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**FACULTÉ DES ÉTUDES SUPÉRIEURES
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**FACULTY OF GRADUATE AND
POSTDOCTORAL STUDIES**

Iain McKenna

AUTEUR DE LA THÈSE / AUTHOR OF THESIS

Ph.D. (Philosophy)

GRADE / DEGREE

Department of Philosophy

FACULTÉ, ÉCOLE, DÉPARTEMENT / FACULTY, SCHOOL, DEPARTMENT

Equality and Accommodation: A Narrative Approach to Canadian Multiculturalism

TITRE DE LA THÈSE / TITLE OF THESIS

Dr. Hilliard Aronovitch

DIRECTEUR (DIRECTRICE) DE LA THÈSE / THESIS SUPERVISOR

CO-DIRECTEUR (CO-DIRECTRICE) DE LA THÈSE / THESIS CO-SUPERVISOR

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EQUALITY AND ACCOMMODATION: A NARRATIVE APPROACH TO CANADIAN MULTICULTURALISM

Iain McKenna

Thesis submitted to the
Faculty of Graduate and Postdoctoral Studies
In partial fulfillment of the requirements
For the PhD degree in Philosophy

Department of Philosophy
Faculty of Arts
University of Ottawa

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Your file Votre référence
ISBN: 978-0-494-51818-2
Our file Notre référence
ISBN: 978-0-494-51818-2

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ABSTRACT	4
INTRODUCTION	5
Trudeau's Principles of Multiculturalism.....	8
Who's afraid of Brian Barry?	13
Thesis Outline.....	17
CHAPTER 1 CULTURE, POLITICS, ETHICS	23
Culture and Moral Universalism	31
Political Liberalism.....	38
Rule Consequentialism	52
Conclusion	60
CHAPTER 2 MULTICULTURALISM: FACT OR VALUE?.....	64
What is Culture?	69
Intergenerationality.....	73
Cultural Law	75
Essentialism vs Postmodernism.....	77
Cultural Narratives.....	81
Culture and Describing Human Behavior.....	84
Why Culture Matters	87
CHAPTER 3 THE POLITICS OF RECOGNITION	90
Taylor and the Politics of Recognition	90
Identification and Political Organization.....	95
Recognition, Authenticity and Identity.....	97
Ontological Essentialism and Reification.....	101
Reified Identity and Violence.....	105
Conclusion	107
CHAPTER 4 LIBERAL CULTURALISM.....	109
Culture, Liberalism and Justice	111
The Ontology of Culture.....	115
Culture, Membership and Rights.....	118
Mosaic Multiculturalism and Cultural Narratives	123
Nation Building and Cultural Barriers.....	127
Objections to the Modified Nation Building Argument.....	130
Conclusion	132
CHAPTER 5 IDENTITY AND POWER.....	135
Relational Identity	135
Heterogeneity and Differentiated Citizenship	140
Processes and Outcomes.....	146
Representation and Difference	149
Conclusion	152
CHAPTER 6 NARRATIVE IDENTITY AND THE RULE OF LAW	154
Psychological Explanations of Narrative Identity	157
The Narrative Limits of Culture	164
Culture and Bureaucracy	168
Conclusion	171

CHAPTER 7 ACCOMMODATING CULTURES	174
Are cultural minority groups like demanding houseguests?.....	179
The Road to Hell.....	182
An Eye for an Eye (or a Prayer Room for a Crucifix).....	184
Conclusion	186
CHAPTER 8 EQUALITY, HARM AND RELIGIOUS FREEDOM	188
Equality	191
Freedom	199
Practices and their Effects	203
Conclusion	214
CHAPTER 9 MULTICULTURALISM AS NEIGHBOURLINESS.....	217
YMCA Windows.....	222
Danish Cartoons.....	229
Some Limitations.....	232
CONCLUSION	235
APPENDIX	238
BIBLIOGRAPHY	243

ABSTRACT

In Canada, a liberal democracy that constitutionally protects liberal freedoms and civic equality, how should the government respond to culturally based demands for accommodation? Should culture be recognized by a liberal democratic government? Does such recognition challenge liberal freedoms and civic equality? In this thesis I argue that there may be times when the Canadian government ought to acknowledge cultural differences for the purposes of legislating and creating public policy in the interest of fairness and to achieve good outcomes. Previous attempts at reconciling cultural diversity with public institutions have focused on protecting and affirming cultural identities. I critically examine three such approaches and argue that cultural identification is tied to fundamental liberal freedoms such that fixing cultural identities in bureaucratic and legislative frameworks conflicts with liberal freedoms in a problematic way. I propose an alternative approach to cultural accommodation that avoids the problems of cultural identification by focusing on concrete relationships between citizens and the practical consequences of cultural practices.

INTRODUCTION

Cultural and religious diversity, immigration, and the status of minority groups have always posed problems for modern liberal democracies and Canada is no exception. Over the course of the twentieth century, Canadian cultural policy developed from one that differentiated citizenship according to racial and cultural hierarchies into one that has been at the forefront of multiculturalism and race-blind immigration policies.¹ However, the events of September 11th 2001 and ensuing concerns over national security brought to the surface cultural tensions that challenge the wisdom of Canada's willingness to accommodate diversity. Since then, high profile controversies over cultural accommodation that are unrelated to national security have become common in newspaper headlines and have inspired somewhat inflated claims about how the fundamental values of Canada's civil society will be forever lost because of cultural diversity.² In the following I attempt to deflate such claims by taking a sober look at what is at stake in current multicultural debates.

This thesis consists in an examination of the tension between the universal character of the liberal principle of civic equality that is instantiated in the *Canadian Charter of Rights and Freedoms* (the Charter) and the particular claims that arise in the application of Canada's multicultural policy and the *Canadian Multiculturalism Act* (CMA). The normative force behind the universal character of the Charter is that every Canadian citizen is entitled to the same rights and freedoms. However, the Charter does recognize

¹ In 1967 Lester B. Pearson's government replaced Canada's racist immigration policy with a race-blind points system as outlined in the *Immigration Act*, 1967.

² A recent database search of Canadian newspapers yielded over 1700 articles and editorials on the question of cultural accommodation.

multiculturalism (s. 27) and affirmative action (s. 15 [2]) as being legitimate in certain kinds of circumstances. As interpreted by some, the CMA and some parts of the Charter are consistent with giving differentiated citizenship based on cultural membership. Much of the professional academic debate over Canadian multiculturalism is between those who favour equal citizenship described as a collection of individual rights and freedoms and those who favour differentiated citizenship in order to accommodate, compensate and protect particular cultural groups. I argue that Canada's policy on multiculturalism ought to continue to reject a general model of differentiated citizenship in favour of a position that focuses on particular cultural practices, and that this is both the appropriate way of dealing with the issues in question and of striving toward the ideals of political freedom and equal citizenship. Furthermore, questions concerning collective identity, whether they are construed in national, ethnic, religious, or cultural terms, ought not to be a primary concern of the government. Rather, the government ought to focus on protecting the freedom of citizens to peacefully explore (or ignore) questions of identity.

Culturally based requests for special accommodations and differentiated citizenship, including special forms of political representation and recognition, are often resisted by those who see multicultural policies as a violation of the liberal principle of civic equality.³ However, a "one rule for all" approach to civic equality is problematic because it might entail a higher cost of political membership for certain identifiable cultural groups. Initially, the concept of reasonable accommodation was applied to cases where a disability results in unreasonable burdens or barriers to public, economic and social

³ France's policy of prohibiting conspicuous religious symbols like headscarves is an example of an approach to cultural diversity that emphasizes equal treatment over cultural accommodation.

institutions.⁴ The precedent of accommodating disabled persons decouples the concept of equal treatment from civic equality. However, whether this approach translates to cultural claims remains to be seen.

This thesis is organized according to a series of questions. The first is: should culture matter to the government, and if so, in what way? In the following I use 'the government' to refer primarily to the Canadian government, however, much of what is discussed can be applied to other contexts. The way that this first question is answered will depend on how one delimits the role of the government and the scope of its authority. This will set the terms of reference for how to go about addressing cultural diversity.

If culture does matter to the government how should this be reflected in public policy and legislation? Insofar as the government operates within a procedural bureaucratic framework, the question of how cultural diversity ought to be addressed will depend on the government's ability (or inability) to define cultural membership.

Is there a defensible general rule according to which cultural membership might be defined for the purpose of assigning rights, administering law, and distributing public goods? One reason for caution when answering this question is the legacy of racism and cultural exclusion that Canada shares with virtually every other liberal democracy.

If there is no such principle (and I argue just that) is there an effective alternative that will address the problems that culturally differentiated citizenship is supposed to solve? It might be the case that the problems of cultural diversity outweigh the problems associated with defining membership. If so, then there may still be compelling reasons to differentiate citizenship along cultural lines.

⁴ R. S. Abella, *Report of the Commission on Equality in Employment*, (Ottawa: Government of Canada, 1984).

Finally, if there is such an alternative how does it appear in practice? The answer to this final question speaks directly to the controversies and concerns that initiated this philosophical study. I suggest that we can find formal and informal solutions to cultural conflicts.

Trudeau's Principles of Multiculturalism

In 1971 Prime Minister Pierre Elliott Trudeau set out in a parliamentary speech the principles that would guide Canada's first multicultural policy. Although this policy has changed over the years, its guiding spirit, as expressed by Trudeau, remains. In this section I go through these principles and suggest how their guiding spirit can contribute to current debates.

Trudeau presented to parliament four principles of multiculturalism that were intended to guide Canada's multicultural policy. The following passage expresses these principles in Trudeau's own words.

First, resources permitting, the government will seek to assist all Canadian cultural groups that have demonstrated a desire and effort to continue to develop a capacity to grow and contribute to Canada, and a clear need for assistance, the small and weak groups no less than the strong and highly organized.

Second, the government will assist members of all cultural groups to overcome cultural barriers to full participation in Canadian society.

Third, the government will promote creative encounters and interchange among all Canadian cultural groups in the interest of national unity.

Fourth, the government will continue to assist immigrants to acquire at least one of Canada's official languages in order to become full participants in Canadian society.⁵

⁵ Pierre Elliot Trudeau, "Announcement of Implementation of Policy of Multiculturalism within Bilingual Framework," House of Commons, Ottawa, 8 October 1971.

The first principle addresses questions of the distribution of government resources to cultural groups. Neil Bissoondath is critical of this principle because he is concerned that it reduces complex identities to cultural stereotypes that are perpetuated by government funded 'food, festivals, and folklore'. In response to what some describe as triple 'f' multiculturalism, Bissoondath gives the following description of culture.

Culture is life. It is a living, breathing, multi-faceted entity in constant evolution. It alters every day, is never the same thing from one day to the next. Stasis is not possible. A culture that fails to grow from within inevitably becomes untrue to itself, inevitably descends into folklore.⁶

If we leave aside (for now) the question of what constitutes 'true' or authentic culture, we can see that part of Bissoondath's worry is that if the government plays a role in the cultural life of Canadians, this will likely ossify culture, degenerate it into kitsch, promote cultural stereotypes, and limit the freedom of individuals to creatively explore cultural life.

One might be sympathetic to Bissoondath's description of culture and share his concerns, and yet disagree with his conclusion that Canada's multicultural program ought to be rejected. The question of what role a government should play in the cultural life of its citizens is secondary to the spirit of Trudeau's first principle, which is that the government should have no official culture.⁷ The implicit claim is that *if* the government supports cultural projects then it would be unfair to support some but not others. One can agree with Bissoondath and take the position that the government ought to get out of the culture

⁶ Neil Bissoondath, *Selling Illusions : The Cult of Canadian Multiculturalism*, (Toronto: Penguin, 2002) 75.

⁷ It is important to remember that Canada's adoption of an official Multicultural policy was, in part, a response to findings in the *Royal Commission on Bilingualism and Biculturalism*. Some might have assumed that the recognition of two official languages (English and French) would necessarily entail the recognition of two official cultures. However, Trudeau decoupled the concepts of language and culture with his policies of official bilingualism and multiculturalism.

business altogether, but refraining from supporting culture is consistent with the government policy of having no official culture.

Trudeau's second principle is one that remains relevant today. A significant part of what one might call Canadian society is structured by innumerable rules that regulate the lives of citizens. If we accept Bissoondath's claim that the government should stay out of the culture business and agree that the government should not have an official culture, then it follows that the rules that structure society ought not to support or reinforce a particular culture. Furthermore, to the extent that societal rules ought not to support culture it also follows that they ought not to hinder culture unless doing so can be justified by a compelling context-transcending reason such as public health, safety, or in some cases, limited resources. Consequently, Canada's policy of not supporting an official culture is an aspiration that can be pursued by either supporting all cultures in a fair way or none at all.

The distance between the ideal of not supporting a particular culture (or group of cultures) and the reality of democratic politics is, at times, vast. It would be expensive and impractical to design public institutions and services that do not somehow cater to the majority. Nevertheless, it is still possible in many instances to lessen barriers that result from designing public institutions and services for the majority.

Given that in the past ten years Canada has accepted on average 220,778 immigrants and refugees per year, it is reasonable to expect that the cultural practices of newcomers may at times conflict with societal rules that were not designed to deal with such practices.⁸ Furthermore, given the ongoing legacy of unjust cultural exclusion that

⁸ *Facts and Figures 2006 Immigration Overview: Permanent and Temporary Residents*, Citizenship and Immigration Canada, (modified 2007 -06-29, accessed October 3 2007, <http://www.cic.gc.ca/english/resources/statistics/facts2006/overview/01.asp>,

Canada shares with most countries, there are groups that are not new to Canada and yet still face cultural barriers to full participation in Canadian society.⁹ Without claiming that every cultural barrier can or ought to be lifted (which in some cases might not be feasible or even desirable) it is reasonable to suggest that at least *some* barriers might be.

Trudeau's third principle is somewhat vague. What constitutes a "creative encounter" and what is meant by "national unity" (other than keeping Quebec in the federation)? Creative encounters could be taken as informal cultural interactions directed at promoting a public good, or as initiatives designed to educate Canadians about diverse cultural histories, beliefs and practices. Although it is vague, the idea of encouraging people with diverse beliefs to engage creatively with others in the interest of all persons identifying with a common national project is perhaps the most important of the four principles because it is at the level of face-to-face interactions that intercultural conflicts can be most dangerous and fruitful. The wisdom of this principle can be judged in terms of its results, and if the empirical data collected by pollster Michael Adams are correct, Trudeau's gamble has, for the most part, paid off.¹⁰ Nevertheless, the realm of informal politics is both fragile and potentially volatile and is no substitute for durable legislation and public institutions.

The fourth principle is rather straightforward and uncontroversial. In order to ensure equal civic status, including the ability to hold public office or work in the civil service, every citizen needs to be proficient in at least one official language. This principle reflects the origin of Canada's multicultural policy, namely, the *Royal Commission on*

⁹ Canadian *Immigration Act*, 1967.

¹⁰ See Chapter 4 of Michael Adams' *Unlikely Utopia: The Surprising Triumph of Canadian Pluralism*, (Toronto: Viking Canada, 2007).

Bilingualism and Biculturalism. Section four of the Commission reports the rather unsurprising fact that cultural groups other than the French and the English have contributed to the Canadian national project. At the present time, there are no serious arguments against the position that immigrants ought to be trained in at least one of Canada's official languages.

Two points in Trudeau's principles stand out as noteworthy. First, by rejecting the idea of an official culture, a dimension of freedom is established for citizens to work out the meaning of cultural identity, practices and beliefs. This is consistent with the liberal tradition of freedom that protects certain aspects of an individual's life from governmental interference. In this regard, the life of an eccentric and that of a cultural traditionalist are equally protected. Furthermore, the rejection of an official culture responds to concerns of creatively minded critics such as Bissoondath who are concerned that 'living' cultures will be stunted by bureaucrats. Secondly, in anticipation of the potential for conflict between groups, informal cultural interactions and exchanges are encouraged (in principle and through public funding) with the hope that *some* differences can be worked out in the interest of promoting a common national project or public good.

Canada's current multicultural policy has changed from Trudeau's initial principles but it retains much of the spirit expressed in 1971. Today's policy focuses on 1) racism, 2) representation, 3) shared citizenship and 4) cross-cultural understanding. Areas 1) and 4) address the potential for conflict between cultural groups. Areas 2) and 3) address potential barriers that some individuals might face in virtue of their culture (broadly construed). That is, Canada's multiculturalism program is directed at facilitating the

peaceful coexistence of a diverse population and ensuring that every citizen has an equal opportunity to enjoy the benefits of citizenship.

Who's afraid of Brian Barry?

In multicultural circles, mention of the name Brian Barry is often met with a degree of hostility. Barry's *Culture and Equality* has become a popular target for critics because of its attempts at exposing alleged weaknesses of multiculturalist arguments with what, at times, can be described as a mocking tone. His basic claim is that in most cases *if* culture can be adequately defined (and this is a big if) it is rarely a political problem or a solution. Rather, issues of fundamental justice such as human i.e., moral rights and political rights, the distribution of resources, and fair treatment are what governments ought to be focusing on. He argues that talk of culture more often than not obscures these fundamental issues with what Barry characterizes as confused and incoherent theories of culture. With respect to rules that govern society and public institutions, Barry takes a 'one rule for all' approach that allows for exemptions for pragmatic reasons but is unsympathetic to models of citizenship that are differentiated according to culture.¹¹

According to Brian Barry, cultural accommodations are not a matter of fundamental justice.

There is no principle of justice mandating exemptions to generally applicable laws for those who find compliance burdensome in virtue of their cultural norms or religious beliefs.¹²

Barry's argument assumes that the laws in question are good ones that can be justified according to some standards of democratic justice. In response to Barry one might grant

¹¹ Brian Barry, *Culture and Equality*, (Cambridge, Mass: Harvard UP, 2001) 54.

¹² *Culture and Equality*, 321.

that 1) some cultural accommodations are justified only for pragmatic reasons and, 2) there are times when culture is used as a smokescreen that obscures questions of fundamental justice. However, the claim that no principle of justice mandates what Barry calls 'exemptions' or what others might call 'accommodations' does not follow from 1) and 2). In the following I argue that there are in fact times when justice demands cultural accommodation of some kind.

Many of the answers that Barry provides to questions concerning cultural accommodation are consistent with those of proponents of multiculturalism. According to Bhikhu Parekh, a frequent target of Barry's criticism, it is often the case that "there is no real practical difference between [multiculturalists] and Barry".¹³ Furthermore, Amy Gutmann concedes that although she regards Barry's criticism of multiculturalism as overstated, it has some merit.¹⁴ Although Gutmann charges Barry with "ignoring" identity groups that promote democratic justice, it is not immediately clear that there is a genuine disagreement between Gutmann and Barry.¹⁵ More needs to be said on both sides to determine where to draw the battle lines.

Barry's commitment to principles of liberalism, egalitarianism and democratic justice is shared by many of his opponents such as Will Kymlicka, Amy Gutmann and Seyla Benhabib.¹⁶ However, proponents of multiculturalism disagree with Barry (and, at times, each other) over the importance that cultural differences play in the interpretation of

¹³ Bhikhu Parekh, *Rethinking Multiculturalism*, (New York: Palgrave Macmillan, 2006) 348.

¹⁴ Amy Gutmann, *Identity in Democracy*, (Princeton: Princeton UP, 2003) 23.

¹⁵ *Identity in Democracy*, 23.

¹⁶ Not every proponent of multiculturalism shares all of these principles but there is at least enough common ground to engage in fruitful debate.

behavior.¹⁷ That is, Barry is accused of giving short shrift to the role of culture in questions concerning fair treatment.

The tone of Barry's criticism of multiculturalism is also a point of contention. Parekh describes Barry as, "predictably angry and self-righteous, his language sometimes intemperate, and his approach combative."¹⁸ Parekh uses words like "unjust" and "perverse" to describe Barry's work and suggests that although Barry might not be a racist, his writing could be interpreted as such.¹⁹

Parekh also challenges Barry's intellectual virtue and suggests that he at times, "swallow[s] interpretive scruples in order to highlight and attack basic limitations of his target's underlying assumptions and structure of thought."²⁰ He goes on to charge Barry with treating proponents of multiculturalism as, "misguided fools, enemies of all he values" and creating "straw men" in their stead.²¹

The tone and tenor of Barry's critique of multiculturalism has elicited some rather blunt responses. Benhabib answers Barry's claim that culture is not really at issue as often as multiculturalists would suggest by accusing him of "bad sociology".²² This appears to be an indirect reference to Barry's criticism of Nancy Fraser, whom he charges with the same offense with identical words.²³ This amounts to what one might characterize as an odd exchange between two political philosophers who agree over basic principles of political ethics but drop their gloves over sociological methodology.

¹⁷ Bhikhu Parekh makes a similar criticism in *Rethinking Multiculturalism* 349.

¹⁸ *Rethinking Multiculturalism*, 346.

¹⁹ *Rethinking Multiculturalism*, 351-352.

²⁰ *Rethinking Multiculturalism*, 354.

²¹ *Rethinking Multiculturalism*, 354.

²² Seyla Benhabib *The Claims of Culture*, (Princeton: Princeton UP, 2002) 113.

²³ *Culture and Equality*, 279.

There is as much disagreement between Fraser and Benhabib, Parekh and Gutmann, and Kymlicka and Taylor (I have yet to mention what Barry says about this last pair) as there is between any one of these proponents of multiculturalism and Brian Barry. However, Barry remains the main target of much vitriol.

I suggest that if we ignore Barry's 'enthusiastic' tone and look at the substance of his arguments we will find that he has advanced multicultural theory in spite of himself. At points in the following work I highlight Barry's contribution by drawing on his best arguments. At other times Barry does make claims with rhetorical flourish but insufficient argumentation. It is at these points where Barry's argument can be challenged.

