since goods generally come in "mixed bundles" for any individual, requiring tradeoffs of undesired goods for those desired, a situation that often arises out of unequal power dynamics (Narayan, 2002; Deveaux, 2006). While for certain vulnerable individuals, the constraints may be particularly higher, it is crucial that confrontation of such unequal circumstances should stop short of denying the agency of vulnerable individuals making such compromise choices. As Narayan (2002) advises, "Regarding women's compliances with "cultural practices" it is important for feminists to maintain a dual awareness--seeing both how the practice imposes constraints on choices and how choices are in fact being made within these constraints" (p. 422).

The alternative to top-down prohibition is the route of internally-led reform. In this approach, the role of the state and external actors is secondary rather than primary, in supporting the democratic empowerment of the vulnerable members of cultural groups to increase their capacity to shape their social context. Thus the intent behind the recommendation for a higher threshold for state intervention according to the more minimal definition of literal coercion is not to imply that situational coercion is harmless, but to preserve conceptual distinctions that support a strong stance against counter-coercive measures from the state to implement cultural prohibitions in a paternalistic fashion. Additionally, on a practical level, some theorists have noted that progressive change is more likely to occur through processes that centrally engage community members, while state-implemented prohibitions can often produce a conservative backlash from within the community (Narayan, 2002, p. 428; Eisenberg, 2002; Deveaux, 2006).

The second condition typically offered by liberal theorists for validating agential capacity for choice is that there be "a significant and morally acceptable array of alternatives" available to the individuals in question (Friedman, 2002, p. 188). Deveaux (2006) raises the point that, in the first place, it is not at all "clear why the lack of available options and choice *per se* should be a definitive indicator of the presence or absence of autonomy for women" in all cases (p. 162). Narayan (2002) gives the counterexamples of socially compulsory veiling and make-up that prove the point:

> It is not a "morally acceptable alternative" for the Pirzada woman to be ostracized by her family and community, or for the American woman to lose her present job. But surely these women make clear choices when they conform to these requirements in the absence of acceptable alternatives. They are choices to do something they don't really want to do but would rather do than face the unacceptable consequences of not so doing, and there are benefits to compliance that the agents are aware of and genuinely desire. I am genuinely puzzled as to why such choices are not procedurally autonomous or worthy of respect. Although I have no quarrel with the view that both women might benefit from having more acceptable alternatives available, the lack of

> such alternatives seems a reason for *respecting* their choice rather than a feature that *counts against* it (p. 429).

These count as choices precisely because a morally rational judgment is made by the women, acting as capable agents, through identification of the difference between a morally acceptable alternative and a morally unacceptable alternative, according to a moral framework that is endorsed through that judgment.

This argument, in my view, should prompt us to recognize the significance of a distinction here between access to alternatives and awareness of alternatives and evaluate them separately as conditions for establishing capacity to consent to cultural practices. It was reasoned that the choice of Pirzada women to accept socially mandated veiling was a choice even in the absence of access to socially viable alternatives, and one of the supportive reasons offered was the women's awareness and rejection of alternatives, including a disparaging opinion of women who do not veil. Similarly, the American professional woman who chooses to wear make-up in order to increase her chances of professional advancement is aware that the alternative is to not wear make-up, reject the beauty norms imposed on her, and thereby gain the benefits of freeing herself from the time and monetary burden that accompanies the practice. In other words, part of what it means to choose is to choose against an alternative according to recognizable reasons, and often these are moral reasons.

Having clarified this distinction between access and awareness, it becomes apparent that the problem in their situation is misidentified--the situation that presents a lack of access to alternatives in the above cases does not produce a complete lack of agency on the part of the women, but a lack of liberty (Narayan, 2002, pp. 429-30). While agency and liberty are related concepts, this is a crucial distinction to make because it makes the difference between a framework that respects women's choices and seeks to support their empowerment by working towards their access to a greater range of options that would be desirable to them,

and a framework that compounds women's oppression through misrecognition of them as lacking agency (Narayan, 2002). The former approach provides a way to begin to identify additional options which would be morally acceptable to the women in question, by attending to the moral framework which determines their judgments about moral value from their own agential perspective. The latter approach precludes this because it fails to recognize that the women have agency at all. This results in a rejection of their choice as a non-choice, and a substitution of that choice with an externally imposed option through state prohibition of cultural practices and arrangements, or withdrawal of cultural protections, options which are often not perceived by the women in question as an expansion of choice or liberty (Narayan 2002).

Part of the problem of why liberals often underrecognize that women within restrictive social circumstances are already making choices is that they underrecognize the range of choices available to women in closed cultural communities. This is because the liberal tradition arises out of a theoretical context in which choice is historically defined in opposition to tradition, which tends to be thought of in the contemporary literature as static, monological and homogeneous. Contrary to this picture, the practice of any tradition, no matter how seemingly rigid and under the control of authoritarian elites, necessitates the daily and continuous navigation of a range of choices. This is because both life situations and traditions themselves carry within them internal conflicts that arise from the confrontation of novel circumstances or of competing norms that call on individuals to make everyday reflective decisions about their values, priorities and preferences, as is apparent, for example, in the situations recounted by Mahmood and Jouilli and discussed in Chapter Four.

While in many cases, improving the quality of life of vulnerable individuals will still require increasing their range of options beyond what is currently available to them, examining the direction in which women navigate everyday conflicts within constraints can

give a wealth of information about their preferences and values in terms of the aspects of the authorized culture they endorse and those they reject, and the extent and kind of external support for reform and access to opportunities they would welcome and experience as liberating. The point being made here is that the argument for increasing the range of acceptable alternatives that are available to women requires rather than precludes respect for the actual choices of women in restrictive social circumstances, because what qualifies as a morally acceptable alternative is subject to the moral and practical frameworks within which the judgments of the women who make these choices derive significance. Liberal alternatives may in many cases conflict with the cultural frameworks and practical aims of the women in question, and if liberal alternatives are implemented in a way that supplants existing options, this serves to preclude rather than expand women's agency.

A key example is the prohibitions on veiling that have been carried out as part of state-sponsored movements to modernize Muslim societies according to a European model, as in Iran and Turkey in the 1930's, as well as more recent legislation in Western contexts such as France and Québec where secularization policies have included bans on veiling in public institutions. As Homa Hoodfar (2003) recounts of the Iranian context, laws that made veiling illegal in public spaces, rather than freeing women from patriarchal constraints, caused them to be effectively imprisoned in their own homes, since going outdoors without the *chador* was for them, equivalent to going out naked (p. 9). The law prevented them from accessing opportunities for employment, condemned them to social isolation, and made them entirely dependent on male family members and neighbours for simple tasks such as grocery shopping and everyday errands. Women who dared to go out with a headscarf or *chador* in defiance of the law were subject to harassment, assault and arrest by police who were charged with the power to chase non-cooperative women and strip them of their veils.

In the Québec context, where certain newly hired public sector workers such as teachers and police officers are, as of June 2019, now banned from wearing “ostentatious” religious symbols while on the job, large areas of employment are made inaccessible to Muslim women who veil and to other marginalized individuals. While secular freedom is the official rationale underlying the new law, liberal feminist objections to the veil as a symbol of patriarchal oppression were key to the legislation’s popular support. While existing public workers are exempted due to the inclusion of a grandfather clause, career advancement is conditional on the removal of religious symbols, such that a Muslim teacher for example, could not accept a promotion to school principal without agreeing to remove her veil. In addition to its primary effects, the ban has had secondary effects of increasing incidents of harassment and assault on Muslim women in public spaces and has been associated with an escalation of anti-immigrant sentiment in the province and across Canada.

While the state prohibitions on veiling present a dramatic example, liberal interventions can also diminish local agency in a more subtle fashion, in cases where liberal actors co-opt local women’s self-descriptions through assuming or imposing a liberal moral framework onto women’s narratives of struggle. Avigail Eisenberg (2002) points to the prominent model of Martha Nussbaum’s (1999) liberal interpretations of women’s narratives in the international development context as a straightforward example of this sort of liberal appropriation (pp. 617-618, 626). Eisenberg asks “why one should think [as Nussbaum does,] that every time someone talks about personhood, autonomy or self-respect, that they are speaking the language of liberalism", particularly when such claims are then used, as Nussbaum does, as a basis for the further claim that liberalism is always the best or the only means to women’s empowerment and liberation (Nussbaum, 1997, pp. 1-3; 1999, pp. 55-56; Eisenberg, 2002, p. 617-618, 626).

Liberal narratives can also have indirect effects. For example, In the Québec context, the liberal secular framework of the Bouchard-Taylor commission report (2008) played a primary role in affirming the categorization of the *hijab* as a religious symbol over the competing interpretation of it from some sectors of the Muslim community as a culturally normative form of modest attire. This framing contributed, in the view of some Muslim organizations, to facilitating the state's efforts to target the *hijab* for prohibition by connecting it to the issue of secularization (Sharify-Funk, 2010, pp. 548-549).

Avigail Eisenberg argues that this liberal approach is not only deficient with respect to agency, but also poor strategy, particularly in cases where a history of colonial oppression sets the stage for a conflict between a group's identity and self-governance aims and the liberal state's intervention for gender equality within the group. Where faced with such a dilemma, Eisenberg (2009) notes that, "unsurprisingly, some women will reject the conclusion that cultural accommodation is a lesser interest and instead put their faith in their cultural community, even helping to define their community in terms that build upon a rejection of the liberal principles foisted on them" (p. 74). I add that this rejection is sometimes if not often also principled rather than only a result of conservative backlash.