Although my argument is indebted to Barry (as it is to Kymlicka, Taylor and Young) I think that it is worth pressing an issue, raised by both Benhabib and Gutmann, over the role that culture plays in understanding and hence legislating behavior. Since Barry insists on uniform general rules, in response to Barry, one might pose the following questions. How do we know what behavior legitimately falls under a general rule? That is, how do we apply rules to cultural practices that may not be entirely understood? For example, in a hospital there may be a general rule for staff to treat patients with dignity and respect. Both dignity and respect are concepts that derive much of their meaning from culturally specific contexts. I suspect that in everyday life most people adjust their behavior according to the standards and expectations of the people they encounter. Sometimes part of being moral is responding to others in a way that is appropriate to what we take to be their world view. Cultural theorists are concerned with the way that cultural mediations affect the ways in which abstract universal concepts like dignity and respect are fleshed out in concrete situations. One service that multicultural theory can perform is to decouple

particular cultural iterations of abstract concepts from universally applicable rules. We might all agree on the importance of dignity and respect but disagree over what is dignified and respectful. Arbitrarily choosing and legislating one cultural iteration of these concepts without at least considering others amounts to a vicious form of moral imperialism. It might be the case that cultural context plays a substantial role in defining some moral principles at the concrete level.

Another question for Barry is how do we make sure that rules are not shaped in such a way as to intentionally exclude or humiliate members of minority cultural groups? It is conceivable that bans on religious practices could be used to marginalize religious practitioners. Barry might be right when he concludes that justice does not demand exemptions from general rules to accommodate cultural practices, but given such occurrences as the potential for the abuse of rules, the possibility that equal treatment can be designed to intentionally exclude certain groups, the discrepancy between how rules are written and how they are enforced, and the possibility of novel situations that pose unexpected challenges for rules, we have reason to at least reconsider established rules in the interest of fairness.

Thesis Outline

This work moves between various levels of discourse that range from highly abstract philosophical concepts to concrete practical issues. These discursive poles are held in tension insofar each represents a limit to the other. Theoretical consistency is challenged by practical limitations and practical exigency is limited by abstract principles. Nevertheless, both levels of discourse (and the range that is found between these extremes) work together to form the basis of an ethical and political theory. The relationship between

theory and practice that I am suggesting is analogous to that between the blueprints for a house and the house itself. If we endeavor to renovate a house we will consult the blueprints to look for key features such as load bearing structures, room dimensions and circuit diagrams in order to plan out our changes. However, when it is time to make the actual changes it is not enough to go by the plans. We might find that the floors are not level, the walls are not true, or other minor imperfections call for changes to our measurements. If the imperfections are serious enough, we may find that we need to rebuild a wall or level out a floor. However, in cases where imperfections are judged to be tolerable, we measure our material to fit. Such is the case with political ethics and public policy. In Canada we have inherited laws, public institutions, societal norms and traditions that are like a solid but aging house. In order to carry out the repairs necessary to maintain this house and respond to changing needs we need to consult plans as well as take actual measurements. Likewise, in order to argue convincingly for an approach to multicultural theory and policy one must take seriously both abstract and concrete levels of discourse.

My basic argument for cultural accommodation is based on the following principles. 1) Any practice (x) that is sanctioned according to an established set of generally applicable rules implies that any other practice (y) that is analogous in relevant ways should also be allowed. 2) In cases where action (z) involves little cost to (a) and can provide a comparatively large benefit to (b), it is reasonable to say that (a) ought to do (z). Much of what follows is devoted to the question of what constitutes relevance with respect to analogous practices. That is, does relevance turn on comparing cultural groups or practices? Many multicultural theorists focus on groups and hence argue for group specific rights or differentiated citizenship. I argue (along with Barry) that political recognition of

groups is problematic and so we are better off focusing on practices. However, I part ways with Barry on the value of multicultural public policies. I argue for a form of multiculturalism that is consistent with state neutrality on questions of culture. Given that the state can never achieve complete neutrality vis-a-vis culture, there may be times when accommodations are justified for more than pragmatic reasons.²⁴ Furthermore, there may be times when requests for accommodation go beyond what can be mandated by the state. In such cases creative exchanges between citizens may give rise to informal solutions. With respect to cultural practices, if the government is to aspire to (though admittedly never achieve) a policy of cultural neutrality, then in most cases cultural significance and meaning ought not to be considered relevant for the purpose of sanctioning a practice. By cultural practice I mean codified behavior that is connected in a significant way to a culturally specific vision of the good or a good life. An anthropologist might define cultural practice as the way things are done in some particular place and time. Although this definition may be apt for describing a way of life it does not allow us to evaluate or prioritize practices for the purpose of creating public policy. Therefore, I include 'codified' behavior in my definition because I am interested in behaviors that have some kind of normative and historical significance for a group. In other words, cultural practices are not done 'just because' but rather have some reason or significance for practitioners. Of course, not every practitioner participates in practices for the same reason or necessarily knows why they do certain practices. Furthermore, as is the case with some religious symbols like the hijab, the meaning of cultural practices is not fixed. However, the

²⁴ For more on the impossibility of neutrality in public institutions see Thomas Nagel's, "Rawls on Justice," in Norman Daniels *Reading Rawls*, (New York: Basic Books, 1974) 1-16.

conceptual domain that includes the significance of a hijab is certainly different than that which covers shoelaces and trouser cuffs. Even if the codification of a practice is contested or revisable, the fact that it is codified in a certain way distinguishes it from things that people do 'just because'. Admittedly, my definition of cultural practice may still be overly broad because it is not clear what is meant by culture. I will address this limitation in Chapter 1.

In a liberal democracy like Canada, the particular meaning of culturally specific visions of the good is not central to multicultural public policy. What *is* relevant is that certain practices are meaningful to practitioners in a significant way such that we ought to consider whether prohibiting the practice would be viewed by practitioners as being an affront to their dignity or sense of duty (or some other morally significant value) *as* a member of a cultural group.²⁵ The fact that a practice is connected to a person's dignity or sense of duty does not entail that said practice ought to be allowed. However, it does signal that it is the kind of practice that is of interest to multicultural theorists and public debates over cultural accommodation. What is at stake is 1) the freedom of practitioners to pursue a way of life that they consider worthwhile and 2) the responsibility of the government to promote public (common) goods like safety, health, and economic security. Consequently, insofar as part of the government's role is to promote these kinds of goods,

²⁵ I include the stipulation that the prohibition of a cultural practice affects people *as* cultural members to distinguish matters of multicultural policy from matters of general public policy. Some may question this distinction because: a) they consider all justifiable multicultural policies reduce to general principles of public policy and/or b) they consider an affront to the dignity of anyone to be an affront to the dignity of all. My response is that many but not all justifiable multicultural policies reduce to general principles of public policy. I will discuss this response more in chapter 8. In response to b) I applaud those who try to empathize with others but I remain skeptical about how much policy makers can rely on universal empathy.

the respective risk and degree of harm posed by cultural practices is also relevant to multicultural policy.

My position is based on the following claims:

- 1) For the purpose of multicultural public policies, questions of accommodation should focus on cultural practices (as opposed to identity).
- 2) There is a common standard or set of principles according to which practices from different cultures can be compared.
- 3) The government has reason to tolerate some practices even if it does not necessarily support them.
- 4) Cultural accommodations can be reasonably limited by practical limitations such as cost.

In chapter one, I defend claims 2 through 4 and argue that the best way for governments to deal with cultural accommodation is with something that looks like a form of rule consequentialism.

In chapter two, I address the questions of how to define culture and why culture should matter to a government seeking to be culturally neutral. I argue that although culture is difficult to define, taking it seriously can yield better social science which in turn may yield better public policy and address cultural differences for the purpose of diffusing potential conflicts.

In chapters three through five, I examine attempts by Charles Taylor, Will Kymlicka and Iris Marion Young, to define culture in terms of identity in order to reconcile the concept with public institutions. Finding each attempt problematic I outline in chapter six an alternative approach that focuses on cultural practices as opposed to group

membership. Using literature on narrative identity as a guide, I lay the groundwork for a narrative approach to multicultural public policy and accommodation. If we accept the consequences of such an approach - that is, we take cultural identity to be mutable and contestable and cultural boundaries to be porous - then it follows that we ought to avoid defining and potentially ossifying culture within legislation. In this context, the concept of narrative identity is best understood as a limit or side-constraint on government action.

The remaining chapters are devoted to demonstrating the merit and limitations of this approach by applying it to concrete cases.

CHAPTER 1 CULTURE, POLITICS, ETHICS

I approach the issue of cultural diversity and accommodations as a question of political ethics. That is, I am looking at how a concern for the well-being of individuals (both citizens and non-citizens) should constrain the government, both in the way it is structured and in the way it acts. Although I do not deny that the government may at times be morally obligated to not only refrain from acting in a certain way but also to act for the sake of the well-being of individuals, I argue for the position that it ought to be cautious in its attempts to shape its citizens according to a particular vision of the good.²⁶ Admittedly, it is doubtful that we can draw a sharp analytical distinction between the right and the good, but we *can* favour rules and policies that allow for a degree of diversity or indeterminacy with respect to diverse visions of the good. Furthermore, although we may not agree about a particular vision of the good or the primacy of one value over another, we may agree on some features that are common to all visions of the good that we are willing to accept as legitimate.²⁷ Consequently, we can be both universalists and pluralists when it comes to the good.²⁸

Multiculturalism as a normative position can best be defended by appealing to political freedom. Insofar as a dimension of political freedom is freedom from the

²⁶ Charles Taylor (*Sources of the Self*) and Alasdair MacIntyre (*After Virtue*) argue that liberal neutrality toward the good leads to anomie (lawlessness). For a robust defense of liberalism against the charge of anomie see Andrew J. Cohen's 'Defending liberalism against the anomie challenge', in *Social Theory and Practice*, (vol. 30, no. 3 July 2004) 391- 436.

²⁷ See chapter 1 of Ronald Dworkin's *Is Democracy Possible Here?* (Princeton: Princeton UP, 2006) for a plausible formulation of common ground.

²⁸ One possible way to go about doing this is to distinguish between biological/psychological needs that presumably are shared by the entire species and desires and needs that are directed at leading the best life possible (however that might be envisioned).

interference of an authority (what Isaiah Berlin calls negative liberty), multicultural public policies can reinforce this kind of freedom by ensuring that individuals can live as they choose without being compelled to assimilate either by the authority of the government or the mood of the majority. In other words, one aspect of political liberty allows people a private space to be governed by the authority or principle of their choosing, whether it be cultural elites, a deity, science, reason, desire, random whims, etc. This private 'space' is not delimited by the walls of one's house. Rather, it is constituted by aspects of an individual's life that are 'off limits' to public decision-making processes. As such, aspects of a person's life that are quite visible in public life (like head coverings) may still be designated as private.

One might argue that negative freedom has no intrinsic value. That is, the value of negative freedom is derived from positive freedom insofar as it matters not only that we have choices but more importantly what kinds of choices we make.²⁹ If this is the case then it appears as though a defense of cultural accommodation that draws too heavily on the concept of negative freedom is vulnerable. I concede that we ought to be cautious with the claim that negative freedom has intrinsic value, but I suggest that there is at least some intuitive appeal to the idea that our freedom to do as we please ought not to be arbitrarily limited by the choices of others.³⁰ Most of us would expect some justification for limits

²⁹ Joseph Raz, *The Morality of Freedom* (Oxford University Press, 1986).

³⁰ Andrew Cohen gives the following argument in response to Raz in "Defending liberalism against the anomie challenge".

Choice, then, is not only instrumentally valuable but is also--to use Raz's terminology--a "constituent" intrinsically valuable good. It "is intrinsically valuable because it is an essential ingredient and a necessary condition of the autonomous life. It is a capacity whose value derives from its exercise." It is part of what makes a life worth living. In Raz's own view, though, autonomy is valuable "only if exercised in pursuit of the good." He is led to

placed on our freedom. If so, those who would limit our freedom to do as we please have the burden of proof to justify such limits and there is some undeniable value to negative freedom. One can accept that negative freedom has some value without giving up the claim that much of the value of negative freedom is derivative of positive freedom. The obligation to justify limiting negative freedom remains.

The capacity to choose, either explicitly or implicitly, is an important aspect of political liberty. To this end, some legal mechanisms are designed to protect, as much as possible, vulnerable individuals from unwanted coercion. For example, we might argue that a woman has the right to refuse to participate in a marriage that has been arranged for her. If it is the case that many women are being coerced into such marriages it may be

this conclusion because of a particular intuition regarding how we would answer a question about autonomy. "The question is, has autonomy any value qua autonomy when it is abused? Is the autonomous wrongdoer a morally better person than the non-autonomous wrongdoer? Our intuitions rebel against such a view. It is surely the other way around." In contrast, I claim that choice--and autonomy--is intrinsically valuable regardless of its relation to the good. Although our intuitions may well rebel when we are faced with Raz's question, I suggest that this is because of an ambiguity in the question.

The autonomous wrongdoer is morally blameworthy where the nonautonomous wrongdoer is not. In that sense, the autonomous wrongdoer is obviously not "morally better." The autonomous wrongdoer, though, comes closer to our ideal of the person than the non-autonomous wrongdoer (or even the non-autonomous good-deed-doer). That we blame the autonomous wrongdoer indicates our disappointment with that person, who is capable of more. That we don't blame the non-autonomous wrongdoer is not indicative of any value we place on him; it is rather indicative of the fact that we do not consider him to be on par with us. To the degree that he is not autonomous, he may be deserving of our pity and/or our assistance, but he is a lesser being. Hence, Raz's question conflates "morally better" with "morally more valuable." "Better" may sometimes mean "more valuable," but it may also mean "worthy of more praise or less blame." The autonomous wrongdoer is morally more valuable; she is not worthy of more praise. *Social Theory and Practice* (2004), 30.

necessary to put specific laws in place that protect women from coercion. Also, social programs (such as public education, public healthcare, economic support) that reinforce an individual's capacity to effectively make choices can help to protect political liberty. Of course, there are important aspects of individual well-being other than the capacity to choose, and a government cannot be expected to remove all coercive influences from an individual's life. But it can refrain from contributing to these influences and where justifiable and possible, resist them.

With respect to questions of culture, it is worth noting that the freedom to choose cuts both ways in the sense that it protects individuals from coercion from members of their own cultural group as well as from the government and majority groups. This has led some cultural elites to demand certain degrees of cultural autonomy over areas of life (such as education) that affect one's capacity to make informed choices. Depending on the context, protecting an individual's freedom to make choices about important aspects of his or her life can either support or challenge specific cultural claims.

Things become even more complicated when the protected areas of an individual's private life are such that they are not only visible but somehow interfere with public life.³¹ For example, a believer in virtually any religious tradition is not likely to discard her beliefs when she enters a public space. Consequently, practices that are justified by religious belief that are uncontroversial in one's private life can seem problematic in public life if the practice is seen as conflicting with principles or standards of public norms. Also, there may be some aspects of public life that put individuals in an uncomfortable position

³¹ Some may disagree over where to place the boundary between public and private life but very few would want to do away with such a boundary altogether. There are some aspects of our lives that most would not want to be subject to public debate.

because of their beliefs. Mores about regulating relationships between the sexes, images of the sacred and/or the profane, beliefs about the nature of the universe and beliefs about the moral status of “nonbelievers” are all potential sources of conflict.

When considering questions concerning cultural accommodation it is important to keep in mind not only moral concerns but also practical concerns. If one is to avoid the danger of indulging in utopian visions one must consider the moral justifications for political arrangements, legislation, and public policy, as well as the limitations of human psychology, institutional mechanisms, and feasible alternatives. The moral theory used to justify the former list should be capable of adequately dealing with the limitations of the latter.

Another issue to consider is the relation between multiculturalism and ongoing debates over metaethics, political theories, and moral theories. Although such debates are not unimportant they are not the focus of this present work. My basic argument is analogical and builds from answers to moral questions that have already been worked out in the practical sphere of civil society. If we take what is currently accepted in law and civil society as a starting point then in the interest of fairness we ought to allow for a certain degree of accommodation or change current practices. In other words, if we accept certain kinds of practices as allowable then we should accept analogous practices. Much of the work that I need to do focuses on the analogical links between cases and the role that narrative plays in making such links. This means that moral judgments about specific practices are secondary to my argument because even if a practice is morally questionable, I can still argue that if one kind of questionable practice is allowed then we ought to allow analogous cases.

A possible retort to my two-wrongs appeal to analogous cases is that the more that questionable instances are strung together, the more there is reason to backtrack and resist the whole sequence. This is what happened in Ontario when some Muslim groups petitioned the government to allow some disputes in family law to be settled according to Shariah law. Part of the argument in favour of allowing Shariah was that other religious groups had analogous status in family law. Rather than allow Shariah law, the Ontario government decided to disallow all religious arbitration in matters of family law.³² Part of the justification for this decision was a concern about maintaining the separation of religion and the state. The petition to allow Shariah arbitration highlighted what was subsequently deemed to be an unacceptable intrusion of religious groups into state jurisdiction. Evidently there are two ways that the government can respond to a request for cultural accommodation that is consistent with the principle that analogous cases ought to receive similar treatment. The cultural practice can be accommodated or the analogous practice can be disallowed, or at least, resisted.³³

Although it allows for the possibility that both the cultural practice and its analogue may be legitimately resisted or outlawed, my two-wrongs analogical argument is designed to unmask cases where the practices of minority cultures are held to a higher standard than those of the majority. To illustrate this point we might imagine a society (somewhat like

³² Keith Leslie, "McGuinty to ban all religious arbitration", Kingston Whig - Standard, September 12, 2005, 9 Front.

³³ One might argue that marijuana ought to be legalized on the basis that tobacco is legal. The analogy is based on the similar health risks that tobacco and marijuana pose. If one supposes that this analogy is strong, one can still argue against the legalization of marijuana by pointing to the fact that although tobacco is legal, the government is taking significant measures in controlling its sale and use such that it is foreseeable that tobacco may one day be outlawed. So, if efforts are being made to get rid of tobacco, it makes little sense to bring in legal marijuana.

Canada) where law enforcement agents allow a certain degree of latitude in some areas such as traffic law, minor drug offences and petty crimes. If, for example, police officers only pull over cars that are exceeding the speed limit by more than ten kilometers per hour, then people will reasonably expect that they will not get ticketed for going eighty-five in an eighty zone. However, if one identifiable group is consistently ticketed for going even one kilometer over the limit, we might think that even though ticketed members of this targeted group are in fact breaking the law, it is unfair that they get ticketed. We might then argue that if most members of society are given limited latitude with respect to speeding tickets then every member ought to be given this latitude. Of course, this argument assumes that the qualities that identify the 'zero-tolerance' group are not relevant to traffic laws. If the group consists of new drivers, those convicted of previous offences or possibly those transporting dangerous materials, we might be inclined to accept differential treatment. However, if the difference is arbitrary (like skin colour or religion) then it is unjust.

I am not uninterested in moral questions concerning particular practices but I am primarily concerned with general questions of fairness between cultural groups. My main argument works with any moral theory that takes seriously the principles of moral egalitarianism, i.e., principles holding that all individuals deserve equal moral consideration. What principles we use to define right action are secondary to the principle of equal moral consideration. This is an important feature of the argument because Canadian society does not strictly adhere to a single consistent moral theory. Different questions have been answered according to diverse conceptions of equality, liberty, societal goods, etc. Although courts attempt to use precedents to give some continuity to legal rulings, this is but one dimension of public moral life. In order to address the inevitable

theoretical inconsistencies of public life I base my argument for accommodations primarily on an analogical argument for fairness.

So as to not get laden down with theoretical baggage, I attempt to build upon principles that are broadly accepted by most. However, there are a few points where my argument demands that I must defend some fundamentals. These points are moral universalism and political liberalism. I also suggest that rule consequentialism is a well balanced method for evaluating and codifying behavior.

In the next section I clarify and justify my theoretical approach to political ethics and in doing so frame the question of cultural diversity and accommodation in Canada. I begin by defending moral universalism against cultural relativism. Without this defense it is impossible to establish morally relevant analogical links between diverse cultural contexts. I then argue in favor of political liberalism as a guide for regulating the relationship between the government and individuals. If we value liberty and agree that the government's authority to declare and shape individuals according to a particular vision of what constitutes a good life ought to be limited, then we agree to some form of political liberalism. I conclude the section by arguing that the moral theory best suited for directing public policy and legislation (including multiculturalism) is rule consequentialism. My commitment to rule consequentialism is intended to reconcile the need for rules in public institutions with the desire to achieve certain kinds of general outcomes (that we can usually agree upon), such as peace, liberty, justice, and a host of conditions necessary for a minimally worthwhile life. At this stage, agreement about the specific kinds of consequences that we are trying to achieve is not as important as the claim that we are concerned with consequences at all.

The aim of my argument is not to show that my position is unchallengeable in all respects. Rather, it is my intention to show that all things considered, of the theories and positions that are currently being voiced in political debates, mine has the least serious difficulties.

Criticism without viable alternatives is unacceptable when dealing with practical concerns like law, politics and public policy. Anyone who attempts to apply ethical theory to these domains will inherit particular political arrangements that can be difficult to change and this difficulty is often exasperated by geographic, economic and historical variables. By addressing a pre-existing situation I am beginning *in media res*. This is why an analogical approach is, I think, the right one to take. An approach that builds solely upon agreement or foundational principles would potentially entail an unreasonable overhaul of existing political arrangements and public institutions. Rather than suggest revolutionary changes, I propose a more modest approach that expands the sphere of those who enjoy social and political goods by proposing small changes (measured in terms of costs) that might potentially have significant positive consequences. I take it to be the case that when dealing with applied ethics an imperfect theory that performs well in practice is preferable to a perfect theory that cannot be implemented. With this in mind I attempt to clarify the issue of cultural diversity and accommodation without seeking to theoretically sanitize the 'messiness' of moral and political life.

Culture and Moral Universalism

Before we can address the issue of cultural diversity and accommodations it is worth revisiting the debate over universal moral principles. One concern that has been raised by liberal theorists like Brian Barry is that many proponents of multiculturalism are

explicitly or implicitly committed to cultural relativism.³⁴ I take cultural relativism to be the position that there are no context-transcending (universal) moral principles according to which we can judge an action to be right or wrong.³⁵ Rather, moral principles (and the truth of the claims supported by such principles) only make sense from within a particular cultural context. Are proponents of multiculturalism necessarily committed to cultural relativism? If so, does this pose a problem for multicultural theorists?

I address the latter question first because if cultural relativism is not problematic then it does not matter whether multiculturalists are necessarily committed to it or not.

There are several arguments that one can make against cultural relativism. I briefly sketch a few in order to show that cultural relativism is, if not an untenable position, then at least a deeply problematic one. I then argue that a commitment to multiculturalism (in some form at least) is not incommensurate with a universalistic approach to moral reasoning.

One of the most common but strongest arguments against cultural relativism is that it gives us counterintuitive answers to moral questions. There is a sense in which we expect a good moral theory to cohere with 'everyday morality' or widely held moral intuitions. To borrow from Rawls, in defending a moral theory one tries to find a 'reflective equilibrium' between strong moral intuitions, moral principles and a moral theory.³⁶ However, if we accept that moral principles are relative to culture, virtually

³⁴ *Culture and Equality*, 284-286.

³⁵ I am borrowing the term "context-transcending" from Maeve Cooke who uses it in *Representing the Good Society*, (Cambridge, Mass: MIT P, 2006).

³⁶ Admittedly I am using reflective equilibrium in a broader sense than Rawls' wide reflective equilibrium in *A Theory of Justice* (Cambridge, Mass: Belknap P, 1971). However, both usages refer to the idea that in building or evaluating a moral theory one

anything is morally permissible so long as it is deemed acceptable (by whatever procedures a particular culture may have for determining acceptability) within a cultural context. If this is the case then cultural relativism's guiding principle (that there are no context-transcending moral principles) fails the 'everyday morality' test. The fact that honour killing, infanticide, and slavery are all practices that at some time have been accepted within particular cultural contexts, or even in places continue to be, gives one good reason to reject cultural relativism if one wants a moral theory that universally condemns these practices and not just in cases that arise in particular cultural contexts. Furthermore, the legitimacy of international law and international criminal courts capable of prosecuting war crimes depends on the claim that there are context-transcending moral principles.

It is worth noting that many of those who have the most to gain from defending morally abhorrent practices do not do so as moral relativists. Racists appeal to their freedom of belief and expression to protect their right to hold unpopular views. Despots appeal to the sovereignty of their borders when facing international pressure to change the way they govern. Human rights violators respond to international criticism with a tu quoque argument that points toward alleged rights violations in their accusers' home countries. In each of these cases, those defending abhorrent positions do so by appealing to universal normative principles. More often than not, the voices of cultural relativists are loudest when supporting what are putatively benign cultural practices but fade into a whisper when cases of abhorrent practices arise. This suggests implicit universalistic moral judgments lurking behind relativist discourse.

ought to try to find a balance between theoretical considerations and widely held moral intuitions.

Cultural relativism is sometimes a position held by critics of the Enlightenment who are skeptical of the claim that we can have the same kind of certainty in moral judgments that is sought by scientific inquiry. One response to this concern is that universalism does not necessarily entail infallibility. Scientists now treat the kind of knowledge they seek as fallible. Likewise, just as current scientists have accepted fallibility as an epistemic principle, so too can (and in many cases have) proponents of universalistic moral thought.³⁷

One might also argue for cultural relativism as a response to the way that culturally specific mores have historically been moralized by hegemonic groups in such a way as to oppress indigenous and minority groups. In response, one can point out that the claim that a hegemonic group ought not to impose its mores on another group is different than the claim that there are no context-transcending moral principles that should be promoted and in some cases imposed. It is not inconsistent to say that mores are culturally specific and yet maintain that there are moral principles that transcend culture. For example, different cultural groups might have different visions of human dignity but this difference does not mean that we cannot make the general claim that human dignity ought to be respected. That is, we might think of respecting an individual's dignity as entailing that one refrains from intentionally humiliating or dehumanizing a person. This moral constraint on how we ought to treat someone is what one might call the 'universal content' or general principle. What one finds humiliating or dehumanizing may vary from person to person and will likely be connected in some way to culturally imbedded mores. Although some cultural mores are morally significant not all mores necessarily suggest general moral principles. Some may be just a matter of convention, utility, or efficiency. Nevertheless, many

³⁷ See chapter 6 of Ian Shapiro's *The Moral Foundations of Politics*, (New Haven: Yale UP, 2003).

standards of 'polite society' can be explained as particular instantiations of more general moral claims. So, one can agree that cultural mores are context specific without being a cultural relativist.

At this point we might be inclined to accept that there may be some context-transcending moral principles but still have reservations about moral imperialism, that is, the imposition of moral principles on an unwilling group. Let us take as an example the imposition of what has been described by some as "Western" morality on Aboriginal peoples in North America.³⁸ The cultural relativist's view is that Europeans should not have imposed their moral views on Aboriginal peoples because the moral principles of North American Aboriginal peoples were just as right within the context of Aboriginal cultures as those of the Europeans were within the context of European cultures.

The proponents of this view are right to say that Europeans acted in a morally reprehensible manner toward Aboriginal peoples but the reasons given in support of this claim are suspect. If we accept the cultural relativist's position then the kinds of things that the Europeans did to the indigenous population are irrelevant to the question of whether they were right to do so. The cultural relativist cannot argue that the treatment of indigenous peoples by Europeans was morally reprehensible because it involved such things as: the unjust expropriation of land and resources;³⁹ the violation of the principle of moral equality by failing to treat Aboriginal people as moral peers and; the denial of

³⁸ The idea of a "Western" moral tradition is itself controversial. However, for the sake of argument I will grant this concept to relativists.

³⁹ Even if we accept Locke's theory of property rights, historical and archeological evidence proves that the "untouched" land and resources that Europeans took possession of was in fact carefully shaped and managed by Aboriginal peoples. See chapter 2 of Bruce Trigger's *The Children of Aataentsic: A History of the Huron People to 1660*, (Montreal: McGill-Queens & Apos UP, 1976).

fundamental freedoms such as speech, mobility and religion.⁴⁰ The relativist cannot appeal to the context-transcending evaluative principles that are necessary for one to claim that the actions of one group toward another are reprehensible. For the relativist, the fact that the worldview of one group was imposed on another is what is at issue.⁴¹ The content of the actual view being imposed and that which is being challenged are irrelevant because each is relative to its particular culture. Consequently, cultural relativism leaves one unable to critically evaluate what actually went on during the colonization of North America. Furthermore, it is hostile to the idea that there may be some good moral principles that the 'West' might learn from Aboriginal moral traditions.

If the cultural relativist is right then there is never a time when it is morally acceptable for one cultural group to impose moral principles on another.⁴² Clearly this is not the case. If a cultural group holds the moral view that only certain religions, races, ethnicities, etc., have a right to exist and this group is able and willing to act on this view, then we as members of a cultural group (or international community of groups) who strongly disagree with this moral view should do everything we can to impose our beliefs on this other culture. This line of reasoning can be used to justify interventions in cases of genocide like the one currently playing out in Darfur. It would be obscene to argue that the international community ought not to intervene in Darfur for fear of moral imperialism, and I doubt that any reasonable proponent of cultural relativism would try to do so. If we can

⁴⁰ Of course, this list of violations of basic moral principles is not exhaustive.

⁴¹ At this point one might argue that relativists need to universalize the principle of noninterference to support their position. This is yet another reason why moral relativism is an incoherent view.

⁴² One might also argue that moral relativism becomes incoherent when applied to cases where a cultural group's moral principles promote the destruction or domination of other groups. See Barry's discussion of the Maori in *Culture and Equality*, 253-254.

agree that genocide ought to be stopped even at the risk of imposing what are arguably one culture's moral views on another, then we are committed to some form of moral universalism. The question is merely one of where to draw the lines of universalism and how to apply context-transcending principles to particular contexts.

We now have good reason to reject cultural relativism because it gives us counter-intuitive answers to moral questions.⁴³ There are many other reasons why cultural relativism is an unattractive position but I suspect that those that I have given are sufficient to make the point. The next question is: if we give up cultural relativism does this mean that we have to give up a main plank of multiculturalism?

Today, most proponents of multiculturalism deny being cultural relativists and have responded to concerns about relativism by arguing for the position that some kinds of multicultural policies are not only consistent with but are in fact justified by universal moral principles.⁴⁴ How we work out these principles in concrete terms and their relation to specific cultural claims may be open for debate, but not the universality of moral principles.

Another potential avenue for proponents of multiculturalism is to argue that although universal moral principles are necessary to any moral theory that yields answers to moral questions that cohere with widely held moral intuitions, such principles are not sufficient. Because it is necessary to flesh out abstract moral principles in concrete terms it

⁴³ One might argue that an appeal to intuitions is itself susceptible of being a form of relativism. This is a legitimate concern that goes beyond the scope of this present work. For a good discussion of this issue see chapter 4 of Amy Gutman's *Identity in Democracy* (Princeton: Princeton UP, 2004). For now, I hope that a moral theory that allows some kinds of intuitively abhorrent practices is deficient in some way. We may disagree about the fine details of what constitutes and intuitively abhorrent practice but I have no doubt that there are some practices that we can agree are in fact abhorrent.

⁴⁴ See Will Kymlicka's *Multicultural Citizenship* (New York: Oxford UP, 1995).

is necessary to consider historical and cultural contexts. This leaves room for multiculturalists to argue for what Seyla Benhabib calls diverse “iterations” of universal principles.⁴⁵ Later in this work I argue that personal and cultural narratives can bridge the gap between abstract contexts and lived experience in order to design laws and public policies that are both sensitive and relevant to a culturally diverse population.

To conclude, cultural relativism is an untenable position but it is not one to which proponents of multiculturalism are necessarily committed. However, in order to avoid unintentional appeals to cultural relativism one must give up the idea that culture can be a reason for justifying moral claims as well as the claim that moral principles ought to never be imposed on a cultural group.

Political Liberalism

There are many different versions of political liberalism but each claims as a foundational principle the primacy of individual liberty and civic (political) equality as political goods. John Rawls’ first principle of justice captures the core of liberalism, namely, that “each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.”⁴⁶ Constitutional documents such as the Canadian Charter of Rights and Freedoms and the American Bill of Rights work out how equal and extensive liberty applies to various aspects of both private and public life. Although they support what are arguably very different political arrangements, both the Canadian Charter and the American Bill of Rights can be said to express liberal principles. To paraphrase Kwame Anthony Appiah, liberals argue over what liberal freedom and

⁴⁵ See chapter 1 of Benhabib’s *The Claims of Culture*.

⁴⁶ *A Theory of Justice*, 60.

equality mean but they don't argue over their importance.⁴⁷ In other words, liberalism broadly construed entails a commitment to individual liberty and civic equality as political goods but there remains some disagreement over questions such as how we ought to construe civic equality, what kinds of limits can be legitimately placed on individual liberty, and what are our obligations to those who are worst off. Although not every proponent of multiculturalism self-identifies as a liberal, other than a few notable exceptions most demonstrate a basic commitment to liberty and equality.⁴⁸

I will not try to offer a solution to the numerous debates between liberals.⁴⁹ Rather, I will try to remain, for the most part, above the fray by sticking to claims that most liberals can agree with. Rawls' first principle of justice is, I think, one such principle.⁵⁰ However, not everyone in my audience is necessarily a political liberal (even in its broadest form). Some might place things like community, social order, security, or a particular vision of the good above individual liberty. Parekh, for example, is suspicious of liberalism because he thinks it wrongly presupposes the primacy of individual freedom over other political goods.⁵¹ Charles Taylor argues that liberalism (what he calls procedural liberalism) is unable to recognize authentic identities and this misrecognition (or failure to recognize)

⁴⁷ Kame Anthony Appiah *The Ethics of Identity*, (Princeton: Princeton UP, 2005) xi.

⁴⁸ Chandran Kukathas is one such exception who argues that the only right that a liberal state should impose on cultural groups is the right of individuals to exit the group. See "Are There Any Cultural Rights?" in *The Rights of Minority Cultures*, ed. Will Kymlicka (Oxford: Oxford UP, 1995) 228-255.

⁴⁹ For an example of one such debate, if we were to read beyond Rawls' first principle of justice we would quickly find ourselves in a controversy over distributive justice.

⁵⁰ I do not make the claim that most people would accept Rawls' reasons for accepting this principle.

⁵¹ *Rethinking Multiculturalism*, 14-15.

constitutes some kind of harm.⁵² In this section I defend liberalism (broadly construed) against some common criticisms by arguing that it does certain things better than other political arrangements, namely, it establishes minimal conditions for a society in which diverse individuals (and groups) can peacefully pursue what they consider to be worth pursuing.

Since some proponents of multiculturalism are critics of liberalism it is worth addressing versions of their criticisms. Generally speaking, there are three lines of criticism that are most commonly leveled at liberalism by multiculturalists. The first criticism is that liberalism is overly abstract and so misses relevant aspects of political life such as cultural differences.⁵³ The second kind of criticism concerns liberalism's claim that the individual is the most basic moral unit. In other words, liberals evaluate moral claims according to their relation to individual well-being. Critics argue that cultural communities or perhaps the state ought to be considered as the ultimate source of moral value. A third criticism of liberalism is that it leads to negative outcomes. Such outcomes are often measured in terms such as community and political participation, public decency, crime rates, divorce rates, mental health, spiritual well-being, etc. Critics make the empirical claim that in liberal countries people are worse off because of liberal laws and policies.

In response to the first line of criticism, one might grant that liberalism *is* often presented in abstract terms but this does not mean that it cannot be spelled out in concrete terms when applying it to particular situations. It would be absurd not to do so. How else

⁵² Charles Taylor, "The Politics of Recognition" in *Multiculturalism*, (Princeton: Princeton UP, 1994) 37-44.

⁵³ See Joseph Carens' critique of Rawls in *Citizenship, and Community: A Contextual Exploration of Justice as Evenhandedness* (New York: Oxford UP, 2000).

would one be able to tell when a liberal principle was being violated or upheld if one did not have a good understanding of contexts? Although liberalism uses procedures this does not mean that legal and political judgment is mechanistic. One must interpret a situation in order to apply a general rule. What it means to be free, tolerant, equal, democratic, etc. is constantly being contextually negotiated in liberal societies like Canada.

The alleged blindness to difference of liberalism is said to leave us unable to address certain kinds of injustices where difference is relevant. For example, in countries like Canada and the United States (and probably every other culturally and ethnically diverse country) there is an ongoing historical legacy of racial and cultural discrimination that at one time was reflected in unjust inequalities in the civil status of individuals who were (and in some cases still are) classified by the government as members of an 'inferior' group. A good liberal will reject such inequalities and provide an argument that demands universal political rights. However, critics might respond by claiming that the harm done by discriminatory policies and social exclusion cannot be adequately addressed by universalizing political rights.⁵⁴ Rather, in addition to granting such rights, there ought to be some kind of social transformation so that marginalized individuals are not only equal 'on paper' or in the abstract sense, but are also accepted as social equals.

There are several ways that a liberal might respond. One is to admit that political rights are not sufficient to adequately address every kind of social injustice, including some suffered by vulnerable members of minority groups, yet maintain that political rights are

⁵⁴ Jamin B. Raskin argues that historically in the United States, colourblind policies have not been inconsistent with the idea of white supremacy. 'Scratch colorblindness, and white supremacy comes to the surface pretty quickly. Colorblindness is now the main rhetorical device mobilized to defend racial privilege and dominance.' "Moving From 'Colourblind' White Supremacy", *Harvard Journal of Law & Public Policy* Vol. 19 No. 3, (1996) 743-752.

necessary conditions to address injustice. The exclusion of some groups from the benefits of civic equality causes harm but it can also be a symptom of some other kind of problem (such as the tendency of groups to oppress each other when given the chance). Addressing this symptom (unjust exclusion) will take care of many problems but may not do much to ameliorate what might be considered as root problems such as racist or bigoted attitudes.

There is no doubt that social and economic inequalities can endure after civic equality is achieved. Nevertheless, by granting to members of hitherto disenfranchised groups the freedom of speech, belief, association, etc., as well as the right to vote and own property, they along with others who are sympathetic to the cause of social justice are better off and are better able to address difference-based injustices. As Anne Phillips puts it,

[political equality] matters because it already delivers something even when that something is not so grand as it promised to be. A society that recognizes all adults as political equals recognizes their equal right to vote and stand for election; within certain limits set by political order, it also recognizes the equal legitimacy of each citizen's point of view. The first of these will not equalize their political influence, but it does mean that each citizen carries the same weight in the moment of casting of a vote and that not can be rejected without reason in the selection of candidates for office... The second does not guarantee equal respect but does mean that the most frowned-upon of opinions will still be tolerated if they cannot be show to do anyone harm. These are achievements that are not to be dismissed as 'merely' political.⁵⁵

I will comment more on toleration later. At the moment, what we can take from Phillips is that even if political equality does not solve every social problem that various theorists and commentators have charged it with solving, vulnerable individuals are still better off for having it.

⁵⁵ Anne Phillips *Which Equalities Matter ?* (Malden: Blackwell, 1999) 129.

Another potential response to the charge that liberalism is abstract is that in some cases abstraction can help us find common ground between what appear to be incommensurable positions. This is the strategy that Ronald Dworkin uses in *Is Democracy Possible Here?*, in order to find common ground between Republicans and Democrats in the United States.

[I]n spite of popular opinion... we actually can find shared principles of sufficient substance to make a national public debate possible and profitable. *These are very abstract*, indeed philosophical, principles about the value and the central responsibilities of a human life. I suppose not that every American would immediately accept these principles, but that enough Americans on both sides of the supposedly unbridgeable divide would accept them if they took sufficient care to understand them.⁵⁶

To find shared principles Dworkin takes certain kinds of claims off the table. For example, a claim that is based on religious doctrine cannot be a shared principle in a religiously diverse society like the United States. However, we might be able to abstract certain principles, like the intrinsic value of human life, from multiple religious and secular positions. In cases like this, abstraction can help us to get past what seem to be incommensurable differences so that diverse individuals (and groups) can engage in what may turn out to be constructive debate.

To recapitulate, the abstract picture of political life that liberalism paints is not necessarily a fatal flaw because, 1) everyone is better off with the kinds of abstract principles promoted by liberalism even if these principles do not solve every kind of problem and, 2) moving to a sufficient level of abstraction can help us to overcome what might otherwise appear at more concrete levels as incommensurable differences.

⁵⁶ *Is Democracy Possible Here?* 6-7 (my emphasis).

Another criticism that is sometimes directed at liberalism is that it is overly individualistic and does not take seriously enough the importance of social bonds, societal goods, and aggregate well-being. The value of political life is said to be more than the sum of individual well-being and so the very idea of an individual removed from social and cultural contexts is incoherent. In other words, liberalism attempts to reduce complex social relations to individual well-being and this places it on shaky ontological ground concerning the constitution of the self and misses important aspects of political and social life.

Liberals can respond to this criticism by stipulating that liberal individualism does not need to be construed as an ontological thesis. Liberals do not need to support the claim that individuals are unencumbered, self-sufficient and self-generated political atoms. Liberalism merely proposes that people should be free to live as they wish so long as they are not infringing on the freedom of others to do the same or there is not some other compelling reason to limit individual freedom. Individuals can decide to build communities or live in isolation. What is key here is the primacy of moral equality and individual choice. Consequently, there is nothing inconsistent with valuing some collective goods and being a liberal. What liberalism does is protect individuals from the power of the government, the majority, and other potentially harmful social forces. Without this protection individuals may find their own interests sacrificed in the pursuit of some notion of an aggregate good or a vision of the good that they reject. Therefore, in practice, of course, various collective goods are unacceptable for liberals. However, it does not follow that all collective goods are unacceptable.

Of course, some might conceive of the good as inseparable from constraining the behavior of others beyond the limits established by liberalism. Parents may want their children to follow religious rules, citizens may want their fellow citizens to take on a particular way of life or set of beliefs, or groups may object to the mores of another group. In cases where a conception of the good is tied to the comportment of others liberalism provides no answers. However, what it does supply is a space in which answers might be sought in a relatively peaceful and hopefully reasonable manner.⁵⁷

A third criticism of liberalism is that it fails to live up to its promises of making life better for people. This alleged failure is often presented as the failure of the Enlightenment project and the general decline of the West. It is argued that by failing to promote a substantive vision of the good liberalism leads to political apathy, mindless consumerism, selfishness, etc. This kind of criticism misconstrues liberalism's purpose. As stated earlier, liberalism does not prohibit like-minded individuals from getting together to pursue collective goods. Just the opposite, it protects the right to speak one's mind and freely associate and in doing so protects potentially vulnerable groups against coercion from stronger groups. An individual can choose to be more politically active, consume conscientiously, be generous, or whatever else one thinks is a worthwhile pursuit.⁵⁸ Furthermore, an individual is free to try and persuade others to come around to his or her point of view.

Ultimately, the claim that we are worse off because of liberalism is empirical and must be supported by evidence that demonstrates a causal connection between liberal ideas

⁵⁷ If answers are not forthcoming perhaps understanding is the best we can hope for.

⁵⁸ Iris Marion Young is critical of this version of 'interest-group pluralism. I address this criticism later.