Glen Coulthard (2014a) gives an astute account of how liberal theorists can render themselves complicit with the colonial state in insisting on the absolute priority of women's freedoms over cultural protections for indigenous peoples while neglecting the colonial power dynamics that underwrite such conflicts. He critiques Seyla Benhabib as a representative example in this respect. Benhabib (2002) defines cultures as essentially fluid entities, thereby positioning the aims of group elites who would restrict this fluidity by restricting the options available to its members as inherently illegitimate. In doing so she makes cultural protections contingent upon the absence of restrictions from group authorities on the contestability of cultural norms within the group. However, by focusing exclusively on

preservationist efforts within the group, she ignores the causal elements of women's oppression that arise from the colonial aims of the state. In such a situation, solely denying the essentialist cultural claims of male elites to reject the terms of the White Paper would have merely cleared the way for the assimilationist goals of the state, which is not only a colonial but also a patriarchal institution (Coulthard, 2014a, p. 97).

In light of the risks of such liberal appropriations, Narayan (2002) makes the following judgments:

> With respect to such practices, I believe that it is usually unproblematic if feminists support two kinds of actions on the part of the state. First, the state ought to intervene to protect women in cases of outright coercion, where women are subject to the practice entirely involuntarily, and protect their ability to exit from the coercive situation. Second, the state should actively foster a number of legal and social changes that improve women's powers and opportunities to negotiate their encounters with these practices-providing women with opportunities for education, employment, ownership of property and the like, opportunities that might empower women to rethink, modify, or reject these practices. However, I believe that improving the range of options women have with respect to these practices is vastly different, both morally and politically, from using coercive state intervention to outlaw or illegalize such practices on the grounds that the cultural constraints render women's decisions to comply with such practices "not really choices in any meaningful sense." I am going to argue that feminists should *not* support coercive state intervention against such practices, for a number of reasons (pp. 425-426).

I cautiously support Narayan's suggestion that states should take a supportive role in women's empowerment by providing programs supporting women's economic independence, with the proviso that attention to women's own accounts of their lives, values and challenges be drawn on so as to optimize the success of such programs by minimizing conflicts between women's economic freedom and their identity aims, and not make the former conditional on the sacrifice of the latter. The best way to do this is to allow women reformers within the community to take the lead in designing these programs, while partnering with state actors and experts to realize these efforts. The potential problems of state intervention that takes a leading rather than supporting role is evident, for example, in

Narayan's assumption that liberal forms of property rights are part of any package of economic emancipation. This assumption played a large role in the threat the White Paper proposals posed to indigenous culture, sovereignty and survival.

The third condition for establishing agential capacity to consent concerns the requirements that provide for the early development of agential capacities for reflection and decision-making. Friedman (2002) defines this only vaguely, by stating that "The right sorts of opportunities and guidance must have occurred in order for women to have developed these general skills of practical reflection" (p. 188).

There are two key problems I see that can arise in the course of defining this third condition. The first problem stems generally from the definitional opposition between autonomy as authenticity, and socialization, non-liberal socialization practices in particular, as has been discussed earlier. The second is that capacity for reflective agency is sometimes conflated with the acceptance of traditionally liberal values such as gender equality. While I do not intend to deny the value of gender equality, I do want to make room for gender equitable conceptions of gender complementarity insofar as they are empowering and/or affirmed by women themselves.

Returning to the example of Kymlicka, he states that a broad liberal education is required to protect the ideal of autonomy, parsed as the capacity to question religious practices rather than simply accepting their authoritative truth (as cited in Deveaux, 2006, p. 157). In exploring liberal standards for validating the legitimacy of state funding for faith-based schools, Kymlicka (2015) notes that if the state funds religious schooling, it can require schools to include curriculum that gives students the critical tools to question religious practices (p. 29). What is notable about Kymlicka's statement is what he assumes as the content of this critical education. For Kymlicka, what qualifies as questioning religious practices is not simply the acquisition of critical tools of reflection, but challenges to religious

practices in favour of the acceptance of liberal values: specifically, mandated education in liberal democratic values of gender equality, gay rights, and multicultural tolerance (Kymlicka, 2015, p. 29).

In light of this liberal conflation of critical tools of reflective questioning and liberal values, it is necessary to separate the two issues, namely, ensuring the conditions for minority individuals to acquire the reflective capacity for consent and choice of cultural practices, and deciding when it is morally and politically justified to impose liberal values against the choices of individuals and groups.

In relation to the first issue, I propose that education in autonomous reflection is not needed to satisfy the requirements of individual agency if a standard of socialization and education can be established using a less culturally particular conception of agential reflection. There is a tendency of liberals to view culturally traditional socialization practices with suspicion, as inherently inhibiting reflective engagement, with the result that it is assumed that the very act of conceiving changes to one's traditional culture is to conceive, not only, liberal changes such as the adoption of liberal norms of gender equality, but to conceive them through autonomous reasoning. Liberals implicitly conceptualize tradition as the conceptual opposite of reason--as stipulative and authoritarian rather than as subject to interpretation, possessing a complex internal logic, conceptual depth, internal tensions and ambiguities that require and cultivate reasoning and reflective agents as practitioners.

As explored in the first chapter of this section, non-liberal traditions have their own internal moral logics which can be mastered by women and used in service of their aims and values, sometimes in conflict with the preferences of those who are socially sanctioned to have authority over them within that same tradition, and this training in moral reflection has the capacity to produce novel choices, through the transference of skills acquired in navigating intracultural choices to develop the capacity for intercultural exchange and even

the motivation to exit from the group. This training can be supplemented with the teaching of human rights norms, as well as multicultural education aimed at promoting tolerance and understanding of cultural groups, particularly those with whom the community will have the most contact. The difference between Kymlicka's proposal and mine on this point is that these latter educational aims do not have to be taught through a liberal lens in which the primacy of rights, particularly civil rights over socioeconomic rights, and autonomy as the detached rational choice of cultural ends shape the framework in which these topics are presented. For example, many religious groups in Western liberal societies do endorse the aims of human rights and multicultural education, but prefer to present these through the framing and priorities set by their religiocultural tenets. For example, emphasizing that rights go hand-in-hand with responsibilities, and that multicultural education is important for dialogue and learning between groups, but is approached from a situated perspective in relation to the religious ends of their particular theological tradition.

In light of this evidence, a state-mandated requirement that religious schools teach students to engage in autonomous reflection, i.e. in a detached Kantian manner as Kymlicka describes the ideal, would be unjustifiable. However, a requirement for compulsory education in multicultural tolerance imposed on integrated "immigrant" minorities and integrated, conservative, or authoritarian-leaning or xenophobic religious groups would be justifiable as a condition of developing the civic values needed for living in a pluralist society and an increasingly globalized world.[55] Multicultural tolerance is a value that protects peace and order and respect for different cultural groups to coexist within a pluralist society. There is a

[55] Imposing this requirement on non-integrated groups like the Amish might be morally more problematic, since the Amish arguably do not need these civic values, or at least need them at a more minimal level, since they do interact to some extent with the external society for financial and educational reasons. However, a substantive right of exit should be supported for groups like the Amish in other ways, like socioeconomic programs that are developed in cooperation with Amish groups or subgroups who are vulnerable and, in actual fact, do want educational opportunities and training in institutions in the external society, since they, like every other human community, need to adapt to globalized modernity and industrial capitalism at least to some extent, despite their valuation of an agrarian, religious, and trades-based way of life.

difference between instilling the civic value of tolerance and respect for the beliefs and practices of other groups, and setting up a liberal relationship of the individual to her own religion and culture as one alternative that may be chosen among many. The requirement of multicultural education would have the incidental benefit of exposing children to alternative ways of life from that of the religion and mores of their cultural community, and produce the benefits of this exposure for informed choice, to the extent that liberals are right to judge that this kind of exposure is necessary. I do believe it is valuable, but perhaps to a lesser and/or less universal extent than some liberals.

With regards to the second question of if liberal states are right to impose liberal values on their citizens or "national minorities" against their reflectively sanctioned preferences: This depends on whether the liberal values in question have universal moral validity, not whether existing preferences are the result of reflective choice. I would argue that there is good reason to assert gender equality as a universally endorsed moral value, but question the universal validity of the liberal version of gender equality as affirming an identical set of choices and roles for men and women in all cases. Certain non-liberal views of gender equality can be recognized as morally reasonable even where they include forms of gender complementarity and difference. On a point on which Kymlicka and I do agree, liberal states and international authorities should hesitate to impose such values forcibly and through legally coercive and broadly encompassing means, and should always prioritize dialogue with the group in question as a first and ongoing step in supporting reform where needed and desired by the vulnerable of the group. However, a crucial aspect that makes this dialogue respectful and politically effective, I argue, against Kymlicka, is the recognition of moral languages and moral pluralism through that process of dialogue. Moreover, reform should always be internally led (and I argue that this is always possible because vulnerable subgroups are rarely or ever wholly stripped of agency). The role of external actors, state, or

international authorities should always be secondary and supportive. A significant part of this support, however, can include in many cases, the active seeking out of the moral, cultural, and political perspectives of the vulnerable of the group in identifying their reformative aims. A big part of this support is attending to democratic activity, as Deveaux argues. I give an account of her description of forms of democratic activity in the next and final chapter.

On an additional note, while I affirm a pluralist account of gender equality as having universal moral validity, it is important to stress that the priority of gender equality in application to actual cases is not absolute. It is rational to weigh it in application against comparable cultural goals such as identity on the individual level and survival on the group level, which may be deemed, upon reflection, to be more important to the agent or group. For example, Islamic feminists, in their efforts to improve the conditions and options of Muslim women, do not compromise the basic Islamic value of piety as submission to God's will, and therefore, tend to frame their feminist aims within the constraints of a literal interpretation of the Qur'an rather than in modification of it. Nevertheless, in their view, they have found adequate resources within these constraints to support certain substantive measures of material if not formal equality for women. Taking the example of polygamy, though the *Qur'an* and Egyptian law permit polygynous marriage, and a woman does not have the religious right to deny her husband if he wishes to marry again, the women in Mahmood's study drew on the resources they had within the religious constraints they endorsed to assert their rights. Rather than declaring the *Qur'anic* provision for polygyny outdated or illiberal, Mahmood (2005) notes that "Nadia and other participants of the mosque movement would often point out that, according to the Qur'an, marriage to more than one woman is conditional upon the ability of a man to treat all his wives equally (emotionally and materially), a condition almost impossible to fulfill" (p. 171). Moreover, some further consideration for women's interests is provided for in certain schools of Islamic jurisprudence. Mahmood

(2005) notes that "Both the Hanbali and Maliki schools of Islamic jurisprudence permit a woman to stipulate in her marriage contract that if the husband takes a second wife, she has the right to seek divorce" (p. 171 n.13). Thus, while the pietists reject liberal Muslim approaches to protecting women's marriage rights, and furthermore, even accept a formally subordinate status under religious law, they balance their religious and gender-related interests according to a schedule of priorities that, while decidedly not liberal, is preferable to them and protective of their material and moral interests.

Picking up on an earlier point, I endorse the idea that liberal states have a right to actively promote, through non-coercive means, liberal values that have universal moral validity. They could do this by making funding for religious schools conditional upon the inclusion of multicultural curricula oriented by a tolerance aim, or through non-exploitative, non-conditional, voluntary programs that promote the financial or political independence of women in attempts to increase their range of choices, or through supporting the moves of women themselves to enact change or to negotiate with group elites on a more equal level. Additionally, autonomy can be promoted in interventionist measures as having instrumental rather than intrinsic value in some non-liberal contexts where equality conditions or the conditions for a minimally decent life are not met.

From Friedman's discussion of conditions for consent, I keep the substantive account of a legitimate reason for choice and consent as supporting a "minimally decent life". Such an approach requires the intercultural identification of minimal moral universals. Objective measures such as basic human rights are the obvious candidate, provided that these admit variations in the schedule of rights dependent on the culture of reference, democratic assent, and a right of exit.

Ch 6: Beyond consent- relative power and empowerment

Defining agency in terms of capacities has the consequence of broadening the analysis of agency beyond the capacity for autonomy to consent to cultural practices to encompass plural capacities for agential power that can be taken into account in a relative measure of the democratic agency of individuals in a community. We can look to studies of agency in non-liberal contexts to enumerate some key examples of alternative agential capacities and the criteria that would be relevant to assessing them.

Pritchard (2006) offers alternative criteria to assess agency and identify power inequalities through her theory of agency as making. Rather than measuring the scope of choice and independent action as liberal autonomy aims to do, she relates agency as making to the relational criteria of "reduced vulnerability, expanded relationality and access to and construction of artefacts of varying and significant scale" (p. 280). According to Pritchard, agency is increased by relational connectivity through the creation of shared objects, culture and language, which extend the range of an agent's sentience and effectivity in a social world. Pritchard's alternative measures of agency can be used to expand the assessment of agency beyond a standard liberal account. In the current study, I treat these alternative measures as additive to and expansive of rather than as replacing autonomy. My pluralist approach also rejects the liberal use of autonomy as a trump that negates the value of all other measures of agency; autonomy is to be measured alongside rather than as a priority over other forms of agency.

Pritchard's first criterion of reduced vulnerability can be understood as the effect of an increase in agency through the benefits of group membership. We can reason that individuals who feel safe and have a social network as a support system and source of collaboration are better equipped socially, materially and psychologically to pursue life goals. In the cognitive psychology literature, research shows that agents who identify as being

collectivist rather than individualist are empowered by secure group belonging, which has direct positive effects on motivation in general (Hernandez & Iyengar, 2001). In individualist societies, one can make reference to the long tradition of social contract theory in Western political philosophy as providing the example of the benefits of group membership in the form of reduced vulnerability. Indeed, Pritchard (2006) draws directly from Locke's social contract theory to substantiate this criterion (p. 275, n. 22). According to Locke, in entering political society from the state of nature, the subject relinquishes individual sovereignty to the collective in order to be joined with the civic "Body", which provides each individual protection for his life, liberty, and property, which she would be vulnerable to lose to stronger individuals in the state of nature. The addition of this criterion for assessing agency enables us to assess the value of group membership to the extent that it decreases an agent's vulnerability by protecting and supporting her, or conversely, increasing vulnerability through exploitation or unequal distribution of benefits and burdens. It should be noted however, that a measure of reduced vulnerability must measure the degree to which increased security facilitates agency. Low vulnerability alone may not be a measure of high agency since one can be kept safe precisely by having one's activities and opportunities restricted.

Pritchard explains the link between her second criterion of expanded relationality and agency in terms of increased sentience—the capacity for one's acts to be understood and successful. We can make sense of this by thinking about how relational connection produces a shared language of understanding which enables the opening up of a meaningful field of possible action. Without such a shared field of action in which one is recognized as mattering, where one's thoughts and acts are understood, and recognized as impacting on relational others, and through which one contributes using a shared language of meanings and values, one's range of agential extension could only remain within the borders of one's own consciousness. In Pritchard's terminology, expanded relationality or increased sentience

increases one's agency by extending one's range of making. In the Canadian context, one might think of some immigrant parents' decision to prioritize English and French language learning for their children over their mother tongue in order to gain societal acceptance, relationship and socioeconomic opportunities for their children, even if it is at the expense of relational connection to the ethnic community of origin. Since these same parents would favour bilingual or trilingual education if it were available and this would not harm their children's acquisition of English and French, support for the agency of allophone immigrants would mean the mainstreaming of bilingual and trilingual education options, as well as social campaigns that debunk the myth that the teaching of allophone languages can harm English and French language acquisition. This differs markedly from Kymlicka's response, which simply endorses the status quo of cultural assimilation as normative, and accepts the choice of immigrant parents as one of a trade-off of values in a context of unnecessarily restricted choice.

In employing a pluralist assessment of agency on Pritchard's relational measures, it is important that the aim of the assessment not be to entrench the status quo of restrictive practices in communities by arguing that, because restricted choices are made in favour of community goods the individual herself values, that these restrictions are morally acceptable and do not need to be changed. Rather, the point is to give due recognition to subject agency, and to work to increase choices in a way that does not sacrifice the cultural goods affirmed by the constrained individual.

Relational connection is often conceived in the standard problematic of culture conflict as the alternative to agency as autonomy. In this standard analysis, the minority individual is conceived as faced with the option of either maintaining relational connection by living a restricted life within their traditional community, or living a life of autonomous choice by exiting that community and risking or severing community bonds. However, using

Pritchard's alternative framework, relational connection is not the opposite of agency but an avenue for it. We can conceive this alternative in two ways. 1. If expanded relationality is seen as an alternative mode of agency to that of a path of greater independence, then this interpretation already represents a significant shift from the dichotomous choice of agency or connection in the standard analysis. Applied to Deveaux's example of arranged marriage, the choice to accept an arranged marriage may provide a clearer and shorter path to pursue the personal aims of starting a family, and thereby facilitate agency in the attainment of these aims—one's spouse is already vetted and chosen, so there is no uncertainty of finding a mate that meets familial approval (though there is always the risk of a poor match in spite of such vetting), and the expectations and framework of this choice are relatively explicit and clear—the match is intended to facilitate intergenerational expansion of the family unit through the having and raising of children, and the fulfillment of familial duties through assigned roles. One's broader life goals, so long as they are compatible with these expectations, may also be made more secure, through the maintenance of the support of the older generation through the acceptance of a normative assigned role. Here, one's field of action is readily available through this choice, since it follows a traditional model where a framework of expectations and meanings are preexistent. The primary agential limitation of this path is that of the limitation of options—one is sacrificing alternative lifestyles and the choice of a love match, which, for some agents, may be critical to their sense of agency and potential for personal fulfillment. The alternative choice of striking out on one's own against the wishes of one's parents for an arranged marriage, has the primary agential benefit of affirmation of romantic aspirations and romantic fulfillment, or the certainty that one's marriage will be based, at least initially, on love, and perhaps also in increasing the range of options for the character of the marriage partnership (traditional or non-traditional). The limitations of this path include the stress of lack of familial support, social stigma, and increased pressure to live up to one's

own and one's spouse's romantic expectations, as opposed to what may be more pragmatic expectations in a traditional arranged marriage with respect to level of compatibility. And, unlike in the traditional route, there is the necessity of creating a field of meaning for one's actions to be understood rather than walking a readymade path, a path which may be more complex, uncertain, and effortful, and present novel barriers, with less security due to the strain on familial bonds and barriers to developing support networks that this choice brings with it. This alternative framework for assessing the choice of arranged marriage expands the considerations of agency beyond the approach of measuring only the range of available options open to an agent to include other considerations, namely the capacity for one's acts to be understood and successful.