(and policies) and negative consequences. Furthermore, *if* negative consequences are shown to be caused by liberal ideas, it must also be shown that such negative consequences are worse than the alternatives. This is hard to prove given the complexity of the social, technological, political and economic changes that have accompanied the rise of liberalism. However, even if we cannot make a definitive judgment about the consequences of liberalism we can refute criticisms of liberalism that are based on idealized misrepresentations of a pre-liberal past. Such idealizations are sometimes responses to what are seen as cultural threats from a diversifying population. For example, a recurring theme emerging in the public hearings of the Bouchard-Taylor commission in Quebec on cultural accommodation is an apparent longing for 'traditional Quebecois' (read French-Catholic) values as a response to questions concerning reasonable accommodations for cultural minorities.⁵⁹ One can infer from this longing a strong opposition to cultural accommodations and a demand for assimilation. However, as an insightful columnist notes in a recent newspaper article,

The events of the past months certainly support the idea that a large number of young Quebecers – perhaps not a majority, but certainly a strong and politically active minority – see pre-Quiet Revolution Quebec through almost rose-coloured glasses. That's easy for them. They have no scores to settle with that past – or more important, scars to show from it.⁶⁰

In other words, if we are going to mount a serious attack on liberalism we must have a clear idea of what its alternatives are and what kinds of problems it has in fact solved.

⁵⁹ The Bouchard-Taylor commission has since published its report. I briefly comment on it in an attached appendix.

⁶⁰ Konrad Yabuski, "Young, diverse Quebec is curiously attracted to its ancestors", *The Globe and Mail*, (November 3rd 2007, <http://www.theglobeandmail.com/servlet/story/RTGAM.20071102.wessay0211/BNStory/National/home>).

When the smoke clears, critics of liberalism may find that given the alternatives, the political ideals that they hold dear are best protected in a liberal political framework.

The value of the protection that liberalism offers cannot be overstated since one possible alternative that has been repeated with alarming frequency is oppression or even annihilation at the hands of an intolerant majority, hegemonic minority, or a tyrannical government.⁶¹ The mistreatment of minorities (such as Quebec's Aboriginal population) is as much a part of Quebec's history as *les Habitants* and *les Filles du Roi*. This demonstrates that we have reason to be suspicious of criticisms of liberalism that rely on overly selective and nostalgic historical memories.

If we are willing to accept the claim that individual freedom is something of value then both the state and individuals must be prepared to tolerate dissent and difference. Some feminist scholars (Young) claim that it is not enough to 'merely' tolerate diversity but we should affirm it. This claim is a main plank of an approach to 'the politics of difference' that criticizes liberalism for not being capable of protecting members of vulnerable groups from tolerant but hostile hegemonic groups.⁶² For example, is it enough to demand that white majorities 'tolerate' people identified as being members of 'other' races or should we push for an end to racism? This question can be posed in reference to any marginalized group. The idea here is that even if hegemonic groups tolerate vulnerable groups there is still a kind of harm done by refusing to affirm the identity of the other in some unspecified (but admittedly palpable) way. So, *in addition* to liberal principles some

⁶¹ See Judith Shklar's influential essay "The Liberalism of Fear", *Liberalism and the Moral Life*, (Cambridge Mass: Harvard UP, 1989).

⁶² More on the politics of difference in chapter three.

argue for certain kinds of transformative processes designed to ameliorate the harm caused to vulnerable minorities in spite of widespread toleration.

I doubt that any liberal would not applaud the end of racism, homophobia or any other attitude that unjustly marginalizes vulnerable groups. However, the proposition that we affirm diverse identities is simply incoherent. How can a monotheist affirm the identity of a polytheist (or an atheist) if doing so means giving up a fundamental belief? How can a pacifist affirm the identity of a soldier participating in a violent conflict? Or put simply, how can conflicting identities be simultaneously affirmed?

The kind of transformative political agenda that is entailed by affirming difference is uncomfortably similar to one that seeks to homogenize a population according to a single religious belief or political ideology. This transformative approach to politics emphasizes, the idea that we can be emancipated by undergoing some sort of transformative process. Berlin argues that this idea has been used as a tool by despots and tyrants in order to impose a singular vision of what constitutes the best life, the highest good, or our highest nature. He draws on the history of philosophy to make the empirical claim that historically people have not agreed on what is the best life or how to go about achieving it. If one were to look today at what people claim is the highest good the list of candidates would include, devotion to God, harmony with nature, happiness, rationality, procreation, artistic creation, public recognition, political service, autonomy, love, wealth, and pleasure. It is worth noting that each of the above values is a complex concept that can be fleshed out in innumerable ways. So, one reason to be suspicious of positive liberty is that insofar as it imposes a singular vision of the good life, it necessarily suppresses the diverse visions of such a life that can be found in virtually any population.

The claim that there is a single highest good to which all other goods are subordinate presupposes certain knowledge of values. Berlin denies that we can have such certain knowledge. For example, many have claimed that nature reveals the ultimate end of humans. To such claims Berlin responds;

True, nature at all times speaks with too many voices. She said to Spinoza that she was a logical system, but to Leibniz that she was a congeries of souls. She said to Diderot that the world was a machine with chords, pulleys and springs, whereas to Herder she said that it was an organic living whole. To Montesquieu she talked about the infinite value of variety; to Helvetius of unalterable uniformity. To Rousseau she declared that she had been perverted by civilizations, sciences and the arts; whereas to d'Alembert she promised to reveal their secrets. Condorcet and Paine perceived that she implants inalienable rights in man; to Bentham she says this is mere '*bawling* upon paper' – '*nonsense upon stilts*'. To Berkely she reveals herself as the language of God to man. To Holbach she said that there was no God and Churches were conspiracies. Pope, Shaftesbury, Rousseau see nature as a marvelous harmony. Hegel sees her as a glorious field in which great armies clash by night. Maistre sees her as an agony of blood and fear and self-immolations.⁶³

Berlin suggests that if the best life, that is, the ultimate end of human existence is to be found in nature, it has yet to be definitively demonstrated.

So it is a problematic claim that we ought to affirm diverse identities. Given the vagueness of the term identity it is not clear that the latter is possible and if it is, what would it look like? The transformation required to affirm diverse identities appears to encompass all aspects of an individual's life and may require that one changes one's own identity in order to affirm all others. If we think the proposition through to its conclusion, the affirmation of diverse identities entails the rejection of many fundamental beliefs of virtually every major religion and so from the outset precludes certain kinds of identities. However, we are supposed to be affirming diverse identities that may include religious

⁶³ Isaiah Berlin, *Freedom and its Betrayal*, (Oxford: Princeton UP, 2002) 24-25.

differences (at least if they are marginalized). This makes the proposition that we ought to affirm diverse identities incoherent. Furthermore, by calling for the affirmation of diverse identities are we really only affirming a single set of beliefs? If so, then the affirmation of identities begins to look like its conceptual antithesis, i.e., a demand for homogeneity.

If I am right and the universal affirmation of difference is incoherent then universal toleration of benign difference is the best we can hope for. The upshot of working toward toleration as opposed to affirmation is that if in fact people are being caused substantial harm by social exclusion, we can justify our attempts to address such problems in the same way that we justify policies directed at preventing lung diseases caused by smoking. In both cases there is a general public interest in changing the behavior of citizens. In practical terms this entails that we focus on preventing substantial harm as opposed to affirming identity.

The promotion of toleration is itself a transformative goal. Since presumably there are many intolerant people in any population, the promoting of diversity constitutes an attempt to transform the population in a specific way. However, unlike affirmation, toleration is entailed by political freedoms that allow individuals to hold diverse worldviews and to engage in diverse activities. In short, if everyone took seriously Rawls' first principle of justice then they would tolerate a generous degree of diversity. We do not need to agree with everyone or even like how they live, but if we take freedom seriously then we are obligated to tolerate benign diversity. Furthermore, intolerance often takes the form of unjust limitations on the freedom of others, so the promotion of toleration can be justified in the interest of protecting basic freedoms. By not demanding affirmation

individuals are free to hold onto their own beliefs and practices so long as they do not unreasonably infringe on the freedom of others.

So, liberalism is capable of withstanding the criticism of some proponents of multiculturalism. Firstly, rather than being a problem the abstractness of liberalism's picture of political life is an asset in that it gives us room to maneuver when more substantive worldviews conflict. Secondly, liberalism's individualism is only a threat to communities if individuals decide that they do not want to be part of such communities. If this is the case then one must ask whether forcing people to be part of a community is preferable to losing a community that is comprised of unwilling members. Furthermore, a commitment to individual rights protects individuals from the potential harm they may be subjected to by their own cultural groups, other hegemonic groups or the government. Finally, it is questionable whether liberalism leads to negative consequences; if and when it does, the alleged negative consequences need to be weighed against those that result from illiberal forms of government.

Although I am arguing for a liberal position it is important to be clear about the limits of liberalism. It is not without its costs. Some groups may have to give up practices that they value and others might have to tolerate groups that they find distasteful. Brian Barry makes this point with a poignant analogy.

Liberal principles are not some sort of 'magic bullet' that can somehow create harmony without the need for sacrifices by the parties. If we want a medical analogy, we might better make the less agreeable comparison with a course of chemotherapy: it holds out the hope of destroying the malignant features of religion, but only with side-effects that are liable to be experienced as debilitating by believers. In other words, if the parties want peace enough to make the concessions that are needed to reduce their

demands so that they become compatible, liberalism proposes a formula for doing so.⁶⁴

Liberalism's hope and failure rests on the willingness of people to compromise. In many situations this prospect is not likely in the foreseeable future. However, Canada appears to be in a position where reasonable agreements between diverse groups can be reached.

Rule Consequentialism

A point of contention between liberal political theory and multiculturalism is the question of civic equality. Insofar as liberalism entails a commitment to the idea that everyone is entitled to the same civic status, including the same benefits (and in some cases obligations) vis-a-vis the law, what reason does a liberal have to consider cultural accommodations? Before we can answer this question we must first look at the connection between moral principles, rules and public policy.

The question at hand concerns the way that states ought morally to act toward individuals as well as the mechanisms it should employ to regulate the civil interaction between individuals. Two moral theories, namely deontology and consequentialism, have dominated moral and political philosophy for the past few centuries. Deontological theories focus on the rightness of actions as opposed to their consequences and propose that we have a moral obligation to act in a certain way regardless of consequences. These obligations might come from divine commands, duty, reason, deliberative agreement, or some single principle from which all other principles are derived. In contrast, consequentialist theories evaluate actions in relation to their outcomes (either actual or expected). Today, in order to answer criticisms from proponents of 'everyday morality'

⁶⁴ *Culture and Equality*, 25.

many plausible moral theories combine elements from both deontology and consequentialism, though not always in explicit ways.

Although there are many ways to define deontological moral theories, most identified as such tend to codify our moral duties into a system of rules or laws such as, “do not harm innocents”, “do not lie”, or “be nice to your mother”.⁶⁵ With respect to liberal political arrangements, deontological theories cohere with the idea that individual rights ought not to be compromised to achieve an aggregate good. This Kantian idea that people ought to be treated as ends and not means, is a fundamental guiding principle in liberal societies. By distinguishing between the ‘right’ and the ‘good’, deontology can support arguments for the maintenance of political and human rights even when infringing on the rights of some individuals could produce some desirable (good) outcomes. Furthermore, by formulating moral duties as rules, arguments for deontological theories tend to look a lot like justifications for the rule of law, which is a cornerstone of liberal political arrangements.

There are several lines of criticism that have been leveled at deontology. One is that rules or duties may sometimes conflict, and so we may need to weigh outcomes so as to give priority to one rule over another. In order to do that we need to look to potential outcomes. If this is the case, then it seems that deontology collapses into consequentialism.

The potential for conflict between values is addressed in s. 1 of the Charter which limits the rights and freedoms outlined in the Charter insofar as such limitations can be justified in a free and democratic society. The *Oakes test* (the standard for the application of s. 1) uses the objectives of the proposed legislation as well as respective weights of its

⁶⁵ Gerald F. Gaus lists no less than ten ways that deontology has been understood in “What is Deontology?” *Journal of Value Inquiry*, vol. 35 (2001)179-193.

potential harms and benefits in order to justify limitations on Charter rights. That is, potential consequences are weighed. The *Oakes test* has been used to justify limitations on Charter rights such as the limit of expression in cases of hate speech.⁶⁶ So, in Canada at least, both rules and consequences matter with respect to the moral justification of legislation and public policy. It is worth noting that not every deontologist will agree that rules conflict. Ronald Dworkin, for example, suggests that we can avoid conflicts if we are careful when formulating the principles that justify our rules.⁶⁷ However, this leads one to ask whether such formulations of principles anticipate, at some level at least, desired consequences.

Another criticism of deontology is that it can lead to terrible outcomes and this makes it an implausible moral theory. The classic example of this criticism is upholding one's duty to tell the truth even if it means allowing oneself or another to be killed. Any reason that a deontologist might give to justify not telling the truth in such a situation seems to be ultimately justified by desired consequences. Like the preceding criticism, this criticism suggests that if pressed deontology either yields counterintuitive results or collapses into consequentialism. When applying their theories to practical moral questions most deontologists (whether they acknowledge it or not) are forced to either show some consideration for outcomes or be content with answers that are intuitively implausible.

In contrast to deontology, consequentialism evaluates actions solely in terms of their respective outcomes. For example, John Stuart Mill formulates his consequentialist

⁶⁶ In *R. v. Keegstra* the Canadian Supreme Court ruled that the potential harm of hate speech outweighed the right of free speech.

⁶⁷ See Dworkin's discussion of value pluralism in *The Legacy of Isaiah Berlin*, eds. Mark Lilla, Ronald Dworkin and Robert B. Silvers, (New York: New York Review Books, 2001.), 121-139.

moral theory (utilitarianism) according to the *greatest happiness principle* which states that moral action is that which produces the greatest happiness for the greatest amount of people.⁶⁸ This form of consequentialism can be classified as act consequentialism because each individual course of action is evaluated according to its consequences.⁶⁹

One criticism of Mill's theory is that it is impossible to measure or calculate aggregate happiness. Happiness seems to be an overly vague concept. Furthermore, given that happiness is a subjective feeling it appears as if those who feel intense emotions (if such a thing can be measured) will play a disproportionately large role in determining what makes an action right.

These criticisms can be addressed by changing the way that we define good consequences. We might define consequences in measurable terms such as health, relative income, education, life expectancy, crime rates, etc..⁷⁰ If we agree that the government has a moral responsibility to strive for (or at least not inhibit) any of the goals in the list above, then consequentialism has an answer for this first criticism.

A more serious criticism of consequentialism is that it allows for human rights violations if they lead to some aggregate good. For example, if we agree that we want to promote health then consequentialism seems to sanction actions such as the harvesting of human organs from unwilling subjects or the use of human subjects for medical experimentation if either achieves the goal of improving the aggregate health of the population. A consequentialist might respond with the empirical claim that maintaining a

⁶⁸ See Chapter 2 of John Stuart Mill's *Utilitarianism*, (Orchard Park: Broadview P, 2000).

⁶⁹ It is possible to interpret Mill as a rule utilitarian. For those that do, my use of Mill is mainly explanatory to illustrate the distinction between act and rule consequentialism. Proponents of Mill as a rule utilitarian can insert any act utilitarian in his stead.

⁷⁰ Health is sometimes viewed as a controversial category but it can be further broken down into less controversial categories such as disease rates and levels of physical activity.

system of human rights that prohibits such treatment leads to good consequences because it promotes peaceful co-existence or some other significant good.⁷¹

One might press further and argue that act consequentialism requires that one violate human rights in selective cases such that a general overall good can be maintained. For example, individuals who have committed particularly heinous crimes might be singled out for such treatment. What would stop a consequentialist from preying on the vulnerable if it was not only useful but had widespread appeal? This criticism suggests that act consequentialism is incompatible with widely held conceptions of justice.

Another potential problem with act consequentialism is that it is overly complicated and impossible to implement in practice. If every moral act is the result of calculating outcomes then this would be an unreasonably burdensome moral theory. In order to act morally everyone would have to spend an unreasonable amount of time trying to figure out how to maximize good consequences (presuming we have an uncontroversial list of goods). Furthermore, it would require more knowledge than we can be reasonably expected to have. With respect to the conduct of the government, it would require an unreasonably large amount of government machinery to evaluate every act that the government makes according to its consequences.

At this point we are presented with two moral theories that have significant merit as well as serious shortcomings. Deontology gives us reason to protect individuals even if doing so leads to less than optimal consequences for the majority. Consequentialism gives us reason to reconsider or modify rules that seem to lead to undesirable consequences. Without suggesting that I can end the debate between deontologists and consequentialists, I

⁷¹ See Judith Shklar's "Liberalism of Fear".

propose that rule consequentialism is a moral theory that takes seriously moral rules and consequences and in doing so provides a theoretical framework for balancing conflicting rights and goods.

Brad Hooker offers the following formulation of rule consequentialism.

An act is wrong if it is forbidden by the code of rules whose internalization by the overwhelming majority of everyone everywhere in each new generation has maximum expected value in terms of well-being (with some priority for the worst off). The calculation of a code's expected value includes all costs of getting the code internalized.⁷²

One important feature of Hooker's formulation is that it takes into account psychological, social, and historical dimensions of rules. Rules, according to Hooker's view do not materialize fully formulated out of a void. Rather, they develop over time and in response to social contexts. Furthermore, for rules to be effective they must be accepted by most of the population. The consequences of imposing a new system of rules that nobody is willing to follow might be worse than leaving in place what would otherwise appear to be an inferior system of rules.

Hooker takes into account the psychological cost of getting people to accept a system of rules. The cost of convincing people to accept a new set of rules must be weighed against the expected consequences. For example, the cost of getting people to accept a complete ban on tobacco products might outweigh the expected health benefits that such a ban might achieve. This suggests that gradual and small-scale change is preferable to revolution in all but the most extreme of circumstances.

At first glance it may appear that Hooker's position may be too demanding because of its use of "maximal" expected value as a standard of evaluation. However, given that

⁷² Brad Hooker, *Ideal Code, Real World*, (New York: Oxford UP, 2000) 32.

Hooker takes into account the costs (and limitations) of implementing a code of conduct, the maximization of expected outcomes is much less radical. In everyday language, this standard of evaluation might be expressed as “the best we can hope for, all things considered.”

One might also question the metaethics supporting Hooker’s claim that adherence to a code of conduct can make an action morally “right”. Some might argue that some actions are right independent of expected outcomes. However, consequentialism broadly construed can include the promotion of things such as justice, human rights, and dignity. So, one need not use consequentialism as an ontological theory for defining right action – rather, the way it is being used in this present work is as a method for promoting (as opposed to defining) right action at the institutional level.

Since my concern is with the moral conduct of the government I will modify Hooker’s formulation in the following way.

A government ought to avoid acting in a way that is forbidden by the code of rules whose internalization by the overwhelming majority of its population has maximum expected value in terms of wellbeing (with some priority for the worst off). The calculation of a code’s expected value includes all costs of getting the code internalized.

The multicultural provisions in the Charter of Rights and Freedoms can be read as being consistent with giving some priority for the worst off when evaluating the effect that rules have on vulnerable cultural minorities.

There are many features of Hooker’s formulation that make it appealing. Firstly, it answers the standard objection to rule consequentialism, namely, that it collapses into act consequentialism. This objection states that according to their standards for deciding on sets of rules, rule consequentialists are committed to the single rule ‘maximize the good’

and so are really just act consequentialists.⁷³ However, as Hooker argues, we can reasonably expect that if everyone were to internalize the single rule ‘maximize the good’, “sooner or later awareness of this would become widespread [and this awareness] would undermine people’s ability to rely confidently on others or behave in agreed upon ways.”⁷⁴ Furthermore, beyond the immediate consequences of particular actions there are benefits (such as predictability, stability, fairness) to the widespread internalization of a set of rules.

Hooker’s theory is also consistent with political and human rights. To return to a previous example, although there might not be immediate negative consequences to treating unpopular individuals unfairly by violating their rights, we can reasonably expect that the general internalization of the rule, ‘it is OK to treat unpopular people unfairly if it has positive consequences’, would yield negative consequences. This kind of arbitrary moral treatment would erode the justice system upon which peaceful and civil societies are built and may provoke sectarian violence if minorities fear that they may be subjected to arbitrary treatment.

Another criticism of rule consequentialism is that it is a form of rule worship because it places rules above immediate consequences.⁷⁵ The problem is that consequentialists need to be able to justify adhering to rules even when breaking rules is expected to yield better results. A rule consequentialist can argue that in most cases the predictability and stability of maintaining a system of fair rules will likely yield better results than breaking rules whenever it appears as if there might be some gain. However,

⁷³ See J. J. C. Smart’s “Outline of a System of Utilitarian Ethics” in *Utilitarianism for and Against*, (Cambridge: University P, 1972).

⁷⁴ *Ideal Code, Real World*, 94.

⁷⁵ See Smart’s “Extreme and Restricted Utilitarianism” in *The Philosophical Quarterly* 6 (1956) 344-354.

what about in situations where following rules is likely to lead to a disaster? In such cases the negative disastrous consequences outweigh the consequences of breaking a rule.

Hooker's response is to stipulate that rule consequentialists ought to accept a rule that states that, 'rules should be followed unless doing so will likely lead to disaster.'

Admittedly, what is disastrous is open for debate, but a regulating rule designed to avert disaster answers a key part of the criticism that rule consequentialism is a form of rule worship.

The merit of rule consequentialism is that it takes seriously both our moral duty to act in a certain way even if it does not lead to some immediate good as well as our concern with avoiding certain kinds of negative consequences that might result from blindly following rules.

There is some debate as to whether rule consequentialism is really a form of deontology. At this point, how we characterize a moral theory is less important than its ability to yield good answers to moral questions. I suspect that good answers will take into account both our moral duties and the consequences of our actions. I will leave the details of such a theory for another day but for our purposes here, rule consequentialism does the work that is asked of it.

Conclusion

What implications do the preceding arguments for moral universalism, liberalism and rule consequentialism have for multicultural political theory? To begin, it might help to return to the basic principle supporting cultural accommodation. *Any practice (x) that is sanctioned according to an established set of generally applicable rules implies that any*

other practice (y) that is analogous in relevant ways should be allowed. This analogical principle is compatible with any universal moral theory that takes seriously the principle that like cases should be given equal consideration. Moral universalism provides a common framework according to which one can evaluate x and y. That x and y are both culturally acceptable practices is not sufficiently relevant because as we saw, cultural acceptability is not a sufficient test for moral acceptability. If we accept moral universalism then it can be shown to be the case that x and y are similar (or dissimilar) in such a way that would make judgments concerning one relevant to the other.