Moreover, while increase in choice or options is universally valuable, there is a limit to this value. In other words, it may not be necessary to affirm a very wide scope for choice or alternative options. That is, the increase in range of choices for individuals should not be understood on a maximalist model like that Kymlicka sometimes affirms.[56] And while comprehensive liberal approaches often assume the intrinsic[57] value of autonomous choice irrespective of the prospective chance of happiness or success for the agent faced with a wide range of choices,[58] Deveaux (2000) points out that the value of cultural membership for many people may well be its role in delimiting rather than opening up the range of acceptable

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[56] Though he himself denies that his monological prioritization of autonomy is "maximalist", his work often implicitly treats it this way, such that most scholars consider him to be a liberal perfectionist (Kymlicka, 1996).
[57] Or "highest-order interest", as in Kymlicka's (1996) description of the liberal priority of autonomy.
[58] By "prospective chance of happiness or success", I am not making the same substantive claim as Kymlicka, insofar as his conception of his principle of autonomy is of autonomy as having instrumental value for the agent's pursuit of the good life. The difference lies in the fact that I understand the prospective chance of happiness or success of the individual's pursuit of the good life as on my perspectival account of agency, where the objectively evaluated "prospect of happiness or success" plays at least some significant role in determining the best path for the individual from that beyond a *merely* subjectively or internally (as opposed to "*also"* objectively and "externally") evaluated best path to the good life, from the individual's perspectivally agential view. This is a crucial part of my argument in Chapter Five for the replacement of autonomy with perspectival agency. On an additional note, one might consider my view on this point to make perspectivally agential evaluation partially dependent on a conception of the reasonable, i.e. objective (where reasonable or objective might be understood on something like Rawls' distinction between the reasonable and rational, though I take a relational (i.e. Taylorian, Pritchardian or Heideggerian) understanding of the ontological falsity of the distinction or separation between the subjective and the objective).

choices (p. 122). She argues that liberal multiculturalists like Raz and Kymlicka overlook other values besides autonomy that cultural membership provides, including through the very restrictions on autonomy that these theorists object to. Specifically, the delimited framework of choices provided by a traditional culture can be experienced by some as a welcome means of "delimiting social and personal options experienced by many as disorienting and burdensome" (Deveaux, 2000, p. 122). This delimitation provides members with "direction and a sense of place" which facilitates "a sense of emotional security and well being that can come from being a member of a collectivity with clearly defined norms and roles" (Deveaux, 2000, p. 122). We can draw from Deveaux's insights the point that an increase in the range of available options is not always perceived by agents themselves as facilitative of agency, empowerment, or even liberation (emancipation). She reminds us of the fact that a key reason ethnocultural identity is valuable to agents is due to its function in delimiting choice, thereby reducing the stress, confusion, and uncertainty of having to filter life options without a clear framework to aid in one's navigation of prospects (Deveaux, 2000, p. 122). She points out that contrary to Raz and Kymlicka's assumptions, not all individuals hold the "neutral liberal belief that a valuable life consists in forming, revising and pursuing one's own conception of the good" (Deveaux 2000 p. 135).

In this passage, Deveaux (2000) does not theorize these goods in terms of agential capacity, and instead posits these alternative benefits of cultural membership as alternatives to agency as autonomy. However, in the current model, it is possible to interpret these benefits precisely in terms of increased agential capacity, provided that one expand the conception of agency beyond that of autonomy and independence. As suggested above, in the place of the wide range of options seen as essential to agency in a liberal framework, a delimited framework provides fewer but clearer options within a readily accessible field of meaning, which increases agential capacity by increasing the capacity for *attainment* of

meaningful choice that is valuable to the agent. Moreover, the provision of a secure sense of emotional wellbeing serves to further increase agential capacity for success, by increasing psychological confidence, competence, and energy in the pursuit of one's aims.

A second alternative interpretation to that of the dichotomy between agency and relational connection is also possible. Pritchard's account provides a version of this alternative in which an even more radical shift in the conception of agency is proposed. Here, agency is conceived in its very character as relational in nature. It is assessed by attending to the relations and interchanges between individuals in society rather than as manifesting through the various acts stemming from the individual conceived as an atomistic unit. A conceptual implication of this shift in definition is that agency is no longer contraposed to relational connection, since agency is explicitly recognized as functioning always and only within broader relational contexts. This point is well illustrated by the example above of the choice of priority in language acquisition that the immigrant parent provides her children. Here, the choice is not between the expansion of agency and the expansion of relationality, but which societal context will provide the context for agential expansion, and correlatively, which aspects of agential capacity will be prioritized—that of increased capacity for socioeconomic success and lifestyle options that comes with mastery of the language(s) of the majority and the state, or the stronger sense of identity that provides increased psychological benefits conducive to agency, in that one's sense of belonging and community supports can be more securely depended upon by racialized individuals socialized primarily (or simply to a significant extent) within rather than outside the cultural community of their ethnolinguistic[59] group. Moreover, as I have argued in Chapter Three, this choice of

[59] By ethnolinguistic, I mean, for example, languages like Mandarin and Cantonese Chinese, but this could also include the languages of moral traditions like Confucianism, and will absolutely also include moral languages that stem from the other social or "folk" sources of an ethnoculture, which may include a less formally philosophical duty or value of respecting one's elders, or something that stems from the mix between cultural traditions and the cultural products produced from racialized experience.

expansion of cultural agency need not be understood as an exclusionary choice, as Kymlicka poses it by equating culture with his conception of societal culture. The point I am making by introducing Pritchard's conceptions of relational agency is, first, to challenge the false opposition between agency and traditional cultures that often grounds discussions of vulnerable members of cultural groups, and to challenge the notion put forth by Kymlicka that all of an individual's cultural and agency needs can be met within the context of the societal culture of immigration. The goods offered by expansion of agency in each cultural realm—that of the societal culture and that of the ethnic culture -- are *different*, and both may be needed.

Pritchard's third criterion, of "access to and construction of artefacts of varying and significant scale", measures the agential reach of individuals in relation to the goods and contexts that are significant and valued within a particular cultural framework or community. In relation to the measure of access, it asks whether access to that culture or society's forms of 'valuable human flourishing' is differential in relation to gender, class, race, sexuality, etc. Beyond the question of access, it also asks who has the power to construct these forms of valuable human flourishing, to produce significant cultural artefacts, religious and social codes, and sociopolitical contexts, and to define the range of available options for those contexts. The question of access and cultural production is closely linked to the further question of which groups within the society benefit from the goods, artefacts, codes, contexts and options that are produced, including in terms of an increase in agency (Pritchard, 2006, p. 279).

For example, religious codes in all three Abrahamic religions are governed under patriarchal authority, and while some progress has been made with regards to the inclusion of women, this is generally maintained under certain limits of authority. To take a specific example: Within the contemporary mosque movement in Egypt, the modern individualization

of religious duty and Scriptural interpretation, along with socioeconomic changes, have empowered women to take up an active and significant role as religious preachers [*dā'iyāt*] with a growing authority to interpret religious texts—a privilege that had classically been reserved for sanctioned (male) scholars of the elite classes. Nevertheless, this new authority of women in the mosque is maintained under certain patriarchal constraints—women preachers can preach only to women, while men are given the authority to preach to mixed groups and preside over the mosque as a whole as *imams.* The comparative authority of male and female preachers in the mosque demonstrates the difference in agential capacity to 'construct religious artefacts of significant scale' within the mosque community. On the one hand, the capacity of the *dā'iyāt* is significant in an assessment of agency as making due to recognition of their interpretive authority in their communities. There is a difference in capacity between female and male preachers in scope of audience, and the fact that the authority of the *dā'iyāt* is secondary to that of the *imams.* Parallel or comparable examples exist in Christianity and many major Orthodox Jewish synagogues.

A liberal case of differential access to a society's forms of valued human flourishing can be found in the racial differential between white and black Americans in terms of the genuine opportunities to pursue and attain 'The American Dream', a shared ideal of upward socioeconomic mobility and financial freedom. Thus, the third criterion can be parsed as a measure of relative power or democratic agency within a cultural community or political society. Moreover, it may not be necessary to aim for a liberal model of democracy here where individual sovereignty has intrinsic value. Democratic agency of the individual may be instrumentally valued by that agent and by the polis as *prima facie* the most reliable means to ensure the needs of each citizen are met.

Critical capacity of a cross-cultural theory of agency:

In fleshing out an alternative to liberal approaches, Deveaux's list of questions of power urge us to attend to the perspectival motivations of the full range of stakeholders engaged by cultural disputes:

> Rather than starting from the question, 'which minority cultural practices should the liberal state permit, and which ought it to prohibit?', as many liberals do, I suggest that those committed to resolving a cultural conflict begin by asking a series of questions about the disputed custom and the social contexts in which it is practiced: Why and how has a particular custom come to be questioned or contested? Who is insisting that a practice takes a particular (traditional or amended) form, and who benefits from this? Whose authority is challenged, and whose is reinforced, by a dispute over a particular custom, or by the introduction of a new form of that custom? These questions are best posed not only of the cultural minority community, but also of the majority culture (Deveaux 2006 p. 90).