On what principles should we base such judgments? Documents like the Charter and the American Bill of Rights represent legal/political instantiations of widely shared moral principles like the value of human life, freedom, moral equality, etc. Although not everyone agrees about how such principles have been formulated in various constitutions, or even that they are best expressed as rights, the spirit behind such documents - that an individual is entitled to the broadest degree of freedom that is compatible with everyone else enjoying similar freedom, and that every individual is entitled to equal benefits and protection before the law – is foundational for liberal democracies and for multiculturalism in the manner I shall support it.

With respect to the analogical argument outlined above, if we give the freedom of belief and religion any weight, then this gives us reason to be sensitive to respecting diverse ideas about divinity, human nature, and the meaning of life. In other words, we should not be overly concerned with the merit of such beliefs. However, insofar as freedoms are limited to the extent that their exercise should not substantially infringe on the freedom of others, the practical consequences of beliefs, such as potential harm caused by

practices based on beliefs, are relevant. This entails that the analogy between practices should be based on a comparison of the practical consequences of each respective practice and not the cultural content. By cultural content I mean a shared set of beliefs that give meaning to the practices.

My analogical argument is directed mainly at those like Barry who feel that multiculturalism is incompatible with civic equality.⁷⁶ My purpose is to show that in order to make judgments about what constitutes equality before the law, we must clarify the points of comparison. Of course, it may be the case that currently allowable practices are problematic to such a degree that analogous practices ought to be deemed unacceptable. Just as allowing tobacco sales does not necessarily mean that we should allow the sale of other harmful products, the mere fact that a practice is allowed does not necessarily entail that all analogous practices should be allowed. However, my approach does help us to distinguish between cases where cultural practices carry a significant risk of substantial harm and those where the principle of civic equality is used against vulnerable minorities in a malicious or mischievous way. So, my analogical argument is not intended to justify all minority cultural practices by linking them to currently acceptable practices. Rather, it is intended to slow down the frenetic pace of critics like Barry and open up a conceptual space in which practices can be evaluated in a fair and thoughtful light.

If we take practical consequences of culture to be relevant to comparing diverse practices how should we evaluate consequences? Rule consequentialism provides a method for evaluating consequences that coheres with current legal institutions and avoids the problems associated with evaluating consequences on an act by act basis. Practices can

⁷⁶ My argument is also directed at those who are concerned about protecting 'Western values' and are hostile to the idea of a culturally diverse society.

be categorized according to degrees and probability of harm and can be legislated accordingly. This is what already happens when the government makes laws intended to promote public health, safety, economic stability, etc. Cultural practices can be evaluated with similar criteria that are already being used for other kinds of practices.

As a relatively well-functioning liberal democracy, Canada has already worked out solutions to innumerable questions concerning the freedom and obligations of public life. These solutions can be used as a template for accommodating cultural practices that may appear to be quite different than what is already permitted in Canadian society, but on closer examination are quite similar with respect to practical consequences. If my suspicion is right, then this entails substantial room for cultural accommodations without giving up too much in the way of liberal principles.

CHAPTER 2 MULTICULTURALISM: FACT OR VALUE?

In a recent radio interview Charles Taylor stated that in Canada, “multiculturalism is a fact.”⁷⁷ If taken as a statement concerning Canada’s demographics, I doubt that anyone could possibly disagree. Section 27 of the Charter makes a similar claim with its reference to the “multicultural heritage of Canadians”.⁷⁸ The fact of Canada’s multicultural heritage is backed up not only by the story of the arrival of Europeans and the subsequent waves of immigration that continue today, but also by Aboriginal historical accounts of pre-contact civilizations like the Wendat confederacy which consisted of the Attignawantan, the Ataronchronon, the Tahontaenrat, the Attigneenongnahac and the Arendahronon nations.⁷⁹ In other words, the country has been multicultural from the start.

One enduring controversy in multicultural literature centers on the normative implications of the fact of multiculturalism. In *Culture and Equality* Brian Barry argues that proponents of multiculturalism in general and specifically the Canadian Multiculturalism Act (CMA) equivocate between descriptive and normative usages of the term ‘multiculturalism’. Barry’s main concern with the CMA’s equivocation is focused on section 3 (1) (a) and 3 (1) (b).

3. (1) It is hereby declared to be the policy of the Government of Canada to

(a) recognize and promote the understanding that multiculturalism reflects the cultural and racial diversity of Canadian society and acknowledges the freedom of all members of Canadian society to preserve, enhance and share their cultural heritage;

⁷⁷ CBC Radio-one February 15, 2007. [Specify]

⁷⁸ Section 27 reads “This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.”

⁷⁹ *Children of Aataentsic*, 58-59.

(b) recognize and promote the understanding that multiculturalism is a fundamental characteristic of the Canadian heritage and identity and that it provides an invaluable resource in the shaping of Canada's future;⁸⁰

Barry argues that in clause (a) multiculturalism is used to refer to a set of policies whereas in clause (b) it refers to a descriptive claim concerning Canada's demography.

[T]he claim being made in clause (a) is that the appropriate way in which to respond to 'cultural and racial diversity' is to pursue multiculturalist policies. This claim is contestable – as I have been contesting it – but it is at least intelligible. Clause (b), however, switches the meaning of 'multiculturalism' by committing the government to 'recogniz[ing]' and promot[ing] the understanding that multiculturalism is a fundamental characteristic of the Canadian heritage and identity and that it provides an invaluable resource in the shaping of Canada's future'. Here, 'multiculturalism' makes sense only as a synonym for what in the previous clause was called 'cultural and racial diversity'. The result of this legerdemain is to make it conceptually impossible to acknowledge the fact of diversity while rejecting policies advanced under the name of multiculturalism.⁸¹

One might grant Barry's point concerning the wording of the act but still maintain that a multicultural policy is both important and justified as a response to the problems that can arise when diverse cultural groups share a common space. However, without rejecting the possible merits of multicultural policies outright, one might still take Barry's point as a warning not to move quickly from the acknowledgement of a demographic fact to the implementation of a normative public policy.

In order to avoid the kind of equivocation that concerns Barry, I use the term 'cultural diversity' to refer to the fact of multiculturalism. I reserve the term 'multiculturalism' to refer to normative policies. In order to justify a multicultural policy

⁸⁰ *Canadian Multiculturalism Act*

⁸¹ *Culture and Equality*, 293.

one must be able to somehow articulate what a cultural group is and show why such groups ought to matter to a state.

The first part of this chapter is devoted to the examination of multiple dimensions of the question of defining culture. Given the complexity of the term we have reason to be cautious when using it to justify public policy. The second part of this chapter is devoted to the question of why culture ought to matter to the government. In other words, with respect to political ethics what are the normative implications of the fact of cultural diversity? This question is answered in different ways by theorists who, for the most part, share a common set of core normative values such as equality, freedom, justice, etc. The diversity of responses demonstrates both an unavoidable tension between conflicting normative political principles as well as the staggering complexity of social phenomena. Both of these factors contribute to a disconnection between theoretical claims and the practical implementation of such claims.

For example, following Taylor one might argue that culture matters because it is connected in some way to a person's sense of selfhood, which he claims is essential to well-being. If the government ought to be concerned with well-being then it follows that it should be concerned with culture (in the form of recognition, support etc). However, to this argument one might respond that in a liberal society everyone ought to be free to pursue their own vision of the good life and this is a reason why culture ought not to matter to the government. That is, refraining from interfering in cultural matters might be construed as promoting well-being. This response would entail a *laissez-faire* approach to culture. Here, the issue is whether culture ought to be public or private.

Another approach to the relation of cultures and the government might look at the negative consequences of not taking culture seriously in political theory and practice. One might argue that if the privatization of culture is to be fair then all cultures must be privatized (the government must be culturally neutral). Since it is demonstrably the case that, in practice this is impossible, it is unfair that some cultures are implicitly (or explicitly) supported by the state while others are not. As evidence for the claim that the government cannot be culturally neutral one might point out that public institutions develop within particular cultural milieus and reflect certain cultures through operational practices, symbolic displays, official languages and so on. Although some might argue that we can minimize such cultural elements in public institutions, practical limitations and the need to efficiently administer programs make it impossible to completely remove culturally specific elements from public institutions. Consequently, people whose cultures are not reflected in public institutions might be disadvantaged.

Unjust disadvantage might also be construed as the result of a lack of cultural understanding on the part of public officials. For example, for many Aboriginal Canadians avoiding eye contact is considered to be a sign of deference and respect.⁸² However, some judges and jurors who do not understand this culturally specific significance of avoiding eye contact might interpret the gesture to be an admission of guilt.

On a larger scale, one might argue that ignoring the political significance of cultural differences can leave us unequipped to deal with the kind of violence that can be the result of group conflicts. This is the claim put forth by Jacob Levy in his book *The Multiculturalism of Fear*. However, as Barry points out, one of the strongest arguments for

⁸² I thank Georges Sioui for this example.

privatizing cultural differences is that it lowers the stakes in the political realm and diffuses potentially violent conflicts. Barry argues that the privatization of difference is a “response to the wars of religion that made much of Europe a living hell in the sixteenth and seventeenth centuries.”⁸³ He points to the end of religious wars in liberal democratic societies as evidence that the privatization of cultural difference has been a successful political project.

At this point it seems as if we are at an impasse. For every negative consequence that a proponent of multiculturalism might point toward it appears that a critic can point toward a positive consequence. The complexity of social life, the ambiguity of temporal points of reference (do we look at long term or short term consequences?) and the indeterminacy of the term ‘culture’ can muddy the field of multicultural theory and impede progress. To avoid this impasse I take a different approach to the question of evaluating the consequences of taking culture seriously. I set aside (for now) the political and social consequences of multicultural policies and I look at how culture sometimes matters to descriptions of human behavior. Insofar as such descriptions inform public policy, if culture matters to the former then it ought to matter (in some way at least) to the latter. The final step to this argument is to show that the way that culture matters to public policy is not trivial. This argument does not refute liberal models of common citizenship or universal rights. However, it does represent a step toward the justification of some kinds of multicultural policies within a liberal framework, such as reasonable accommodations and social programs targeted at particular cultural groups.

⁸³ *Culture and Equality*, 21.

What is Culture?

One might say that a culturally diverse country is any with more than one cultural group. According to this definition it would be easy to defend the claim that Canada is culturally diverse. However, things become more complicated when we try to pin down exactly what counts as a culture. In the context of political discourse, culture is connected with groups of people with varying levels of social cohesion, mutual identification and institutional organization.⁸⁴ However, when cultural differences are connected to public policy in the form of accommodations, legal rights and special status, what counts as a culture and what follows from being officially recognized as a culture become contentious issues. On the one hand, if public institutions are to be fair (impartial) then there ought to be some common standard that determines who is entitled to what. If entitlements are to have a cultural dimension then there ought to be something(s) that each culture holds in common. However, if we take individual freedom seriously then we should be suspicious of cultural classifications and identifications that are imposed on individuals by the state.

The tension between justice as a common set of rules and standards that is instantiated in bureaucratic structures and individual freedom— which entails an individual's capacity to accept, reject or refigure a cultural identity – can be framed as a tension between essentialist and postmodern approaches to cultural identity. In this section I examine this tension.

In order to get an empirical picture of cultural difference in Canada, one might propose to take a survey in order to count every cultural group. This is what was done to measure ethnic diversity in Canada with the *Ethnic Diversity Survey* (EDS). One could

⁸⁴ In other contexts, the term 'culture' could also refer to artifacts and objects.

object to this kind of ethnic census out of concern that it might unjustly identify individuals according to the morally problematic categories of ethnicity and race.⁸⁵ However, the EDS avoided this problem with a methodological approach that had those surveyed report their own ethnicity. By using the sense of identification that individuals felt with respect to ethnic groups as an indicator, the EDS sidestepped the issue of authoritatively ascribing ethnicity.

Might cultural identity be approached in a similar way? Could we just ask people what cultural group they belong to? Unlike ethnicity, which has a relatively limited (though not fixed) range of possibilities, the popular usage of the term 'culture' is virtually unlimited.⁸⁶ Some groups use 'culture' to frame political claims within a pre-existing political idiom in order to gain political advantage. For example, shortly after the CMA became law in 1988, the Ontario Association of the Deaf (OAD) responded to what it considered to be a threat to Deaf education in a way that framed its claims in the same language as the CMA.⁸⁷ The brief that was presented to the Ontario legislature demanded in the name of Deaf Canadians the right to collectively, "exist as a full and distinct culture within the cultural mosaic of Canada," to use American Sign Language (ASL) and Langue des Signes Québécois (LSQ), and to preserve Deaf culture.⁸⁸ The claims made by the OAD against the Ontario Government were made in cultural (as opposed to medical or

⁸⁵ For more on this see Seyla Benhabib's discussion of the American Census in Chapter 3 of *The Claims of Culture*.

⁸⁶ In some cases ethnicity is used as a synonym for culture or as a kind of cultural group (alongside religious, national and linguistic groups). This further complicates matters.

⁸⁷ This perceived threat was the Ontario government's Bill 82, "which supported the integration (mainstreaming) of all handicapped students into public schools". Clifton Carbin and Dorothy Smith, *Deaf Heritage in Canada*, (New York: McGraw-Hill Ryerson, 1996) 469.

⁸⁸ *Deaf Heritage in Canada*, 459.

pedagogical) terms taken directly from the political discourse of the day. That is, the OAD was not demanding rights as an organization that represented disabled persons, but rather it was demanding cultural rights for what it claimed was a distinct (albeit marginalized) culture.

An analogous example is the choice that was made to change the name of the National Indian Brotherhood (NIB) to the Assembly of First Nations. The change coincided with the 1982 repatriation of the Canadian Constitution. One reading of this change is that in order to reframe its political discourse to one that was analogous to the nationalist claims of Quebec, the NIB replaced filial language with nationalistic language.

I am not concerned about the validity of the respective claims of the AOD and the Assembly of First Nations (though I would say that the claims of the latter are much stronger than those of the former). My intention is to point out how political processes, mechanisms and institutions can influence the ways that groups frame their claims and conceive of their interests. Given the influence that legal and political procedures have on self-identification, the potential for an endless proliferation of cultural claims is a real concern for proponents of multiculturalism.

When one attempts to justify multicultural public policy on the basis of cultural diversity, the everyday experience of "belonging" to a cultural group risks being transformed into a list of criteria that one must fulfill if one is to be publicly recognized as belonging. Or, if someone does not recognize the authority of government institutions to

“recognize” cultural members then one may be in a position where one’s legal status is at odds with one’s cultural identity.⁸⁹

Another problem with trying to define cultural identity is that in everyday language it seems to include too many groups. One might speak of a “corporate culture” or a “culture of entitlement” to describe social phenomena, however, these are not the kinds of social groups that multicultural policies are trying to address. The kinds of groups that multicultural policies are trying to address overlap with designations such as religion, ethnicity, nationality and language. Consequently, it is not always clear whether cultural claims ought to be considered in terms of freedom of religion claims, nationalist claims, language claims or on their own (if such a thing is possible to conceptualize). If we are to come up with an adequate definition or concept of culture that can be used to create multicultural public policy, we must limit its usage to exclude certain kinds of groups, while at the same time allow for some overlap with respect to other kinds of group designations.

Amy Gutmann defines a cultural group as a kind of identity group. She distinguishes identity groups from interest groups by arguing that members of the former have some affinity or sense of identification with fellow group members that goes beyond the sense of purposive collectivity that ties together the latter. However, as a kind of identity group, cultural groups can be difficult to define because it is often the case that the concept of culture is given too broad a scope.

⁸⁹ This brings to mind a conversation with a friend who spoke of her father who became a status Indian at the age of 75. Although he was born of Algonquin parents, spoke Algonquin as his first language and lived a traditional Algonquin life, for most of his life he was not an “Indian”.

The most common kind of identity group around which controversy stirs is the cultural identity group. When the term is loosely used, cultural identity subsumes the entire universe of identity groups, and every social marker around which people identify is called cultural. Culture, so considered, is the universal social glue that unites people into identity groups, and the category becomes so broad as to be rather useless for understanding differences among identity groups.⁹⁰

If we do not limit the scope of the concept of culture then virtually every group constituted by a strong sense of mutual identification could be construed as a cultural group.

Intergenerationality

Will Kymlicka narrows the scope of the concept of cultural identity by focusing on ethnic and national differences. He takes essential characteristics of a cultural identity to be empirical and historical facts that can be used, in what he considers to be a relatively unproblematic way, to justify public policy.

I am using 'a culture' as synonymous with 'a nation' or 'a people' – that is, as an intergenerational community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and history.⁹¹

According to Kymlicka's approach, an outside observer could determine cultural membership by looking at things like common language, geographical concentration and social institutions. In other words, cultures are observable as relatively stable social phenomena. Some have argued that Kymlicka's definition narrows the scope of culture too much and unjustly excludes groups.⁹² Others claim that the public policies that Kymlicka

⁹⁰ *Identity in Democracy*, 39.

⁹¹ *Multicultural Citizenship* 18.

⁹² *The Claims of Culture*, 59-67.

justifies with his definition of culture are counterintuitive.⁹³ However, the line that Kymlicka is trying to walk with his definition is one that navigates between a key demand of procedural justice (the need to identify who is entitled to what) and individual freedom. Regardless of whether he is successful in plotting this course (more on this later), he demonstrates an astute awareness of what is at stake.

One thing that Kymlicka gets right is the importance of intergenerationality to the concept of culture. It is usually the case that parents or guardians are the first to introduce their children to cultural practices and have the authority to expose their children to cultural institutions.⁹⁴ Given this, intergenerationality is important to questions concerning multiculturalism for three reasons. First, intergenerationality brings to light the politically problematic concept of descent. To what extent can we and should we base public policy on blood relations? Currently, in Canada Indian status is determined by blood.⁹⁵ Intergenerationality in this sense is an essentialist category of identification because it identifies individuals according to a fixed criterion. It would be a mistake to reject the possibility that a cultural group is not intergenerational, however, most groups that are central to debates over multicultural public policy are.

Secondly, since a great deal of cultural transmission takes place in the private realm, multicultural policy can be seen as either an intrusion into or protection of private life. For example, many parents want their children to have culturally specific or religious

⁹³ Kwame Anthony Appiah, *The Ethics of Identity*, (Princeton: Princeton UP, 2005) 121-125.

⁹⁴ See Pascal Boyer's "Evolutionary Psychology and Cultural Transmission", *American Behavioral Scientist*, vol. 43, no. 6, (2000) 987-1000, for a detailed account of how cultural practices are transmitted to children.

⁹⁵ Canadian *Indian Act*, (R.S., 1985, c. I-5).

education and consider it to be essential to preserving a cultural community.⁹⁶ Should the state fund such education in the interest of preserving cultures? Should curricula be changed in order to conform to particular cultural beliefs? Should children be allowed to leave school at an age that is younger than that legislated by the state? The transmission of cultural beliefs and the responsibility of the state to educate children are often construed as being at odds.

Finally, intergenerationality directs us toward the narrative processes through which the past is recollected, the present is lived and the future is anticipated.⁹⁷ The cultural identity of a group, that which unifies a collective across multiple generations, is in part, a function of cultural narratives. Consequently, the acts of creating and interpreting history are relevant to both cultural members who identify with ancestors and have aspirations for future generations, as well as public institutions that are sometimes confronted with claims of historical injustices directed at intergenerational cultural groups. The creative dimensions of historical narratives as well as the indeterminacy of historical interpretation are central to postmodern understandings of cultural identity and pose an obstacle to legislators and policy makers who may require a static and authoritative historical account.

Cultural Law

Like Kymlicka, Ayelet Shachar tries to define culture in such a way as to yield the kinds of group delineations that can be used to assign special rights. However, recognizing

⁹⁶ Sharon Chisvin, "Religious education has sustained city's Jewish community for over 100 years", *Winnipeg Free Press*, March 16th 2008, B9.

⁹⁷ Gabriela Dumbrava, "Turning History into Culture", *European Journal of English Studies*, vol. 11, no. 3, (2007), 251-261.

the ambiguous relation between cultural groups and legal rights, Shachar focuses on only those groups for whom control over certain aspects of legal processes is deemed to be inseparable from that which serves as a fundamental principle of cultural membership. She calls such groups “nomoi communities”.

I use the terms “nomoi communities” or “identity groups” ... to refer primarily to religiously defined groups of people that “share a comprehensive world view that extends to creating a law for the community”.⁹⁸

Unlike Kymlicka, who tries to come up with a general definition of culture that can be used to justify public policy, Shachar’s approach is to isolate a particular point of conflict between cultural groups and public policy – the domain of legal jurisdiction – and to define culture in relation to this problematic. In other words, she defines culture in response to an identified problem. Consequently, her definition of culture does not have to be all things to all people. Rather, it need only identify the players in a particular kind of situation for a particular purpose.

One problem that Shachar is trying to solve is the tendency for cultural groups to respond to the perceived threat of assimilation by restricting the freedom of vulnerable members (usually women), in order to preserve a collective intergenerational cultural identity. If public policy is directed at preserving cultural identity, then it may in fact place an unjust burden on those who have been given the task of maintaining cultural traditions.

[W]ell-meaning accommodation by the state may leave members of minority groups vulnerable to severe injustice within the group, and may, in effect, work to reinforce some of the most hierarchical elements of a culture. I call this phenomenon the *paradox of multicultural vulnerability*.⁹⁹

⁹⁸ Ayelet Shachar, *Multicultural Jurisdictions*, (New York: Cambridge UP, 2001) 2, fn 5.

⁹⁹ *Multicultural Jurisdictions*, 3.