Pritchard's model adds to this approach the interrogation of power through a model of relative agency. Relative agency situates questions of power within particular communities: "A viable theory of agency for the cross-cultural study of religion must accommodate diverse 'forms of valuable human flourishings' without losing sight of who fashions such forms and who benefits from them" (Pritchard, 2006, pp. 278-279). Here, Pritchard's qualification of the analysis of agency as a model of relative agency helps to situate agency relative to the contextual model of flourishing, and analyse the extent to which agents within that context exercise equal agency relative to other members within that context's framework of flourishing.

Pritchard (2006) gives a list of questions geared towards the task of assessing the power dynamics within a community:

> what is the agency of women relative to men of similar class status or to women of another class, colour, sexuality, age, ethnicity or religion? What would one say is these women's agency relative to their expressed desires? Are their desires expressed: in what form? What is these women's agency relative to their culture's forms of 'valuable human flourishings'? What part

> do these women play in constructing these models of human flourishing? As Nancy Hirschmann writes of agency: 'The act of choosing is necessary but not sufficient. What is also needed is the ability to formulate choices, and this requires the ability to have meaningful power in the construction of contexts' (Hirschmann 1998, 361; emphasis added). Hirschmann's point is that agency must include the ability to make cultural artefacts of significant status, such as religious and political codes. (This point gestures toward the centrality of consent.) Thus, scholars must raise and answer the following questions: What is the relative scale and status of artefacts authorized by different sectors of a given population? What are the effects of those artefacts on different populations? Do these effects include the ability to extend one's range of making? A viable theory of agency for the cross-cultural study of religion must accommodate diverse 'forms of valuable human flourishings' without losing sight of who fashions such forms and who benefits from them. Kumkum Sangari's question 'who or what is women's agency on behalf of . . . Are all modes of empowerment for women equally desirable?' deserves an answer (1996, 471). Some women can become powerful by advocating anti-women or anti-minority legislation. Some women augment their agency by conforming to widespread expectations of their taking subordinate roles vis-a`-vis men. These cases are not sufficiently analysed by adopting the simplistic idioms of autonomy or resistance or intoning the inevitable and universal subordination effected by subject constitution. Nor are they sufficiently analysed by looking simply at a given group of women's agency. Working with a model of 'relative agency' challenges us to situate a given action within a broader context of subject formation—and thus to analyse the extent to which a given action affords reciprocal power to a given agent. Moreover, to the extent it necessitates a systematic comparison of men's and women's agency, it pre-empts the dismissal of negative assessments of women's agency as simply paternalistic or ethnocentric. Similarly, the larger picture afforded by 'relative agency' pushes us to look at how class status, for instance, impacts on who it is that 'consents' to join the military. Taking seriously a model of 'relative agency' means that agency is no longer regarded as a transcendent endowment of a sovereign autonomous subject but is the ongoing fabrications, modifications and transactions of bodies and things (p. 278).

With regard to a critical assessment of Pritchard's alternative approach, I see two options possible, depending on the reading of her approach:

Option one is to interpret "agency as making" as possible on a group (e.g. groups of women) rather than exclusively individual model. Here, agency as making is *not* the same as autonomy. It is more akin to what happens in covertly gathered illicit communities on the feminist and critical race model of standpoint theory, where a new form of culture is developed in restrictive circumstances through the collective dialogue between, e.g. women

meeting and discussing their experiences of patriarchy. In this description, groups of women develop new cultural products through a "third generation" neo-communitarian venture, in other words, on a critical democratic multicultural conception of communitarianism.

Option two: If agency as making is meant to be a liberal form of autonomy, "agency as making" has only instrumental value for some women. Agency takes its significance from the model(s) of flourishing that shapes the aspirations of the agent. Only in a liberal framework does agency as autonomy, including agency as making, have an intrinsic value that is to be maximized as a good in itself. A critical modification of Pritchard's third criterion is required in this case: the power of making may only have instrumental rather than intrinsic value for some collectivist agents.

In the second option, we can demote the centrality of agency as making in Pritchard's account while retaining the aims of Pritchard's model of assessment in tracking the unequal benefits of power by drawing on Sen. Sen distinguishes agency freedom from wellbeing freedom, but also recognizes that the measures of agency and wellbeing are mutually dependent. If this is so, then in at least some non-liberal contexts, the promotion of agency as making in light of the relevant conception of the good has a limit beyond which an increase in agency as making is counterproductive to that good. Sen's insights restore the pluralism of the measure of relative agency while retaining the crucial capacity to track the unequal capabilities with regards to wellbeing that Pritchard's model aims to track. In turn, Pritchard's insistence that agency be treated as a relative measure brings both the measures of agency freedom and wellbeing freedom into focus with regard to a measure of equality within a particular society.

Both wellbeing freedom and agency freedom are important for assessing relative agency. For example, measuring relative wellbeing freedom between men and women may complicate an ideal of flourishing that places self-sacrifice higher in value for women than

for men. To illustrate, we can apply the logic of one of Sen's examples to an assessment of relative power. In order to illustrate the concepts of wellbeing freedom and agency freedom, Sen (1985) uses the example of a man who sacrifices a peaceful lunch by the river to save a drowning man (pp. 40-41). In this example, the man's agency freedom is increased by the opportunity to save the drowning man (the relevant contrastive situation being a situation in which the man is drowning far away from your lunch spot). The lunching man's agency freedom is increased because he has, in the situation of proximity to the drowning man, access to an opportunity to complete a moral good deed that he would not have had had he been far away from the drowning man. However, his wellbeing as well as his wellbeing freedom has not been increased and has perhaps been reduced. His wellbeing is decreased by the sacrifice of the quiet and nourishing lunch, and his wellbeing freedom has certainly not been increased because the opportunity to save the drowning man does not increase the lunching man's options for wellbeing, and may even have decreased his wellbeing freedom since the option to eat his sandwich without anxiety or guilt has been taken away by the presence of the drowning man. Sen's example does not interrogate a situation of power inequality, but we can make the relevance of the contrast between agency freedom and wellbeing/wellbeing freedom clear by reference to other situations. Pritchard (2006), in her article, cites Talal Asad's example of the early Christian martyr whose pain was not one-dimensionally a sign of a decrease in agency but itself a vehicle of agency (p. 278). In her discussion of this example, Pritchard (2006) emphasizes the legitimizing role of consent as what is determinative of the presence of agency:

> Clearly, this pain is a form of agency because it is consensual, because the martyrs were 'open' to it; hence, Christian suffering and death becomes the 'emerging tradition' of Christianity. Having consented to form the body of the Christian tradition, they are willing to have their bodies substantiate that tradition and its beliefs. Substantiating religious power via coerced bodies, say Christian power via broken Jewish bodies, has generally not been viewed as an example of agency on the part of those same bodies (p. 278)

We can add to Pritchard's account of agency by noting that the increase in agency freedom here is accompanied by a decrease in wellbeing, while the persecuted status of the early Christians is the cause of the decrease in wellbeing freedom, a situation which is itself responsible for the emergence of martyrdom as an opportunity for agency freedom. An assessment of relative agency here would reveal inequality in the comparative levels of wellbeing freedom of the persecuted group with the dominant one—the early Christians would not have had as many options to pursue wellbeing, a factor directly relevant to their choice of martyrdom.

The utility of the conceptions of agency freedom and wellbeing freedom now becomes apparent in relation to more contemporary examples. Take, for example, the situation of the Muslim woman in Québec. While she retains the agency freedom to choose to keep her *hijab*, the new legal prohibitions on the wearing of "religious symbols" in the public service have caused a decrease in both her wellbeing freedom as well as her agency freedom, for she cannot choose to keep her *hijab* and take a public sector job or advancement in a public sector career. These decreased levels of wellbeing freedom, and agency freedom in relation to freedom of religion are comparatively lower than public sector employees of Christian denominations, whose affiliates are able to unproblematically choose to honour their religious obligations while working in the public service. The *hijabi* woman's sacrifice for her religious obligations—career stagnation or limited employment opportunities, is an agential act, but one made within the constraints of a lower level of wellbeing freedom than comparative others.

In the first chapter of this section, heteronomous agency was explored as a legitimate model that poses a serious challenge to the liberal account of agency as autonomy. It is useful to revisit this mode of agency in order to see how the above criteria would assess

heteronomous agency in reference to a particular cultural ideal such as that of the traditional Confucian family structure where authority is hierarchical and choice heteronomous. We can start with the traditional liberal concern with choice, as a priority that is included in but not exhaustive of a pluralist assessment of agency. In the heteronomous model, personal choice is constrained by the collective good of the family unit (honouring the family name), which is in turn, deferent to the head(s) of the family. Constraint in the context of authoritarian iterations of the Confucian model, as in a large proportion of real world East Asian families, does not amount to coercion, but strong social pressure to choose certain options over others, i.e. some choices are perceived as less open to such agents through the consideration of increased negative consequences of defying parental directives, which may be experienced from relational others as social reprisal or even disownment, or may be moral or emotional in nature, amounting to guilt or shame (Dundes, Cho & Kwak, 2009, p. 152). Dundes, Cho and Kwak's (2009) study supports the idea that following parental directives against personal preference can produce psychological penalties (pp. 148-149).

However, through the application of our pluralist analysis of agential capacities using Pritchard's criteria, it becomes apparent that choice for collectivist agents in such a situation (and to a certain extent for people in general) produces conflict that carries agential penalties either way--either in terms of sacrifice of personal preference, which decreases agential capacity for open choice fulfillment as recognized on the liberal model, or in terms of moral/psychological penalties and social consequences as on Pritchard's model, which decreases agential capacity through a decrease in self-esteem affecting psychological capacity (Pritchard's first criterion) and relational disconnection affecting social capacity (Pritchard's second criterion), both of which I have argued are key aspects of agency.