We might be able to clearly delineate group membership in cases where groups that, as part of their evaluative framework, have rules for determining membership. However, if this membership is tied to state sanctioned rights and cultural elites (those who interpret and enforce cultural rules) determine membership according to cultural law, then such cultural elites are empowered to act on behalf of the state and in so doing, exercise significant political power without the mechanisms for regulating its use and protecting against the possibility of its abuse. Shachar suggests that by protecting the individual right of cultural members to have legal recourse to state laws when the implementation of cultural laws are deemed by these members to be unjust or disadvantageous, the problems associated with investing state powers in cultural elites can be managed. My purpose here is not to evaluate Shachar's solution, but rather to show how multiculturalism might be justified as a response to a problem or injustice.

Essentialism vs Postmodernism

Shachar's response is based on the normative claim that people ought not to be forced to identify with a cultural group or to engage in particular cultural practices. This is a position that ought to be shared by any cultural theorist who takes autonomy seriously. If we reject the notion that people can be culturally identified against their will (by descent or by particular rules of cultural membership), and accept that people can choose when and how to identify, doesn't this render the concept of cultural identity useless for the purpose of justifying public policy? Even if we limit the scope of culture to include only certain kinds of groups (as does Kymlicka), or as a response to particular problems (as does

Shachar), if we affirm the right of people to determine how and with whom they identify, doesn't this make culture a redundant concept (at least for political ethics)? Can't we just skip the whole idea of culture and just affirm individual rights?

Roger Brubaker and Frederick Cooper raise a similar concern with the concept of "identity" as it is commonly used in identity politics. In their paper, "Beyond 'Identity'", they argue that the constructivist response to structuralism and essentialism has rendered identity as a concept incapable of providing any explanations of social behavior.

[T]he prevailing constructivist stance on identity – the attempt to "soften" the term, to acquit it of the charge of "essentialism" by stipulating that identities are constructed, fluid, and multiple – leaves us without rationale for talking about "identities" at all and ill-equipped to examine the "hard" dynamics and essentialist claims of contemporary identity politics.¹⁰⁰

The kinds of "hard" dynamics that Brubaker and Cooper are talking about are enduring intergenerational differences such as the kinds of identities that currently divide the Balkans. The concern that Brubaker and Cooper express is that without a clear concept of identity we will be incapable of adequately analyzing social phenomena and without such analysis we are incapable of producing effective public policies.

The tension that Brubaker and Cooper see as being responsible for the incoherence of identity is that between essentialism (structuralism) and postmodernism (post-structuralism). According to an essentialist approach to identity, there are some features that are essential to identification (like descent), such that if an individual possesses enough of these features he or she is judged to be an authentic member of the group in question. Here, the process of identification is external to cultural members. The essential features of

¹⁰⁰ Roger Brubaker and Frederick Cooper, "Beyond 'Identity'", *Theory and Society*, vol. 29, no. 1, (2000), 1.

identification vary depending on how and why group membership is being identified. One serious concern raised by an essentialist approach to cultural identification is that it seems to be overly conservative and impedes positive social change. Another criticism is that it is morally problematic to allow that unwanted cultural identities can be ascribed to individuals. However, from these criticisms it does not follow that identities, and by extension cultural groups, are infinitely malleable.

Empirically, it is not the case that cultural groups are infinitely malleable. There are both practical and moral limits to how much change can be imposed on a group. In response to the apparent tension between essentialist and postmodern approaches to identity, Ian Shapiro proposes a balanced approach.

An intermediate and more plausible account that avoids the attendant difficulties of both primordialism and postmodernism might run as follows. Human beings are shaped by context and circumstance, but are also constrained by their inherited constitutions. These constitutions may themselves evolve, but at a given time and place they limit the possibilities of social reconstruction. Human psychology is always malleable but never infinitely so, and certain ways of shaping it are likely to be more effective than others in any given situation.¹⁰¹

According to Shapiro, we ought to be cautious when legally determining cultural membership (for the purpose of assigning rights) because the criteria will most likely tend to be conservative and based on primordial (read essentialist) claims about what it means to be a cultural member. At the same time, we ought to resist the claim that cultural identity is infinitely malleable because this fails to acknowledge the effectiveness of certain kinds of enduring sociological features in explaining social behavior. That is, ignoring some cultural features might lead to ineffective public policies.

¹⁰¹ Ian Shapiro, *The State of Democratic Theory*, (Princeton: Princeton UP, 2003) 95.

Seyla Benhabib shares Shapiro's concerns about essentialism and postmodernism, and adopts a Hegelian inspired sociological constructivist approach to cultural groups. She takes the position that social realities are constituted by intersubjective social relations and the meaning and significance of such relations are rich and often conflicting narratives. She does not seek the analytic clarity that Brubaker and Cooper demand but Benhabib does take seriously the ways that intergenerational cultural differences factor into explanations and understandings of behavior.

Sociological constructivism does not suggest that cultural differences are shallow or somehow unreal or "fictional." Cultural differences run very deep and are very real. The imagined boundaries between them are not phantoms in deranged minds; imagination can guide human action and behavior as well as any other cause of human action. Yet the student of human affairs should never take groups' and individuals' cultural narratives at face value. Rather, to explain human behavior, the student should seek to understand the totality of circumstances of which culture is an aspect.¹⁰²

Benhabib does not treat cultural identities as fixed. For her, the question of cultural identity is not answered by quantitatively determining membership. Benhabib answers the question of cultural identity by critically interpreting the meaning(s) of collective narratives. Consequently, she construes the question of culture as a question of narrative identity. Narrative understandings of culture begin with the question: "who are we/they?"

One potential problem with this approach to cultural understanding centers on the issue of who does the asking and the answering. The concern here is how to avoid a kind of intellectual elitism that is insensitive to the perspectives of those who are not interested in publicly contributing to a cultural narrative but nevertheless have an interest in maintaining a cultural identity.

¹⁰² *The Claims of Culture*, 7.

According to Benhabib, to understand cultural difference one must understand how cultural members collectively make sense of the world, and such an understanding is gained through the critical examination of cultural narratives. Cultural narratives will change over time as collective understandings change, but such changes are not determined by the whims of particular cultural members. Insofar as cultural understandings are collective endeavors, they constitute a meaningful and structured social reality. It is this tension between the creative construction and interpretation of cultural identity and the semantic structures that ground such identities that narrative theorists like Benhabib try to negotiate in order to bridge postmodern and essentialist approaches to the phenomenon of identification.

Cultural Narratives

The social reality revealed by the narratives of a culture provides general descriptions that tell us how cultural members might conceive of their interests and what they value. According to Bhikhu Parekh,

[t]he beliefs or views human beings form about the meaning and significance of human life and its activities and relationships shape the practices in terms of which they structure and regulate their individual and collective lives. I shall use the term culture to refer to such a system of beliefs and practices. Culture is a historically created system of meaning and significance or, what comes to the same thing, a system of beliefs and practices in terms of which a group of human beings understand, regulate and structure their individual and collective lives. It is both a way of understanding and organizing human life. The understanding it seeks has a practical thrust and is not purely theoretical in nature like that offered by a philosophical or a scientific theory, and the way it organizes human life is not ad hoc and instrumental but grounded in a particular manner of conceptualizing and understanding it.¹⁰³

¹⁰³ *Rethinking Multiculturalism*, 143.

Along with semantic components of cultural narratives, there are also moral dimensions to describing and understanding cultures. Firstly, there is the culturally specific evaluative system that is crucial to understanding social behavior. According to Georges Sioui, it is this dimension that is key to correctly interpreting behavior.

The portrait of a culture depicts the ideas that are most important to its people. The hierarchy of priorities is called a scale of values; culture, therefore, is fundamentally a question of values... To understand the values that have motivated a people in its relations with another people or civilization, it is essential to comprehend the values of the cultural groups concerned. [Where warranted] this makes it possible to respect the motives and recognize the dignity of those peoples.¹⁰⁴

Also, as Sioui suggests at the end of the above quotation, there is a moral obligation that the researcher owes to members of the culture he or she is describing. The recognition of a culture's hierarchy of priorities (conceptual framework) is a reflection of an anti-authoritarian theme that runs throughout post-colonial literary theory and multicultural political discourse. Stereotypes, oppression, racism and colonialism are all pernicious forms of authoritarian description. Sioui's autohistoric method seeks to generate historical narratives from the living perspective that embodies the conceptual framework of a people.¹⁰⁵ His approach supports the claim that culture is not like a museum diorama, nor is history. To take up a common history is to identify with (as opposed to objectify) people described in historical narratives.

Clearly, if cultural identity is to be reflected in public policy, historical narratives must play a role in how cultures figure into public institutions. A narrative approach to the

¹⁰⁴ Georges Sioui, *For an Amerindian Autohistory*, (Buffalo: McGill-Queens and Apos UP, 1992) 20.

¹⁰⁵ There remains the question of who is providing the story or central elements. This is not easily answered because it is possible that there may be conflicting accounts.

preservation of Canada's multicultural heritage provides a hermeneutic guide for Canadian history. Preserving Canada's multicultural heritage would not mean preserving a particular historical script. That is, it would not entail collecting 'authoritative' narratives from identified cultural groups for the purpose of integrating these strands into a grand 'Canadian' narrative. Rather, a narrative approach would accept the multiplicity of voices that contribute to an ongoing historical project. In practical terms this approach would favour protecting a public space in which diverse narratives can be heard as opposed to imposing a unified narrative on a heterogeneous group. According to the narrative approach that I am promoting, we do not need to go beyond the familiar rights of freedom of expression, etc., in order to maintain a public discursive space. However, how such rights are interpreted and balanced against other goods is influenced by how one construes cultural identity. Furthermore, there is a tension between particular historical narratives and the technical limitations of bureaucratic processes. We cannot expect public institutions to reflect the particular experience of everyone nor should we be too quick to change the principles upon which these institutions were built in order to accommodate changing and diverse public moods. The tension between multiple narrative understandings of a nation and the commonality of public institutions is an unavoidable obstacle for multicultural policy in Canada.

What normative claims does the acceptance of the claim that Canada is a culturally diverse country entail? I suggest that this question can be answered by taking an approach to cultural diversity that acknowledges that there are cultural differences that have important normative and descriptive dimensions, without endorsing cultural relativism or rejecting universal normative principles. That is, cultural diversity refers to the empirical

fact that there are cultural differences without asserting that there necessarily ought to be.¹⁰⁶ This is not to say that the existence of cultural differences does not entail any moral obligations. However, such obligations are matters that need to be worked out within particular contexts rather than according to a general theory of cultural interaction.¹⁰⁷ The acknowledgement that cultural differences matter does not tell us how such differences matter in every possible situation. Rather, it places culture alongside other important kinds of differences in order to better understand and appropriately respond to social phenomena. Currently, there are many theorists in various disciplines whose work reflects concerns raised by cultural diversity.¹⁰⁸

Culture and Describing Human Behavior

Some of those who seek to describe human behavior (such as social scientists and historians) are questioning approaches that fail to take culture seriously as a relevant sociological variable. The idea is that by taking cultural differences into account we can come up with better (truer) explanations and understandings of social, political and historical phenomena. For example in *Culture Troubles*, Patrick Chabal and Jean Pascal Daloz argue that comparative political science is unable to adequately explain political events and processes unless culturally diverse evaluative perspectives or conceptual frameworks are taken into account. In their study of African bureaucracies they use the

¹⁰⁶ The wording of s. 27 states that the government ought to “enhance and preserve” cultural diversity. This may be the case but this claim does not follow from accepting that Canada is a culturally plural country.

¹⁰⁷ Depending on the situation, the context might be constituted internally within a cultural group, or it might involve multiple groups and institutions.

¹⁰⁸ Kwame Anthony Appiah *The Ethics of Identity* 2005, Seyla Benhabib *The Claims of Culture* 2002, *The Rights of Others* 2004, Amartya Sen *Identity and Violence* 2006, Georges Sioui *For an Amerindian Autohistory* 1992.

conceptual framework of the cultures in question to reveal a system of “unwritten rules” that work alongside formal rules. The “disorderly” appearance of the formal bureaucratic structures that Chabal and Daloz examine obscures the effectiveness of informal rules based on local conceptual frameworks.¹⁰⁹ They argue that insofar as comparative political science requires a comparison of events and processes, a certain degree of literacy in the particular conceptual framework of an actor is necessary.

Because there is in the world almost infinite cultural variation it is impossible to devise a comparative analysis other than by means of a cultural approach, or what we call a perspectivist paradigm.¹¹⁰

In order to compare two events, they must be evaluated according to a general theory that construes the events as having a common feature. However, in order to recognize two events as being subsumable under a single theory, one must have an understanding of what each event means within the context in which it takes place and this, according to Chabal and Daloz, requires an understanding of particular cultures¹¹¹

The importance of cultural context is clearly illustrated in the case of *R. v. Children's Aid Society*. What was at issue was the right of parents to refuse life-saving blood transfusions on behalf of their children for religious beliefs. The court had to become literate in the belief system of Jehovah's Witnesses in order to understand that, a) for Jehovah's Witnesses there is a religious significance to blood transfusions and, b) this

¹⁰⁹ Patrick Chabal and Jean Pascal Daloz, *Culture Troubles*, (Chicago: University of Chicago P, 2006) 242.

¹¹⁰ Patrick Chabal and Jean Pascal Daloz *Culture Troubles* 326.

¹¹¹ What counts as an event will depend on the theoretical framework and the research objectives of the social scientist.

significance is the kind that makes the request for the right of a parent to refuse a blood transfusion on behalf of a child fall into a freedom of religion Charter claim.¹¹²

Taking differences seriously is also important to the study of history. For example, Georges Sioui's autohistoric method, first articulated in his book *For an Amerindian Autohistory: Essay on the Foundation of a Properly American Social Ethic*, and later in *Huron-Wendat: The Heritage of the Circle*¹¹³, provides historical accounts that take as a starting point the particular conceptual framework of the subject group (the Wendat-Algonkian civilization) in order to interpret archeological findings and post-contact European documentation of the Wendat and Algonkian peoples.

Along with the enriched descriptions provided by taking cultural differences seriously, there is also an ethical dimension to cultural description. Sioui's autohistoric method is one that invites historians to describe a group from within the particular socio-cultural logic of that people in order to better understand his or her subject, as well as treat the living descendents with the respect that is owed to them.¹¹⁴ He notes that it is often the case that the discipline of anthropology is reserved for "less developed" cultures whose primary historical sources are oral, whereas the discipline of history is reserved for cultures whose primary historical sources are printed documents. The consequence of this division is that Canada's Aboriginal population is often considered by historians to be constituted by people whose history begins with European contact – pre-contact periods are described

¹¹² Admittedly, in this case the degree of cultural understanding is quite minimal because of the clear consequences of the cultural practice and the clearly stated views of the Jehovah's Witnesses. However, it serves as a clear example for more difficult cases.

¹¹³ Georges Sioui, *For an Amerindian Autohistory: Essay on the Foundation of a Properly American Social Ethic*, *Huron-Wendat: The Heritage of the Circle*, (East Lansing: UBC P, 1999).

¹¹⁴ Describing a group from within a socio-cultural logic is necessary for explanation, but not sufficient.

as prehistoric. Ironically, shortly after European contact, the time in which Aboriginal history is said to begin, this historical period is usually treated as a postscript to an extinct people or a footnote to the history of the European fur trade. That is, the conventional story of Canadian Aboriginal history begins with its own ending. However, as if to empirically refute the claims of most 20th century Euroamerican historians, Aboriginal Canadians stubbornly continue to survive. It is to these survivors who identify, not as post-historical people, but as people whose cultural identity is contiguous with their ancestors, that historians have moral obligations.

Why Culture Matters

Why does culture matter to the government? First of all, a good understanding of cultural groups leads to better understanding of human behavior. In order to understand and explain social phenomena it is often important to read behavior through a culturally informed lens. Since an understanding of human behavior is necessary for creating public policies, a better understanding of behavior will make it possible to create better (more effective) public policies. Secondly, ignoring culture can leave governments unprepared to deal with conflicts between cultural groups. This problem is amplified when the government itself is considered to be representative of a particular cultural group. For these two reasons it is important for a culturally diverse country like Canada to create multicultural policies.

Taking culture seriously is not the same as defining culture. The government can accept that culture may be a relevant factor when creating legislation and public policy yet refrain from attempting to define cultural identities.

A culturally diverse population presents many challenges to policy makers because of the social tension that can result when different cultural groups interact in a common space. Such tensions can be heightened if one group is seen as being entitled to occupy such a space and others are construed as invaders, outsiders, or guests. If universal principles are instantiated in culturally specific policies that are applied to novel situations in inflexible ways, this might impose unjust burdens on marginalized groups. On the other hand, if marginalized groups make demands that violate fundamental principles of a free and just society, the claim that “it is my culture” does not outweigh the normative force of universal moral principles. However, between the extremes of cultural relativism and cultural chauvinism there is a great deal of room for discussion and compromise.

One obstacle to redefining public policy to accommodate cultural diversity is the tension between bureaucratic structures and cultural groups. The former operates according to (what are ideally) impartial rules that require clear definitions if such rules are to be applied in a fair way. If rules are made to accommodate culture, then this presupposes that cultural membership and practices can be clearly defined. If membership and practices are defined by bureaucratic structures then this seems to represent a problematic intrusion of the state into private life.

One of the risks of this intrusion is that the complex and dynamic dimensions of cultural life will be reified by bureaucratic structures and culture will be reduced to essential and static features in order to be recognized by the state. In the next three chapters I go through some attempts to reconcile the tension between bureaucratic structures and cultural groups. I begin with Charles Taylor’s politics of recognition. By drawing on the work of Patchen Markell, I argue that Taylor’s approach entails a kind of cultural

essentialism that is antithetical to the spirit of his politics of recognition and leaves us unable to challenge illiberal and immoral cultural claims. Next I look at Will Kymlicka's attempt to articulate culture within a bureaucratic framework of differentiated citizenship. Although I agree with Kymlicka that we should not give up universal moral principles (like those that justify liberal political theory), I am not convinced that we can come up with a general model of culture that can do the conceptual work that he requires of it. Next, I examine Iris Marion Young's relational approach to politics. By focusing on the ways in which individuals and groups relate and the subsequent unjust inequalities of political power that are revealed in these relationships, Young provides an alternative to the distributive approach to political justice. However, when Young tries to translate her descriptive approach to political relationships into public policy, she is forced to revert back into the essentialist discourse that she is trying to overcome. Finally, I argue that the best way to approach multicultural policy is to treat cultural identity as a collection of narratives. With this approach I suggest an alternative approach to multicultural policy that is sensitive to the demands of bureaucratic structures and cultural groups.

CHAPTER 3 THE POLITICS OF RECOGNITION

Should cultural groups be given special recognition by the government? Should differences in ethnicity, religion, language and national origin matter when a state politically organizes its population? These questions are at the heart of what is often termed “the politics of recognition”. Coined by Charles Taylor, “the politics of recognition” is associated with multicultural policies directed at ameliorating injustices that affect cultural groups. One of Taylor’s most important contributions to the debate over cultural recognition is his insight that identity is situated in an intersubjective web of interlocation. However, the political and moral consequences that Taylor draws from this insight are problematic because of a tension between the role that webs of interlocations are said to play in the constitution of identity and the freedom of an agent to act.

In this chapter I argue that although it offers many important insights, Taylor’s politics of recognition is problematic. What exactly is it that the political act of recognition recognizes? Does it entail ‘seeing’ what is really there or does it create something new? If the recognition is of one’s ‘authentic’ identity (or a culture’s identity), can we really ask the government to see what is really there or be charged with creating and sustaining it? Picking up on Bissoondath’s concern that the government ought not to be in the culture business, I suggest that we are better off if questions of ontology, including cultural identification, are left up to citizens to answer.

Taylor and the Politics of Recognition

In his seminal paper, “The Politics of Recognition”, Charles Taylor argues that the attempt by “procedural liberals” to make the public realm into a common and neutral space

fails to address certain identity based injustices and causes certain kinds of substantial harm to minority group members. Taylor's argument is based on the ontological claim that identity is "formed through confrontation and interaction with other(s)".¹¹⁵ By transforming Hegel's master/slave dialectic into a struggle of marginalized groups for recognition, Taylor successfully unmasks the inability of the government to provide an impartial space of appearance.¹¹⁶ From the claim that imbedded within political institutions are substantive notions about what constitutes a good life, Taylor argues that such notions can marginalize members of cultural groups who do not share them. This insight is important because it brings to the surface certain kinds of political injustices that can be obfuscated by procedural liberalism's 'one rule for all' approach.¹¹⁷ However, by conflating ontological claims about the constitution of identity with political claims about how people ought to be organized, Taylor's politics of recognition falls into the same morally suspect territory that other ontologically essentialist approaches occupy.

Many attempts to legitimate political inequalities have tried to show that there are certain ontologically essential and distinctive features that define identifiable groups and that these differences are morally and politically relevant. The list of attempts includes: the description of the soul that Aristotle uses to defend slavery;¹¹⁸ pseudo-scientific racial hierarchies that were used to justify colonial practices; and biological accounts of human

¹¹⁵ *The Claims of Culture*, 50.

¹¹⁶ See Hegel's *Phenomenology of Spirit* section IV, trans. Arnold Miller, (Oxford: Clarendon P, 1977). Section?

¹¹⁷ Certain rules, like bans on head coverings, entail that certain identifiable groups are disproportionably burdened. However, I have not yet demonstrated that such a burden is unjust.

¹¹⁸ See Book I, Chapters iii-vii of the *Politics*. and Book VII of the *Nicomachean Ethics*, trans. W. D. Ross, ed. Jonathan Barnes, (Princeton: Princeton UP, 1995).

agency that are used to exclude women from the political realm. The basic argument behind these attempts is:

Political agency requires x, where 'x' is a 'natural' characteristic.
Since some people do not have x, some people are not political agents.
Standing within a political community should only be given to those who are political agents.
Therefore, those who do not have x should not be granted political standing.

This argument turns on the claims that, a) there is an essential connection between political agency and certain aspects of human nature and b) not everyone shares in these aspects. I will refer to this method of political organization as 'ontological essentialism' because it posits certain ontological features as being essential to political agency.

The liberal principle of equality in its modern form challenges the position of the ontological essentialist with the claim that every human being is of equal moral worth. Liberals deny that the kinds of differences that the ontological essentialist uses to try to justify social and political stratifications are morally relevant. What matters to liberals is not what a person is by birth or circumstance, but rather, what a person does to distinguish oneself – legitimate social stratification is connected to and justified by the exercise of individual agency. Liberal equality supposes that almost every adult has in common the minimal capacities necessary for political agency and so ought to be granted standing within the political community.

Taylor's politics of recognition challenges the liberal exclusion of differences from the public realm by arguing that, 1) such exclusion is neither complete nor impartial – some cultures are imbedded within public institutions, 2) the exclusion of difference from the public realm causes substantial harm and, 3) in order to address certain kinds of injustices, differences must be publicly recognized. Taylor's argument is based on the ontological

portrait of identity that he situates within a “web of interlocution” – ‘who’ one is, is not separable from what one values and these values are generated by and known through a social group or culture. Taylor takes an ontologically essentialist approach to identity in that he makes the claim that identity is connected to a culturally specific evaluative framework in such a way that the recognition of culture is a precondition for political agency. Though Taylor seems thus to be focusing on cultural and not ‘ontological’ factors, the way in which he construes cultural factors is such as to lend them a weighty ontological-like character.

At first glance, Taylor’s inter-subjective ontology of the self seems to be in step with liberalism in its opposition to the problematic political consequences of ontological essentialisms that rely on biological, ethnic or racial accounts of human nature. However, what Taylor takes issue with is not the idea of politically organizing people according to ontologically essential characteristics, but rather he argues against what he sees as inadequate theories of human nature. Consequently, Taylor replaces theories of human nature with his theory of identity that focuses on socially imbedded concepts of ‘the good’.

From the claim that the self is connected in a fundamental way to a particular evaluative framework, Taylor makes the further claim that failing to recognize the values within a framework amounts to a failure to recognize who one ‘really’ is and that this kind of misrecognition causes substantial harm.¹¹⁹ He argues that both majority groups and the state ought to recognize minority groups in order to avoid causing such harm.

Taylor’s argument appears to support many just political causes. Furthermore, in some cases failure to properly recognize a minority group can and does cause harm. For

¹¹⁹ “The Politics of Recognition”, 25.

example, the reserve system that was put in place to ‘manage’ Canada’s Aboriginal populations failed to recognize, a) the significance for Aboriginal people of the relationship between the land and their spiritual sense of well-being and, b) the negative impact that restricting access to traditional hunting territories would have on the well-being of Aboriginal people. This misrecognition of Aboriginal people has contributed to a legacy of poverty and poor health on Canadian reserves.¹²⁰ However, by using identity-group difference as a principle for political organization, Taylor is vulnerable to the same criticisms that are directed at essentialist ontological accounts of human nature. Just as essentialist accounts of human nature place unjust and unfounded limits on what certain groups are capable of, Taylor seems to limit what an individual is capable of valuing according to a preconceived image of a paradigmatic cultural member. One might agree with Taylor (and I do) that there is a fundamental connection between culture (as an inter-subjective web of interlocution) and identity, however, it is not always clear or predetermined exactly how culture shapes identity.¹²¹

If a culturally mediated conception of the good is given an overly determinate role in the constitution of identity, Taylor’s web of interlocution risks tightening into a self-contained comprehensive knot whose strands do not connect across group lines. In the words of Patchen Markell, minority groups risk being “bound by recognition”.¹²² To continue with the example of Canada’s Aboriginal population, there is resistance amongst many who identify as Aboriginal to give up the word “Indian” because this is the term that appears in treaties, legislation, and historical documents. This concern about conforming

¹²⁰ Campaign 2000 reports that Aboriginal children are the poorest in Canada in, “Oh Canada! Too Many Children in Poverty for Too Long”, 2006.

¹²¹ See Benhabib, *The Claims of Culture*.

¹²² Patchen Markell, *Bound by Recognition*, (Princeton: Princeton UP, 2003).

to an identity that is politically recognized is further complicated by rules that determine “Indian” status according to genetic descent.¹²³ This can lead to situations where those who have status feel pressured against having children with non-status people for fear that their children will no longer be recognized. Evidently, the ontological mistake of construing identity in terms of recognizing authenticity is compounded when it is carried into the realm of political organization.

Identification and Political Organization

Categories are used in many ways to organize people. A shoe store might organize people according to foot size whereas a bank might organize people according to the amount of money in one’s bank account. What is taken to be the determining feature in each case is that which is used as an organizational principle – the population in question is organized according to a rule that is determined by an essential feature. Using this method of categorization is not unjust if the rule that is used to differentiate people is relevant to the purpose or reason for differentiation. For example, it makes sense and is fair to categorize medical patients according to the nature, severity, and urgency of their maladies because such essential features or rules of organization are relevant to the task at hand (administering healthcare). However, when the organizational principle is arbitrary, that is, when it is irrelevant to the purpose for differentiation, this method of categorization

¹²³ The way that Indian status is currently defined in Canada is such that, “[Indian] status [is] terminated after two successive generations of intermarriage between Indians and non-Indians.” *Indian Status and Band Membership Issues*, Prepared by Megan Furi and Jill Wherrett, Political and Social Affairs Division, Government of Canada, February 1996, Revised February 2003.

becomes morally suspect. For example, since the colour of a person's skin is not relevant to one's ability to perform the kinds of tasks that most employment requires, the selection of employees should not typically be based on skin colour. Unfortunately, skin colour could become relevant if, say, the clients being served are racist. However, in such cases the prejudice of the customer is morally arbitrary. Antiracism legislation is sometimes necessary to protect people from the harm caused by morally arbitrary treatment in private or social life.

Identification is one way that people organize into groups. What distinguishes identity groups from other essentialist categories is the degree to which members of a group feel some kind of commonality with other members. This sense of commonality often includes normative ideas about what it is to be a good x, where x is a category of identification. Kwame Anthony Appiah uses the Robbers Cave study to show how group identification can emerge from virtually any kind of organizational principle, regardless of how arbitrary it might be.

In the summer of 1953, a team of researchers assembled two groups of eleven-year-old boys at adjoining but separate campsites in the San Bois Mountains, part of Oklahoma's Robbers Cave State Park. The boys were drawn from the Oklahoma City area and, though previously unacquainted, came from a fairly homogenous background – they were Protestant, white, middle-class. All this was by careful design. The researchers sought to study the formation of in-groups and out-groups – the way that tension developed between them and might be alleviated – and the Robbers Cave example has justly become something of a classic in the social sciences.¹²⁴

What became evident within the first four days of the study, and what gives it its 'classic' status, was the formation of two distinct identity groups that had different standards for determining what a good group member was. One group identified as "prayerful, pious

¹²⁴ *The Ethics of Identity*, 62.

and clean-living” and the other as “boisterous, tough and scrappy”.¹²⁵ This study points to how the phenomenon of group identification can entail the adoption and perpetuation of group-specific standards of excellence, norms and evaluative frameworks. It also shows the role that narrative plays in the identification of the self and others.

Cultures, construed as including such notions as ethnicity, religion, nationality and language, carry evaluative frameworks. From this claim Taylor infers that these frameworks are determining factors in the way group members make sense of the world, i.e., culture is a *comprehensive* organizational principle. The claim of those who use culture as a comprehensive organizational principle is that insofar as culture plays a strong role in determining how a person relates to the world, it must play a foundational role in moral, political and legal institutions. In other words, virtually every evaluative stance that a person takes must be considered as culturally mediated.

Recognition, Authenticity and Identity

Taylor uses culture and civilization almost interchangeably when categorizing people. One of his most well-known usages of civilization as an organizing principle is his discussion of Tolstoy and Zulus. Taylor argues for a reconsideration of what has come to be known as the ‘Western’ canon on the grounds that the criteria that are used to judge whether a work ought to be added to the canon are “those of North Atlantic Civilization”.¹²⁶ In his criticism of a comment attributed to Saul Bellow (“when the Zulus produce a Tolstoy we will read him”), Taylor takes it to be an arrogant universalization of a

¹²⁵ *The Ethics of Identity*, 63.

¹²⁶ “The Politics of Recognition”, 71.

particular civilization's standards of excellence and so it is a failure to, 1) recognize that the evaluative framework of North Atlantic Civilization is just one of many legitimate frameworks and, 2) recognize the value of Zulu civilization. In other words, according to Taylor, cultures carry with them their own comprehensive evaluative systems that inform every aspect of a person's life. To be recognized as an authentic member of a culture entails that the evaluative system is at least presumed to be of equal worth to other systems.

The mistake of attempting to compare the works of Tolstoy with Zulu cultural achievements is seen by Taylor to be not only aesthetic but also moral. Because he connects culture and its products with one's sense of self-worth and well-being, the failure to recognize the former as valuable is considered to be a source of substantial harm to those whose cultural products have not been recognized. Based on this line of reasoning, Taylor argues that the canon ought to include works from marginalized groups because:

the excluded groups are given, either directly or by omission, a demeaning picture of themselves, as though all creativity and worth inhered in males of European provenance. Enlarging and changing the curriculum is therefore essential not so much in the name of broader culture for everyone as in order to give due recognition to the hitherto excluded. The background premise of these demands is that recognition forges identity, particularly in its Fanonist application: dominant groups tend to entrench their hegemony by inculcating an image of inferiority in the subjugated. The struggle for freedom and equality must therefore pass through a revision of these images. Multicultural curricula are meant to help in this process of revision.¹²⁷

Taylor is rightly concerned with righting the wrongs of colonialism. However, he goes beyond the claim that groups who are unjustly excluded from public life ought to be included and makes the stronger claim that the way that marginalized groups are seen ought to be revised to require the universal affirmation of their cultural works.

¹²⁷ "The Politics of Recognition" 66.

Although Taylor is critical of the universalization of values, he does not make the claim that the products of each culture are in fact of equal value – his position is more subtle than that. To assert that each culture is of equal value one would have to occupy an evaluative position that transcends culture. But this is a position that Taylor denies one can take. Since Taylor considers culture to be a comprehensive essential category, an evaluation is necessarily bound by one's culture. Taylor suggests that one ought to "presume" that each culture is of equal worth. The intended benefit of such a presumption is that members of marginalized cultures will not be swept up in a dominant culture's attempts to universalize its own value system.

The perpetuation of negative images is a genuine concern and Taylor is right to focus on its consequences. Negative stereotyping has been linked to harmful effects that further widen gaps between dominant groups and vulnerable minorities.¹²⁸ However, it does not follow that the path to social justice necessarily begins with improving the self-esteem of marginalized groups by convincing the majority to view them with "authentic" vision. Such an approach takes an uncritical stance toward evaluative structures that may in fact be contributing to negative stereotyping.

Sometimes it might be the case that cultural values ought to change rather than be protected. At other times, it might be the case that the authentic positive image that is being projected by a majority group or minority group members is just as unwelcome to some as the negative stereotype. As Susan Bickford suggests:

¹²⁸ See Steele, "A threat in the air: How stereotypes shape the intellectual identities and performance of women and African-Americans". *American Psychologist* 52, (1999), 613-629, and Steele & Aronson. "Stereotype threat and the intellectual test performance of African-Americans." *Journal of Personality and Social Psychology* 69, (1995) 797-811.

the identities that are imposed on us do not necessarily neatly mesh with what we want to reclaim; other individuals or institutions may define us differently than we would define ourselves, or take as defining characteristics ones that we do not. Controlling definitions of group identity that are imposed from the outside establish particular lines of sameness (of those within the group) and difference (from those not in the group). This premise of homogeneity with groups is often repeated and enforced by the groups themselves.¹²⁹

Of course, Taylor is arguing against the kind of imposition of identity that Bickford is speaking about. "Being true to myself means being true to my own originality, which is something only I can articulate and discover. In articulating it, I am also defining myself."¹³⁰ However, if Taylor's ideal of authenticity as originality is tied too closely to culture and its products, then the articulation and discovery of the self is externally defined in a way that is analogous to the unwelcome projection of negative stereotypes.

In his book, *Selling Illusions: The Cult of Multiculturalism in Canada*, Neil Bissoondath uses his own experiences of immigrating to Canada to show how the politics of recognition construed as the recognition of authentic identities, can be at odds with the ideal of self-definition.

Here [in Canada], they insisted, you did not have to change. Here you could – indeed, it was your duty to – remain what you were. None of this American melting-pot nonsense, none of this remaking yourself to fit your new circumstances: you did not have to adjust to society, the society was obliged to accommodate itself to you... The problem was that I had come in search of a new life and a new way of looking at the world, "to expand my horizons" (to use a cliché) from the narrowed perspectives of my youth in Trinidad. I had no desire to transport here life as I had known it: this seemed to me particularly onerous baggage with which to burden one's shoulders. I was no longer the same person who had boarded the aircraft in Trinidad bound for Toronto: I had brought with me not the attitudes of the

¹²⁹ Susan Bickford, "Anti-anti-identity Politics: Feminism, Democracy, and the Complexities of Citizenship", *Hypatia* 4 (1997), 117.

¹³⁰ "The Politics of Recognition", 31.

tourist but those of someone embarking on an adventure that would forever change his life. This alone was a kind of psychological revolution.¹³¹

Bissoondath goes on to describe his frustration when well-meaning people tried to make him feel welcome by 'recognizing' him in terms of his Trinidadian identity. What he was looking for was a space to experiment and find a new way to fit into a post-colonial world. What he found was that the politics of recognition bound him to an unwanted colonial identity.

It would be a mistake to universalize the experience of Bissoondath, or to claim that his mode of identification is more authentic than one that is tied to cultural tradition. What one might draw from his account is that people identify in many different ways and in a free society they ought to be free to do so. However, following Herder, Taylor starts with clearly delineated identity groups and then proceeds to imagine an ideal of authenticity. This suggests such problematic conclusions as 'Zulus ought not write novels' and 'immigrants are really baggage laden tourists'.

Ontological Essentialism and Reification

Can the re-conceptualization that Taylor calls for do what he says it can? Should we presume that each culture has its own value system that is equal to any other? If Taylor is right and culture is an essential organizational principle that encompasses virtually all aspects of a person's life, including one's sense of identity and well-being, then it would follow that both the recognition and affirmation of cultural differences are moral

¹³¹ *Selling Illusions*, 23.

obligations. However, upon closer examination, cultural value systems are not always as comprehensive as Taylor might suggest. People identify for all kinds of reasons. However, as Lawrence Blum points out, Taylor's sense of culture excludes categories of identification that are not based on ethnicity, religion or language.¹³² Many political movements have been organized around cross-cultural identification that is based on social categories like gender, sexuality, occupation and ability. The preservation and affirmation of comprehensive cultural value systems restricts members of cultural communities to 'their own' evaluative spheres and seems to preclude the possibility of cross-cultural identification. As the Cave study suggests, identity groups can emerge in arbitrary and unexpected ways. The danger of defining a person and organizing a population according to a single politically recognized identity is that it seems to force a person to either choose one group over another, or takes the choice away completely and externally ascribes an identity.

The problem with starting with well-delineated identity groups and then applying these as principles of political organization is that people have no say in who they are or how they live. If identity is a matter of the kind of self-realization that Taylor suggests, then the politics of recognition entails that the alleged demands for assimilation made by procedural liberalism, patriarchy, or whatever form the hegemonic group in question takes, are replaced by a demand to conform to a pre-given image of a marginalized group. Admittedly, Taylor does not intend to force individuals to conform to visions of 'the good' dictated by cultural tradition. Rather, his claim is that one's very conception of *oneself* is

¹³² "Recognition, Value, and Equality: A Critique of Charles Taylor's and Nancy Fraser's Accounts of Multiculturalism", *Theorizing Multiculturalism*, ed. Cynthia Willet, (Oxford: Blackwell, 1998), 53.

situated within a culturally mediated understanding of tradition. However, by placing too much emphasis on culture as a determining factor in the constitution of identity, he seems unable to avoid the external ascription of identity that is a political consequence of his ontological essentialism.

The tension between Taylor's concept of the self as constituted by a web of interlocution and his concept of comprehensive evaluative frameworks is illustrated by Patchen Markell as a tension between two senses in which Taylor uses the term "recognition".

On the one hand, we frequently use "recognition" in ways that accent its relationship to knowledge. For instance, "recognition" can refer to a *recognition* of something once known but latently hidden, forgotten, or absent: I put a name to the face of an old friend; I remember having been in this place. Similarly – and more importantly for the purposes of ethics and politics – "recognition" can refer to a kind of conduct or action that flows from, and manifests, what we perceive or know of other people or the world... In this first sense, then, recognition brings together cognition and evaluation.¹³³

Recognition in this first sense has to do with accurately seeing the world and responding appropriately. In the second sense, "recognition" refers to a kind of generative act that "brings something new into being, or that transforms the world in some way."¹³⁴ The kind of recognition that sovereigntists in Quebec seek is this second kind – recognition of Quebec as a state by Canada and the international community would bring about Quebec's statehood.

The constitution of identity within a web of interlocution uses recognition in the second sense whereas the misrecognition of individuals that takes the form of the

¹³³ *Bound by Recognition*, 39.

¹³⁴ *Bound by Recognition*, 40.

projection of negative stereotypes uses recognition in the first sense. Markell argues that both senses of recognition are integral to Taylor's account but are at cross-purposes.

The politics of recognition, then, is at odds with itself. Rooted in an admirable awareness of vulnerability and finitude, it nevertheless advances an understanding of justice and injustice that ultimately denies those phenomena in the name of an attractive but impossible vision of sovereign agency. And in this way, the pursuit of recognition comes to be bound up with a certain sort of *misrecognition* – not the misrecognition of *identity* (for that understanding remains within the cognitive framework, in which recognition is just a matter of getting someone's identity wrong) – but an even more fundamental *ontological* misrecognition, a failure to acknowledge the nature and circumstances of our own activity.¹³⁵

The institutionalization of the recognition of identity in the cognitive sense fails to recognize in the generative sense the capacity of individuals to freely act across multiple evaluative frameworks, to identify in multiple ways, and to initiate processes that have the potential to bring about new evaluative frameworks (create new identity groups).

By creating political arrangements that are designed to protect cultural identity, Taylor is trying to sanitize the public realm by placing limits on how words and actions are interpreted – on how agents appears to others. However, this kind of interpretive control goes against the ideals of free speech and conscience. In his attempt to protect individuals from misrecognition Taylor reifies identity by removing it from the interpretive realm of interlocution and treating it as a cultural artifact to be preserved behind the museum glass of the politics of recognition.

¹³⁵ *Bound by Recognition*, 59.

Reified Identity and Violence

Amartya Sen argues that when cultures are reified, that is, when people are pressured to follow cultural scripts, they are more prone to engage in cultural violence. He draws on his own experience to make the point.

From my own childhood memory of Hindu-Muslim riots in the 1940s, linked with the politics of partition, I recollect the speed with which the broad human beings of January were suddenly transformed into the ruthless Hindus and fierce Muslims of July. Hundreds of thousands perished at the hands of people who, led by the commanders of carnage, killed others on behalf of their "own people". Violence is fomented by the imposition of singular and belligerent identities on gullible people, championed by proficient artisans of terror.¹³⁶

Although the kind of identification that Taylor is advocating for is neither belligerent nor intended to be imposed on gullible people, there is a sense in which he glosses over the potential dangers of using reified group identity as a principle for comprehensive political organization. An example of Taylor's discomfort with serious debate concerning morally unacceptable 'cultural' values is his reluctant condemnation of the *fatwa* that the Iranian government decreed against Salmon Rushdie after the publication of *The Satanic Verses*.¹³⁷ Brian Barry rightly criticizes Taylor's response to the Rushdie affair by pointing to the potentially violent consequences of affirming comprehensive identities as self-contained value systems. "Taylor exhibits what appears to be genuine regret that the case of Rushdie does not lend itself to compromise...".¹³⁸ Here Barry draws attention to the

¹³⁶ Amartya Sen, *Identity and Violence*, (New York: Cambridge UP, 2001), 2.

¹³⁷ Given the renewed hostility to Rushdie's recent knighthood, this is no mere outdated issue. "Muslim world aflame by Rushdie Knighthood", *Times Online* (June 19th 2007), <http://www.timesonline.co.uk/tol/comment/faith/article1951462.ece>.

¹³⁸ *Culture and Equality*, 283

potential dangers of the politics of recognition and one of the strong points of liberalism – the protection of individual against harm.

Sen offers a more defensible and less ambitious approach to identification. He acknowledges that one can derive many goods from identifying with a cultural group, but warns that identification can be used for political evils. Furthermore, Sen is suspicious of claims that individuals behave in certain ways in virtue of the culture with which they identify. He makes the empirically defensible claim that for every stereotype of what it means to be a good x (where x is a cultural identity), there are numerous counterexamples that challenge it. Even if a cultural group has a highly codified value system and even if a person strongly identifies with this group, Sen argues that one might identify with other groups as well. He claims that one makes choices as to how strongly one identifies with what group at what time and for what reason.

Many communitarian thinkers tend to argue that a dominant communal identity is only a matter of self-realization, not of choice. It is, however, hard to believe that a person really has no choice in deciding what relative importance to attach to the various groups to which he or she belongs, and that she must just “discover” her identities, as if it were a purely natural phenomenon (like determining whether it is day or night). In fact, we are all constantly making choices, if only implicitly, about the priorities to be attached to our different affiliations and associations. The freedom to determine our loyalties and priorities between the different groups to all of which we may belong is a peculiarly important liberty which we have reason to recognize, value, and defend.¹³⁹

Sen highlights the capacity of the individual to play a role in how he or she is organized into identity groups. What distinguishes identification as a unique kind of principle of organization is that the people who comprise an identity group feel some kind of affinity with the group. If people no longer feel mutual group identification, the identity group

¹³⁹ *Identity and Violence*, 5.

dissipates. The authenticity of identity does not take the form of an allegiance to tradition, but rather an allegiance to the commitments that one makes to oneself and to others in virtue of shared values, histories, sufferings and aspirations. Subsequently, the formation and dispersion of identity groups is a consequence of freedom. It is this kind of freedom and not cultural tradition, that ought to be recognized, affirmed and protected by state institutions.