An alternative account of the assessment of agential capacity through choice is also possible, by applying a pluralist lens to demonstrate cultural difference in the significance of

choice and authority to different agents. In a series of cross-cultural studies measuring motivation, cognitive psychologists Iyengar and Lepper (1999, as cited in Hernandez & Iyengar, 2001) found that in contrast to American children of European ancestry socialized according to an individualist ethic of independence, Asian American children socialized according to an ethic of interdependence showed a greater intrinsic motivational response to choices made by others as compared to their own choices (p. 285). Furthermore, when this group was tested by varying the source of the choice, either between an outgroup member (an unfamiliar experimenter, or a student from a rival school) or an ingroup member (the participant's mother, or the participant's classmates, respectively), the Asian American children were more intrinsically motivated and performed better in the latter case (Iyengar & Lepper, 1999, as cited in Hernandez & Iyengar, 2001, p. 285). In contrast, the individualist agents' responses varied only with regard to the shift from a choice to a no-choice context; the source of influence in the no-choice context produced no change in motivational response (as cited in Hernandez & Iyengar, 2001, p. 286). These findings on motivation in different cultures suggest that personal choice and autonomy may not be empowering for collectivist agents as that are for individualist agents. Rather than being primarily motivated by a sense of independence and self-governance, the collectivist agents in these studies were motivated by contexts in which options were decided by an influencing chooser with whom the collectivist agent feels or desires interconnection (Hernandez & Iyengar, 2001, p. 286). Moreover, Hernandez and Iyengar note that cross-cultural studies on motivation have been garnering increasing evidence that while authority-based decision-making is often read by personally agentic individuals as dictatorial and by nature opposed to personal motivation, the same situations may be read by interdependent agents as a welcome opportunity for fulfillment of duty as a form of intrinsic self-fulfillment (Hernandez & Iyengar, 2001, p. 286). Two further findings support the recognition of a collectivist model of agency as distinct from a

personally agentic model: Hernandez and Iyengar (2001) found that conformity did not have a negative connotation for collectivist agents, but was perceived as a common sense regulation of behavior aligned with the agents' general valuation of belonging (p. 279, pp. 282-284). Secondly, the studies on collectivist agents suggest that even where personal preferences are not shaped in conformity with norms, and come into contrast with the agent's public performance of interpersonal duty or social norms, this does not necessarily produce cognitive dissonance in collectivist agents, who are not strongly motivated by consistency between their private thoughts and public behaviours. Rather, private feelings are regulated in response to what is situationally appropriate and are not regarded as significant attributes of the self, which is constituted by its relationships rather than its 'inner' attributes (Hernandez & Iyengar, 2001, p. 279). Thus, whereas self-esteem may be promoted by independent and authentic action for personally agentic individuals, in collectivist agents, it may instead rise and fall with the individual's connection to a successful group, precisely through conformity of public actions and fulfillment of duty to that group.

Beyond the question of intrinsic differences in motivation among agents conditioned in different cultural contexts, it should be noted that where personally agentic or hybrid agents find themselves under the constraint of group or familial authority, such as in the case of North American children of East Asian immigrants, it is also important to take into account the societal influences that constrain the collectivist choices of the authoritative decision-makers, such as factors of racial inequality that pose socioeconomic challenges against immigrant success and the range of options that appear viable as pathways to success: "Among a sample of Asian medical students, there was universal recognition that the decision to pursue medicine was a response to parental expectations that they enter a field that brought prestige that was deemed necessary for immigrant families to ease the immigration process and to 'establish their credentials in the host society'" (Akins, 2007, as

cited in Dundes, Cho, & Kwak 2009, p. 145). For Asian Americans across diverse ethnic backgrounds, educational achievement and career prestige are seen as a necessity for social mobility in the face of social discrimination in the broader society. On my reading, this empirical evidence suggests that a large part and maybe the most important form of support that external liberal actors can offer to increase the choices and happiness of children of East Asian authoritarian immigrant parents is through democratic activity. In addition to promoting multicultural and multilinguistic policies, they could stand, act *and theorize* in solidarity against the systemic and personal racism that increases pressure on East Asian immigrant parents to think that their children and family's only path to a successful and flourishing life is to pursue a single-minded focus on studying and the pursuit of a very limited range of acceptable high status careers. In other words, working to decrease racism and minimize culture loss (including linguistic and moral ethnoculture loss) will increase choices by decreasing *both* societal restrictions of racism *and* the number one reason cited by authoritarian Confucian immigrant parents themselves as to why they implement their values by setting significant restrictions on the choices of their children.

Pritchard's third criterion for assessing agency, on option one, the third-generation neo-communitarian or standpoint theory interpretation of agency as making, is compatible with all forms of agency, autonomous or heteronomous. It can work to reform dysfunctional forms of the latter into well-functioning forms, through the "making" of the lower status subgroup. For example, new standpoints can be made by women in highly restrictive patriarchal societies through their shared agency as exercised in cooperative activities and dialogue in everyday or covert contexts in which women interact and gather. Here, the "subgroup making" of women happens through the sharing of confidences, empathy, examples, experiences, insights and problems, where the product of dialogue and other forms of interaction communally produces perspectives, gestures, collective directions or models

for change that are acted upon by the women. These can constitute subgroup making of cultural products, not only through the additive and collective action of individual women, but also through emerging group consciousness and synchronicity of action that can take preconsciously convergent forms. Alternatively, subgroup making can happen through the authority of influential women who can command conformity of other women to countercultural shifts by commanding the trust of the group. This would amount to subgroup making of cultural products in which only some women can be said to be acting autonomously in the sense of making independent choices, while the group as a whole acts through emergent communitarian values in which social influence, heteronomous agency, and social pressure determine individual agency by shifting allegiances from patriarchal heteronomy to subgroup heteronomy.

If Pritchard's third criterion for assessing agency is read on option two, the autonomy interpretation of agency as making, then her conception of agency as making would challenge the notion of a legitimate form of heteronomous agency altogether. If this is the account Pritchard proposes, I give the following modification in order to recognize the legitimacy of heteronomous agency: Since not all agents recognize the intrinsic value of agency as making *qua* autonomy, then agency as making sometimes has only instrumental value as a way to personally secure agential capacity to pursue the agent's aims in other respects. While we have already discussed the key means in which heteronomous agency is validated by the agent in question, through the agent's reflective endorsement of the decision-making proxy, an alternate manner of validation of heteronomous structures is one that goes beyond the assessment of agency as making to include that of agency as wellbeing freedom and substantive wellbeing, a move that is possible in my approach, in which autonomy (or agency as making) is not treated as a monological principle of assessment.

The first point that would be picked out by an assessment of relative power on Pritchard's model and mine, would be the obvious one-- that heteronomous authority is by definition, a form of unequal power *qua* decision-making power, since the agents in a heteronomous relationship have differential capacities in terms of agency as making (agency freedom) that is relative to their respective roles in the relationship. However, where heteronomous agents value agency as making *qua* autonomy, only instrumentally for its value for wellbeing freedom and wellbeing, a lower score on this measure might not be decisive of morally acceptable levels of agency where levels of wellbeing freedom and wellbeing, in relation to the substantive situation of the agent, is high.

What may be a more pertinent measure of the legitimacy of a heteronomous relationship is the measure of reciprocity. While Pritchard also discusses reciprocity, her conception of reciprocity is tied to agency as making. In contrast, reciprocity on the current model measures goods (both material and otherwise[60]) and caring labour. This measure of reciprocity stands in place of the measure of relative power as better suited to assessing the validity of heteronomous relations. Central to the healthy flourishing of agents in a heteronomous relationship is the reciprocity of benefit and sacrifice, a measure which may have especial importance for assessing the moral legitimacy of heteronomous structures of authority. In relation to Dundes, Cho and Kwak's (2009) review of studies of East Asian immigrant parents and their children, these heteronomous relationships are legitimate where both parties endorse the arrangement as acceptable, physical and psychological abuse is not present, both parties share in family honour and family shame, and both contribute the personal sacrifices seen as necessary for the collective goals (pp. 146-147). Note also that establishing moral validity within the heteronomous framework does not yet establish

[60] An example of a non-material reciprocal good would be respect, and this could include mutual respect of each person's autonomy, but it could also refer simply to reciprocal respect as being equally worthy of concern.

consent or endorsement of the heteronomous model by the agent of lesser power. The moral test of consent based on my perspectival understanding of agency still supersedes this measure in terms of moral legitimacy for a particular case.

Democratic activity

The current account of agency has implications not only for the assessment of consent and relative power, but also as a means of identifying democratic activity on a broader scope than that of formal and informal speech, deliberation and public protest. Democratic agency, as Deveaux conceives it, recognizes the political significance of implicit, indirect and everyday forms of influence and activity as counting towards an assessment of norms, institutions and practices, as well as indicating directions for democratic reform, and sometimes even manifesting democratic reform.

She draws from feminist theory the idea that reflective endorsement does not always require explicitly self-conscious deliberation, but can take an implicit form. This conceptual expansion of autonomy is broadened further by feminist insights that conceive reflection as involving emotion and the body. For example, the basic capacity for self-reflective activity in Friedman's (2003) account is minimalistic in that it does not need to be comprised of "consciously articulate judgments" in a narrow Kantian sense (p. 9). What counts for Friedman's account of autonomy is that reflective activity proceeds from "coherent rational patterns amounting to concern", where this is understood in terms of a broad account of reasons where emotions and character can count towards rationality. As Friedman notes, action itself can demonstrate minimal reflective consideration as something that is not always conscious or highly determinate.

Confucian theory also offers a proto-framework in which non-deliberated-upon actions can be identified as demonstrating reflective agency in the second sense. In the *Analects* 2.8, Confucius characterizes genuine filial piety as revealed in the facial

countenance rather than a matter merely of having done what was expected. As Amy Olberding (2012) explains of this passage, "the expressions of the face will effectively notify others whether what one does reaches to one's dispositions, whether one's caring behavior is well-motivated" (p. 113). And speaking to the higher reflective potential of bodily expression and emotive attitudes, one might refer to *Analects* 2.7, where Confucius criticizes the popular equation of filial piety with the mere provision of care to aging parents by comparing this to what is given to farm animals. He cites respect as what differentiates the human relationship of care owed to parents (*qua* a rational and reflective attitude) from the material provision of care owed to farm animals. Evidence of Confucius' sincerity is given especially through the whole of Chapter 10 of the *Analects* which catalogues the exemplary details of Confucius' manner in all things, particularly in mundane and everyday activities. He expressed moral virtue and ritual propriety as a fully internalized and personalized second nature. Evidence of this is highlighted in this chapter in examples that demonstrate the ease with which he engaged in and elaborated upon prescribed ritual with the utmost sincerity of countenance, compassionate concern, and individuated style (Olberding, 2012). Characteristics that can be used to identify reflective activity of this sort, and that are noted in commentary in Confucian scholarship are spontaneity and creativity in the *manner* of fulfilling expected actions, individual style, consistency, attention to detail, elaboration of customary action, sincerity, grace or ease of action, and unprompted responses.

While we are not interested in an assessment of agent virtue here, I move that attention to these same cues can also sometimes speak to the manner and degree of consent of agents with respect to traditional practices and prescribed roles. Where countenance, emotion and style elaborate upon what is expected of restricted agents, these may provide clues as to whether the agent fulfills these expectations out of grudging or fear-induced social pressure, or out of sincere endorsement. While these signs, observed from the outside, cannot give any

certainty as to what agents actually think of the practices, they may provide non-testimonial indications to confirm, call into question, or elaborate upon agent testimony where social pressure in the maintenance of community practices is a factor. Here, ethnological research is key to gathering this sort of documentation, since the significance of many aspects of bodily countenance and outward displays of emotion are culturally particular.

Deveaux's account of democratic agency is both evaluative and prescriptive. It is evaluative because democratic activity, both implicit or embodied, and explicit, as in informal and formal political action, democratically validates and challenges cultural practices in everyday activity as well as the formal political sphere. Deveaux's (2006) conception of democratic agency also describes it as a form of agency that goes beyond autonomous choice to include the myriad ways in which women accept certain roles and practices not through passive conformity, but by creatively reaffirming them, subverting them, revising and reinventing, or personalizing them, and also, not necessarily rejecting, but raising concerns and challenging the conditions of acceptance through both moral and strategic negotiation (p. 179).

Democratic activity is specifically prescriptive, because it consists of any agentic activity, either in the formal political sphere or in the informal sphere of everyday interaction that speaks to or alters a norm, practice or institution (Deveaux, 2006). In other words, the analysis of democratic activity goes beyond assessing mere validity on a dichotomous measure of meeting the test of autonomous consent or not. Deveaux's prescription to political theorists and political actors for how democratic agency can be leveraged politically is to attend to the ways in which the complex range of manifestations of women's agency not only affirm and reject cultural practices, but also suggest reform and cultural innovation. By attending to and describing democratic activity in a case study of arranged marriage practices in the South Asian communities in Britain, Deveaux exercises democratic activity as a

political theorist by detailing three overlooked sources of women's agency. The first points to the actions of women higher up in the patriarchal hierarchy, such as women of senior generations who might not only accept, condone or enforce patriarchal customs, but also resist and reshape them through advocacy, negotiation, and selective cooperation. Deveaux (2006), citing Usha Menon, details the examples of this democratic activity as the power to "engage with impunity in verbal and nonverbal displays of discontent: complaining loudly, withholding advice, and not cooperating are ways whereby confident and dominant women express their dissatisfaction and displeasure with what is happening within the family" (p. 181).

The second source of democratic activity points to the initial stages of potential change which begins in the imagination of women and girls and results in the first subtle adjustments of behaviour, such as the delaying of parental pressures to marry through the pursuit of higher education, or through fictional depictions of girls' rebellion against community social norms, such as in the movie, Bend it Like Beckham (2002), where the young protagonist pursues a career in soccer despite her mother's protestations, for example, of the indecency of a woman exposing her legs publically by wearing shorts (Deveaux, 2006, p. 182). These forms of subtle adjustment and imaginative reinvention may, through the destabilization of stereotypes, lead to bolder unconventional choices that pave the way for wider change (Deveaux, 2006, p. 183).

The third source of democratic activity points to the formal and informal politics of women activists and women's organizations. Key to expanding the analysis of political activity in this respect is attending to the ways in which women's organizations representing a particular community may protest even through cooperation with authorities. Deveaux points to the cooperation of British South Asian women's organizations on the British government's national campaign against coerced marriage, which these women supported.

Through their raised profile in joining the government's task force, these organizations used the opportunity, not only to advance one of their own aims of eliminating forced marriage, but also to protest the British government's withdrawal of funding for community-run social services (Deveaux, 2006, p. 183).

I would add that the full range of variation of political positions of women's groups is often what is obscured when multicultural liberals point to the support of community women as confirming the legitimacy of a certain mode of response or reform of cultural practices over others. A notable example is Kymlicka's (2005) discussion of the controversy in Ontario over *Shariah* law tribunals in which he glosses over the diversity in Muslim women's views, which spanned the range of views for and against this form of alternative mediation of divorce settlements in Muslim communities in Ontario. In his analysis, Kymlicka (2005) cites only Muslim women's organizations who were against the use of religious arbitration in family law and leaves out the views of Muslim women proponents. He counterposes the women critics of the proposal for *Shariah* law tribunals to the proponents, the latter of which he refers to as conservative Muslim leaders, language which he connects in a footnote to religious male leadership (Kymlicka, 2005, p. 12, n. 16, p. 13, p. 13 n. 18). He also states the unsupported claim that "we know that women….fare less well within private arbitration than they do in the common family law courts", a claim I can only surmise he takes from the arguments of the two Muslim women's organizations he does cite,[61] since it does not align with Commissioner Marion Boyd's review of the full range of testimonial evidence from stakeholders on this matter (Kymlicka, 2005, p. 17, p. 12 n. 16; Boyd, 2004, pp. 29-68, p. 133).[62]

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[61] Note that these arguments, while raising a number of legitimate concerns, have also been challenged in the literature as one-sided and as often taking up Orientalist tropes in service of political aims (Ruby, 2005; Habeeb, 2004, as cited in Boyd, 2004, p. 66).

[62] Boyd's (2004) review of the evidence identifies multiple serious concerns about the outcomes for women in both the alternatives of religious arbitration and the common family law courts, which suggests that the question of which is better for women is rendered inconclusive by the evidence at hand (pp. 29-68). Moreover, while I

Deveaux (2006) also adds to her three categories by pointing to the direction of cultural shifts in community practices in the Indian subcontinent and diaspora, many of which are documented by sociologists and ethnologists studying arranged marriage, or by women themselves through memoir (p. 183).

The majority of Deveaux's examples seem to speak to democratic agency that opposes individual women agents to cultural groups. Thus, Deveaux's account of democratic activity can be expanded further beyond the limits of a procedural autonomy-based account. On my communitarian-standpoint theory reading of Pritchard's theory of agency as making, I add to Deveaux's three categories of examples of democratic activity by adding a fourth category, namely, the communal or joint activity of groups of women or other marginalized and racialized groups who "make" new standpoints in either covert or everyday subcommunities, both formal and informal through a form of Taylorian dialogic agency.

am not taking a position on the matter here, it is notable that Boyd concludes her review with the statement that, "The Review did not find any evidence to suggest that women are being systematically discriminated against as a result of arbitration of family law issues. Therefore the Review supports the continued use of arbitration to resolve family law matters" (p. 133). Boyd's recommendation was for the continued use of religious arbitration, including arbitration using Shariah law, while identifying a number of safeguards to be implemented (p. 133).

Conclusion

The current work is a theoretical contribution to multicultural philosophy. My aims here were to make a first formal attempt at a supportive role to cultural empowerment with respect to the diversification (and therefore, democratization) of moral languages in the academic context of political philosophy. I do not intend to speak *for* these women and communities, though I recognize that this is an inherent danger of the project. I hope to ameliorate this danger through further and extratheoretical research in the future.

The intended value of the current work, insofar as I discuss groups which I do not personally represent is firstly, documentative or proliferative of others' accounts of modes of agency which tend to be obscured by liberal theorists that dominate the academic discussion of political philosophy and political multiculturalism. In carrying out this aim, I have attempted to exercise democratic agency in the sphere of academic philosophy on political multiculturalism. I consider this to be a form of Deveaux's democratic agency, primarily on the descriptive dimension. The reader, particularly those readers who are representative of the agents in question in terms of being members of their ethnocultural group or subgroup (as well as allies such as relevant ethnological experts, feminist theorists, critical race theorists, democratic theorists as well as philosophers in general who have some genuine interest in facilitating the empowerment of vulnerable agents through their research or educative roles) will have to judge whether this descriptive democratic attempt was successful.

My ongoing dialogue with the above interlocutors is also, on my conception, a form of democratic activity of a morally aspirational kind, which means that it is my minimum or starting point from which I will continue to work towards evolving aspirational ideals of democratic agency. One of these ideals I wish to work towards next is to incorporate Monique Deveaux's (2020) and others' forms of grounded normative theorizing, a model of research I encountered formally or explicitly only late in my project, though I believe that it

is implicitly constitutive of my work in at least a partial sense. I regret that I could not incorporate its democratic forms into the current work, and this regret, on my Confucian model of embodied or emotive democratic activity, gives me my next democratic *prescription*.

The current project, insofar as it ventures a more ambitious goal, is offered as a tentative and modest theoretical contribution to developing possibilities that *could* be drawn on by those primarily affected, or those with elite forms of democratic power. Realistically speaking--this work being an iteration of academic philosophy--the latter group of readers and potential readers are a very limited group of political or politically minded philosophers who are not only read by other thinkers concerned with democratic empowerment, but who also exercise an authoritative and influential democratic role for students at the university level, and shape future philosophers if not also the political views of political actors in general. Insofar as this work (and all democratic contributions) is risky in its political implications, this fact and its exposure through ongoing critique will give me more democratic prescriptions on which to act.

In plainer language, the limitation of my work in its present form is that it must first be more directly informed and improved by critique from those with representative or relevant knowledge. In terms of experimental forms of philosophy that might count as grounded normative theorizing for this ongoing project of making space for alternative modernities within critical democratic multiculturalism, this might involve direct partnership with sociologists, ethnologists, and members of minority groups themselves in field research.

The aim of the current project was to diversify multicultural liberal theory in order to make philosophical space for alternative modernities, specifically within Western academic philosophical theory on multiculturalism. A critique of Kymlicka's liberal multicultural

theory forms my starting point because this work is both dominant in political multicultural theory and more broadly influential on lived political life and multicultural policy than any other academic work in the global context. It is also, in my view, the most representative and good faith translation into a genuinely moral but, I argue, flawed philosophical account of the normative justifications of the Canadian liberal colonial state.

First, Kymlicka's political basis for his model of liberal multiculturalism is the principle of neutrality understood on a thin theory of the good or weak liberal perfectionism. This amounts to a culturally particular and monological prioritization of liberal autonomy rather than the liberal universalist model of multiculturalism he aims to justify. I propose, instead, a deliberative democratic model whose starting point is a "thin" theory of the good that takes neo-communitarianism seriously.

Doing so does better justice, I maintain, to the postcolonial indigenous perspective, specifically of Dene nationalist movements insofar as a) they still strive to be sovereign nations in their own right rather than merely national minorities on Kymlicka's and the Canadian state's colonial conception, b) they pursue this aim on the foundation of an indigenous land ethic as updated by new and evolving philosophical influences, c) the good they endorse is substantively different from those moral, cultural, and political goods offered within colonial liberal, capitalist, and assimilative terms rather than their own terms. In the context of political negotiation of land and sovereignty, the critical democratic multicultural position I have outlined offers better representation than does the model of liberal multicultural recognition.

In the second chapter, I also claimed that from the standpoint of racialized cultural internal minorities, in particular Muslim women who are members of minorities within liberal multicultural - or perhaps more accurately, liberal-republican intercultural - states such

as Québec, Eisenberg's identity approach (2009) will produce the fairest result, from the considered and reasonable cultural perspective of all directly relevant stakeholders. The identity conflict at issue involves shifting and various conceptions of religion and culture that reflect the unequal power dynamics of majority and minority within a "national minority" or what might be described as a Québécois nation within the Canadian state. My critical assessment of this case study, within the context of the shifting significance of religion and culture between historical points of time and identity conflicts between majority and minority groups, reflects the power dynamics of this political relationship. I argued that this dynamic can produce morally problematic or wrong effects at times, even where the shifts also have morally legitimate significance for perspectival identity.

In the third chapter I made the main claim that "polyethnic minorities", meaning ethnocultural minorities within liberal multicultural states, have linguistic rights that are conceptually and morally equal to "national minority" linguistic rights. Recognition of such rights can be implemented with no harm, in Canada, to French Canadian "national minority" linguistic rights, including that of linguistic survival and even dominance of the French language within Québec, and with highly significant cultural and wellbeing benefit to the children and descendants of "immigrant" minorities. I also made the claim that "immigrant" or ethnocultural minorities are not only members of a national culture on Kymlicka's conception of societal cultures, but also local ethnocultural societies or communities in their own right, as well as diasporic or transnational communities or cultural identities. All of these communities have morally legitimate claims to try to survive, as well as a more plausible possibility of surviving than Kymlicka assumes. Kymlicka's assumptions on this front, I suggest, amount to misrecognition or illegitimate condonement of assimilation.

My claims in Section II critique the paradigmatic analytical framework of vulnerable "minorities within minorities" insofar as it employs either an Orientalist and/or culturally

particular liberal standard for the "test of consent". Because this "test of consent" is juridical and culturally particular, it is conceptually and morally problematic and the wrong model to use if one is looking to facilitate or make space for democratic empowerment, agency, and alternative modernities. My critique of liberal agency *qua* juridical and culturally particular autonomy proceeded incrementally through the three chapters on perspectival agency, democratic validation, and democratic empowerment. I examined critically two models of agency, moral legitimacy, and democratic empowerment that present an alternative to the liberal model of autonomy and are based on a heteronomous account of agency as potentially morally legitimate. These countermodels of agency were specifically, the neo-communitarian Confucian model of the hierarchical family in East Asian "immigrant" families in North America, and Islamic women in the Egyptian piety movement. In the former case, the Confucian heteronomous self is the counterexample to liberal autonomy *qua* socially independent or individualistic agent. The Confucian heteronomous agent finds herself within a genuinely love-based though in many cases, authoritarian and restrictive parent-child relationship that is based on relational agency. It poses the choices of the adult child of Confucian parents in two main options. The first is that of a mixed bundle of goods involving relational empowerment through cultural assimilation into the white liberal society that offers greater liberty and wider scope for opportunities, but also disempowerment through racialized exclusion and disadvantage. The second option is that of an alternate mixed bundle of goods involving relational empowerment within a tight-knit familial unit of mutual care and benefit, but also disempowerment in terms of the limitations on one's range of choices for pursuing the good life, and the marginalization of an aspiration to manifest an authentic or self-made life path.

In the second case, the pious Muslim woman understands authenticity in reverse fashion to that of the authenticity ideal of autonomy, in that the higher pious self is "given"

by an "external" moral authority. This heteronomous self affirms an ethic of responsibility and self-construction from the "outside in," to put it in Foucauldian terms. In other words, these socially conservative women seek to transform the lower innate self through the guidance of the higher pious self and "external" moral authority. This model of agency is counter-opposed to liberal autonomy *qua* authentic agency. Both liberal forms of agency as autonomy limit the emergence of alternative modernities, whatever other benefits they may have. The greatest benefits of liberal autonomy may be efficient emancipation from highly restrictive situations. On the other hand, there is at least a significant if not greater potential for multiple modes of empowerment beyond autonomy wherever vulnerable heteronomous agents live and struggle to conceive, negotiate, and realize alternative modernities to that of liberal modernity in postcolonial contexts by using a form of non-liberal or extraliberal reflective agency.

In arguing for morally pluralist and genuinely inclusive deliberative democracy over procedural liberalism, I do not intend to promote or excuse inequalities of power and forms of subordination within different cultural traditions, including, importantly, patriarchy. Moreover, I recognize that Deveaux's (2006) argument for procedural autonomy, for example, has the advantage of focusing on progressive feminist aims of emancipation. This argument, and her approach in general, do highly significant work to further the political goals of feminism, women's rights, and equality for women in cultural minorities and elsewhere.

Nevertheless I think it important to highlight the morally constitutive elements of political and concrete ends, and this is part of what I have tried to do in the current project. I believe it is necessary in order to fully account for the empowerment and even the emancipation of many racialized women who value non-liberal cultural practices and moral traditions as centrally constitutive elements of their lives, identities, agency, and aims. No

doubt, my strategy has its own risks, potentially equal and opposite to those that retain a procedural conception of liberal autonomy as their core organizing principle.

Perhaps the solution then, is to take the second option I offered in my introductory chapter, of affirming the moral pluralist approach I have outlined as a methodological and complementary approach to emancipatory political projects, and perhaps also to methodologically universalist approaches, particularly ones that engage seriously in contextual analyses. Eisenberg (2009) sometimes employs this sort of methodological universalism with strong contextualism, and sometimes affirms universalism while employing methodological pluralism. But this question of the scope of legitimacy and value of my arguments and strategies here will have to be decided through further deliberative democratic activity--philosophical, ethnological, empirical, theoretical and political. What I can affirm definitively as a concluding claim to the immediate project is my conviction that the cultural retrieval of non-liberal moral traditions is highly important for the political and cultural empowerment of the relevant agents themselves, and for maintaining cultural diversity and cultural protection of threatened minorities. This is a conviction that I believe my interlocutors in this project share.

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