Conclusion

If Taylor's politics of recognition is supported by an essentialist ontology of culture, then implementing Taylor's theory as public policy would likely lead to consequences that are undesirable (even for Taylor). First, the political recognition of cultural groups carries with it the risk of imposing unwanted identities on individuals. The freedom of individuals to explore and express their identity would be limited in a problematic way by political recognition of cultural identity. Secondly, tethering political and legal privileges to cultural recognition may exasperate tensions between cultural groups. Since group-based conflicts have the potential to be violent, it is prudent to avoid, if possible, public policies that may lead to violence.

It is possible that in some cases the expected benefits of the political recognition of cultural groups outweighs the undesirable consequences that I have outlined above. For example, in cases where there is a history of violent cultural conflict such that it is necessary to separate groups, political recognition of cultural groups may, on the balance, be the best course of action. However, in the case of Canada, the costs of politically recognizing cultural groups cannot be justified by the expected benefits.

CHAPTER 4 LIBERAL CULTURALISM

Throughout his body of work Will Kymlicka is consistent in his attempt to remedy what he sees as a problematic absence of culture in liberal political theory. He tries to, a) describe culture in a way that makes it recognizable to legal and political institutions and b) show how culture is an integral part of a theory of liberal justice. Unlike Taylor, Kymlicka does not make an essential connection between culture and the generation of values. Rather, Kymlicka argues that accepting liberal values entails certain forms of cultural recognition and so culture ought to figure into liberal theories of justice. According to Kymlicka, multiculturalism as normative public policy is justified by liberalism. Kymlicka tries to express the connection between liberalism and multiculturalism by means of “liberal culturalism” which he defines as, “the view that liberal democratic states should not only uphold the familiar set of common civil and political rights of citizenship which are protected in all liberal democracies; they must also adopt various group-specific rights or policies which are intended to recognize and accommodate the distinctive identities and needs of ethnocultural groups.”¹⁴⁰

This chapter focuses on Kymlicka’s attempts to make culture into a relevant principle of political organization within a liberal theory of justice. Although Kymlicka deserves praise for bringing to light political injustices suffered by cultural minorities, his descriptive approach to culture is problematic. In order to make cultures recognizable as the subject of rights within legal and political institutional domains, Kymlicka treats cultures like states, i.e., as clearly delineable, fairly comprehensive, institutionally complete

¹⁴⁰ Kymlicka “Liberal Culturalism: An Emerging Consensus?”, *Politics in the Vernacular*, (New York: Oxford UP, 2001) 42.

and permanent political entities. In order to conceptualize culture in this way, Kymlicka tries to establish essential criteria for cultural membership. However, as some critics have argued, cultures do not appear as clearly delineable wholes. Furthermore, people might identify with multiple cultures or resist an ascribed cultural identification.¹⁴¹ In such cases, it is not clear what menu of political rights an individual would be entitled to. As well, cultural groups interact, hybridize, and change over time. If cultures change over time then this should be taken into account before special rights are fixed in legal arrangements. So, essentialist accounts like Kymlicka's will inevitably leave out certain people. The inability of Kymlicka's descriptive approach to culture to include difficult and marginal cases becomes a moral issue when such a descriptive approach is tied to political status.

One might question why I am discussing Will Kymlicka in light of the mountain of criticism that his work has already generated. The short answer is that Kymlicka's ideas are still influential in current multicultural literature and so need to be considered.¹⁴² Furthermore, Kymlicka's approach illustrates the tension between dynamic cultural group identification and relatively static bureaucratic processes. It is this tension that is at the center of many debates over multiculturalism.

In what follows I argue that Kymlicka's descriptive approach to culture fails to capture key aspects of the politically relevant forms of cultural identification. This failure is most notable in the problems that his theory faces when trying to define the limits of cultural membership. Insofar as Kymlicka connects cultural membership to one's political

¹⁴¹ See Seyla Benhabib's *The Claims of Culture*, Amy Gutmann's *Identity and Democracy*, Anthony Appiah's *The Ethics of Identity*, and Amartya Sen's *Identity and Violence*.

¹⁴² Michael Adams uses Kymlicka's work as a philosophical foundation for his analysis of Canadian multiculturalism in, *Unlikely Utopia: The Surprising Triumph of Canadian Pluralism*.

status *vis-a-vis* the state, his descriptive failure effectively marginalizes those who fall outside his scheme.

I begin by outlining the basics of Kymlicka's position. One of my main concerns is that Kymlicka does not seem to take his critics seriously enough, and so good aspects of his theory are lost amidst an accumulation of inadequately answered criticism. Although I intend to add to this criticism I do so with the hope of preserving the aim that I take to be at the core of Kymlicka's project, namely, the amelioration of cultural injustice.

For the purposes of the argument presented here I accept Kymlicka's claim that autonomy is connected in a key way to cultural membership with the caveat that I am not convinced of this claim. However, whether or not cultural membership is necessarily connected with an individual's capacity to autonomously act has no bearing on the outcome of the argument being forwarded in this section.

Culture, Liberalism and Justice

As one of the first liberal theorists to take culture seriously, Will Kymlicka is an important voice in debates over multiculturalism and liberal theories of justice. He argues against what he (and others) sees as the problematic privatization (and hence exclusion) of culture in liberal political theory. Before Kymlicka's contribution, questions concerning liberalism and culture were addressed as questions concerning the freedom of expression, association, religion, and belief. However, Kymlicka rightly points out that liberal rights are on their own incapable of answering questions such as those concerning what language is spoken in government institutions, what symbols are employed by the state, which

groups (if any) have a legitimate claim to self-government, and what kind of accommodations (if any) should be made for minority cultural practices. In response to the apparent inability of liberalism to answer such questions, Kymlicka proposes an approach to politics in culturally diverse states that seeks to reconcile the protection of cultural minorities and the liberal tradition of individual rights.

In addition to the apparent inability of liberalism to answer certain kinds of questions, Kymlicka is also concerned with addressing culturally based social inequalities. In this respect, his project is part of a larger one that is often referred to as 'the politics of difference' or 'identity politics', as was Taylor's.¹⁴³ Within this broader discourse, cultural justice is one movement that is being developed alongside movements centered on the rights of women, disabled persons, racial minorities, and other marginalized groups. One of the main claims of those who argue for identity politics is that in practice, the liberal principle of impartiality is unattainable. Consequently, assuming that a state is impartial can have negative effects on marginalized groups. In order to address this problem, proponents of the politics of difference argue that certain kinds of differences (such as race, gender, sexual orientation and religion) ought to be recognized and dealt with in the public realm.

Another issue that concerns Kymlicka is the legacy of colonialism. The rights of indigenous people as well as national groups who have been annexed into multinational states entail, according to Kymlicka, an acknowledgement of distinct political status. One justification that he gives for granting special political status is that prior to colonization, indigenous groups had political and cultural institutions that were unjustly (violently and

¹⁴³ See Amy Gutmann's *Identity in Democracy*, and Kwame Anthony Appiah's *The Ethics of Identity*.

without consent) taken away by colonial powers.¹⁴⁴ Special political status for indigenous people is intended to help remedy the injustice of colonialism by facilitating the reconstruction of indigenous institutions.

In response to these three problematics, Kymlicka tries to provide a coherent theoretical account of cultural rights within a liberal framework. He argues that cultural membership is a primary good because it is a precondition for the exercise of individual autonomy, i.e., the capacity to freely pursue chosen goals (or a way of life).¹⁴⁵ According to Kymlicka, one's culture provides a meaningful range of options (a context for choice) from which one can choose. He argues that cultural membership is a good not because there is something intrinsically good about culture, but rather, because it is necessary for an individual to exercise his or her capacity to freely act. If, as Kymlicka claims, cultural membership is a precondition for individual autonomy, then culture ought to be preserved and protected by liberals; hence, Kymlicka calls this position "liberal culturalism".¹⁴⁶

As stated earlier, Kymlicka's use of the term 'culture' is limited to ethnic and national groups. He excludes cultures that arise from common experience or forms of life.

I am using 'a culture' as synonymous with 'a nation' or 'a people' -- that is, as an intergenerational community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and history.¹⁴⁷

¹⁴⁴ See Kymlicka's discussion of colourblind liberalism and forced integration in *Liberalism, Community and Culture*, (New York: Oxford UP, 1989), 135-57.

¹⁴⁵ Kymlicka, "Do We Need a Liberal Theory of Minority Rights?", *Politics in the Vernacular*, 53-54.

¹⁴⁶ "Liberal Culturalism: An Emerging Consensus?".

¹⁴⁷ *Multicultural Citizenship*, 18.

Groups that organize around common features such as interest, gender, sexual orientation, or ability do not count as cultures according to Kymlicka's definition. Kymlicka is concerned with what he calls "societal culture[s]" which he considers to be sources of meaning "across the full range of human activities".¹⁴⁸

In his works promoting and defending liberal culturalism, Kymlicka focuses on two kinds of cultural groups, namely, national minorities and immigrant groups. A national minority is a minority cultural group whose homeland is part of a state run by a majority culture.¹⁴⁹ An example of what Kymlicka means by a national minority culture is the Scottish people in the United Kingdom. Another is "the Québécois". Although the descendants of French colonists immigrated to Canada, Kymlicka considers them to be a national minority as well because (he argues) the Quebec settlers never considered themselves to be immigrants. Kymlicka acknowledges that there are some groups who do not fall into his dichotomy of national minorities and immigrants but still thinks that there are enough that do to make his distinction and his project worthwhile.¹⁵⁰

The distinction between national minorities and immigrant groups is used by Kymlicka as a way of justifying two different schedules of rights for cultural minorities. He argues that national minorities have a societal culture that they have a right to maintain.¹⁵¹ Insofar as Kymlicka feels that the best way to maintain a societal culture is with some kind of right to self-determination, he argues that some national minorities ought to be granted such a right in the form of self-government over certain culturally significant aspects of public life.

¹⁴⁸ *Multicultural Citizenship*, 76.

¹⁴⁹ *Multicultural Citizenship*, 11-12.

¹⁵⁰ *Multicultural Citizenship*, 25.

¹⁵¹ *Multicultural Citizenship*, 105.

According to Kymlicka, immigrant groups are unable to maintain the societal culture of their homeland because, “[t]hey are typically too small and territorially dispersed to hope to recreate their original societal culture from scratch in a new country.”¹⁵² Leaving the factual validity of this claim aside, immigrants are to be granted what Kymlicka calls “polyethnic rights”.¹⁵³ In general, polyethnic rights are designed to help immigrants integrate into a majority societal culture. Sometimes this means a majority culture will make accommodations (like allowing articles of clothing that would otherwise be banned) that serve to remove barriers to participation in the institutions of the majority societal culture.

The Ontology of Culture

Kymlicka’s first formulation of liberal culturalism takes culture as its object of investigation.¹⁵⁴ By distinguishing between two aspects of culture, namely, structure and character, Kymlicka tries to navigate between a culturally conservative position that risks abrogating individual rights and freedoms in the name of preserving cultural traditions and an individualist liberal position that is suspicious of group rights. It is Kymlicka’s position that a culture’s structure is that which constitutes a context for choice and so ought to be protected.

The range of options is determined by our cultural heritage... We make these judgments [about how to lead our lives] precisely by examining the cultural

¹⁵² Kymlicka, “Multiculturalism” in *Contemporary Political Philosophy* 2nd ed., (New York: Oxford UP, 2002), 353.

¹⁵³ Chandran Kukathas challenges Kymlicka’s empirical claim in “Multiculturalism as Fairness: Will Kymlicka’s Multicultural Citizenship”. in *The Journal of Political Philosophy*: Vol. 5, No. 4, (1997), 421.

¹⁵⁴ This is the position Kymlicka takes in *Liberalism, Community, and Culture*.

structure, by coming to an awareness of the possibilities it has, the different activities it identifies as significant.¹⁵⁵

For Kymlicka, a cultural structure is, in part, constituted by the social setting into which one is thrown by accident of one's birth. As a child, one does not choose what language to speak, what religion (if any) to follow or even what food to eat. If a person is born into a minority culture, then he or she may face burdens that a member of the majority culture will not have. For example, if my mother tongue is other than those used and recognized in public institutions, then in order to participate in the social and political life of the majority, I may be forced to learn the language of the majority. Although Kymlicka does not restrict the reference of the term 'cultural structure' to language, in most cases when he talks about policies that are directed at preserving a culture's structure he is talking about language policies.¹⁵⁶

A culture's character is a function of the choices made by cultural members and so, according to Kymlicka, ought to be left to cultural members to sort out.

[N]orms, values, and their attendant institutions in one's community (e.g. membership in churches, political parties, etc) would be open to modification should [cultural members] find [the culture's] traditional ways of life no longer worth while.¹⁵⁷

One will recall the problematic restriction on individual freedom and the sense in which one is bound to externally generated cultural identity that is a consequence of Taylor's ontological essentialism. By protecting the capacity of cultural members to shape their own culture, Kymlicka tries to remedy this problem. The merit of Kymlicka's approach is well

¹⁵⁵ Kymlicka, *Liberalism, Community, and Culture*, 165.

¹⁵⁶ Will Kymlicka, *States Nations and Cultures*, (Toronto: Van Gorcum, 1997), 8.

¹⁵⁷ *Liberalism, Community, and Culture*, 166-167.

illustrated by its ability to adequately deal with Quebec's 'Quiet Revolution' since Quebecers would have their structural language rights preserved in legislation but would be free to modify their views about religion.

Some commentators like Carl Knight have challenged Kymlicka's distinction between cultural character and structure. Knight argues that cultural character and structure are "necessarily coextensive" because a culture's values (character) cannot be completely abstracted from its meanings (structure).¹⁵⁸ His claim is that when values change, meaningful structures change.¹⁵⁹ For example, if we take Mennonites as one of the groups that Kymlicka recognizes as a cultural minority, it seems clear that the structure of Mennonite culture is tied to religious values in such a way as to make the preservation of the former entail the acceptance of the latter.¹⁶⁰ The same goes for other religious groups that Kymlicka recognizes as cultural minorities (such as Hutterites and Hasidic Jews). The potential consequence of the coextension of structure and character is that,

once a stable culture is specified, Kymlicka's argument appears to yield the strongly conservative conclusion that any threat of change to the character of a community gives rise to a valid claim to cultural protection.¹⁶¹

Kymlicka's distinction fails to ensure the possibility of challenging cultural norms (which he thinks is necessary to a liberal theory of justice) without threatening the integrity of cultural structures.

¹⁵⁸ Carl Knight "Liberal Multiculturalism Reconsidered", *Politics* 24, (2004), 193.

¹⁵⁹ "Liberal Multiculturalism Reconsidered", 193.

¹⁶⁰ *Multicultural Citizenship*, 164.

¹⁶¹ "Liberal Multiculturalism Reconsidered", 193.

Culture, Membership and Rights

Without resolving the problem of the coextension of cultural character and structure, Kymlicka reframes his position in *Multicultural Citizenship* to focus on questions of justice and the ways in which cultural groups relate to each other and to state institutions. Here, the emphasis is on the claim that cultural members ought to have some control over their own culture and in cases of minority cultures, ought to be protected from the potentially harmful influences of the majority. The type of harm in such cases is not harm directed at individuals (this kind of harm is covered under a general set of rules and laws). Rather, Kymlicka is talking about the harm that a majority culture might do to minority cultural institutions. For example, when Canadian aboriginal children were forcibly taken to residential schools, prohibited from speaking their mother tongue and separated from the cultural practices of their parents, this was an instance of the state acting on behalf of a majority culture. Amongst other abuses suffered by the children in residential schools, the forced integration into a foreign culture was a violent and unjust policy that had the effect of harming individuals as well as destroying cultural institutions.

One concern that many liberals have with protecting cultures (as opposed to individuals) is that some cultural practices are illiberal. For example, one might argue that forced arranged marriage is a practice that ought not to be protected against the protests of a liberal majority.¹⁶² Kymlicka responds to this kind of concern with his distinction between internal restrictions and external protections. Internal restrictions are restrictions that cultural groups place on group members and go beyond the limitations on freedom that are uniformly imposed by a liberal democratic state. An illiberal practice like forced

¹⁶² To be clear, it is not arranged marriage that is necessarily illiberal, but rather, it is the practice of forced marriage that is illiberal.

arranged marriage might be considered by Kymlicka to be an internal restriction. It is Kymlicka's position that we should "reject internal restrictions which limit the right of group members to question and revise traditional authorities and practices".¹⁶³ Kymlicka's rejection of internal restrictions is based on the principle of individual freedom.

A claim made by a minority group against the majority is, according to Kymlicka, an external protection. An external protection is intended to protect the stability of a minority culture against the decisions of a majority. That is to say, external protections are designed to protect a culture's context for choice and so, according to Kymlicka, are politically justifiable as preconditions for the exercise of individual autonomy.

Historically, some minority groups have used external protections to oppress vulnerable majority groups.¹⁶⁴ Given the possibility that such situations might arise, Kymlicka stipulates that, "liberals can and should endorse certain external protections, where they promote fairness between groups".¹⁶⁵

As Chandran Kukathas observes, in *Multicultural Citizenship* Kymlicka treats cultural groups in much the same way as states are treated in liberal political theories, in that he argues that cultural groups ought to be given the collective right to determine their own affairs within the limits of liberal justice.¹⁶⁶ In other words, according to Kymlicka's scheme, cultures relate to each other much like states do in that, 1) cultural groups have rights *vis-a-vis* other groups and 2) so long as minority groups do not infringe on the liberal rights of their members, they are not to be subjected to interference by nonmembers.

¹⁶³ *Multicultural Citizenship*, 37.

¹⁶⁴ South Africa during apartheid is one such example.

¹⁶⁵ *Multicultural Citizenship* 37.

¹⁶⁶ Chandran Kukathas, "Multiculturalism as Fairness: Will Kymlicka's Multicultural Citizenship", *Journal of Political Philosophy*, (1997) 228-255.

The problem with treating cultural groups like states is that unlike most modern states that have clear geographical boundaries, durable constitutions (or some legal framework that serves the same function) and clear criteria for membership, cultural groups are not clearly delineable entities. By treating cultural groups like states and granting them, "permanent political identity or constitutional status," Kymlicka is basing his position on a questionable ontological framework.¹⁶⁷

When commenting on Kymlicka's ontology of culture, Seyla Benhabib argues that he, "conflate[s] institutionalized forms of collective public identities with the concept of culture".¹⁶⁸ This claim is supported by Kymlicka's own words: "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".¹⁶⁹ Is Kymlicka right? Institutions can be important to the construction, ascription and narration of cultural identity. However, the analogy that Kymlicka implies is problematic. By focusing on the "embodiment" of culture, Kymlicka seems to be suggesting that a cultural group is analogous to the embodiment of the self or perhaps the geographical and legal embodiment of a state. Insofar as both the state and the individual can be conceived as being bearers of rights, the analogy entails that cultural groups can have rights. But do cultural groups have clear boundaries in the same way that a human body or a political state is bound? Boundaries are important to questions of justice because when making decisions about legal obligations, culpability, entitlements and rights, we must know exactly who is the subject of a decision. However, theorists like Benhabib argue that the very composition of a culture

¹⁶⁷ *Multicultural Citizenship*, 4.

¹⁶⁸ *The Claims of Culture*, 60.

¹⁶⁹ *Multicultural Citizenship*, 76.

is contestable in such a way as to make its boundaries indeterminable. Furthermore, if we cannot abstract cultural structure from meaning, then cultures are inherently subject to interpretive indeterminacy in such a way as to make them unlike either a body or a state. This kind of indeterminacy poses a challenge for Kymlicka's claim that cultural groups can have rights or be granted permanent political status in that legal and political arrangements might become focal points of identification in place of the kinds of things (such as language and religion) that such arrangements are trying to protect.

Kymlicka recognizes that the question of determining cultural membership is a potential problem for his position. His discussion of the issue of descent shows that he is struggling with the idea that cultural groups can be clearly delineated.

Before examining Kymlicka's discussion of descent I will say a few words about how descent already appears as an organizational principle in public life. Many Western democracies, including Canada, use descent as a factor in determining citizenship by considering children of citizens who are born in the country of their parents' citizenship to be citizens. Likewise, most cultural groups consider children of group members to be members of the group.¹⁷⁰ So, descent can be a factor in the determination of an individual's status *vis-a-vis* a state and a cultural group. However, it would be a mistake to go from the former claim to say that descent is the *only* relevant factor in determining state recognized membership.¹⁷¹ Most liberal democracies have legal mechanisms whereby individuals can become citizens or give up their citizenship. One can gain the benefits of

¹⁷⁰ Depending on the group, membership may be tied to either the lineage of the mother or the father or both. However, the point being made is that descent in some form is used as one way to determine membership.

¹⁷¹ I restrict this argument to "state recognized" membership because there are cases (such as with family groups or with genetic mapping) when descent is the sole legitimate determination of group membership.

citizenship either through having the luck of being born into citizenship or by going through some kind of naturalization process. So, citizenship is not centrally connected to descent.

Kymlicka supposes that cultural membership might work in a similar way. He stipulates that, “national groups, as I am using the term, are not defined by race or descent.”¹⁷² He goes on to write;

[D]escent-based approaches to national membership have obvious racist overtones, and are manifestly unjust. It is indeed one of the tests of a liberal conception of minority rights that it defines national membership in terms of integration into a cultural community, rather than descent. 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.¹⁷³

Although Kymlicka takes seriously the problems of defining groups according to essential characteristics such as blood, his alternative criteria for membership are problematic and raise the following questions. Are the notions of learning and participation enough to delineate cultural membership? If so, what (if anything) would distinguish an active cultural scholar from a group member? Is there not a sense in which existing members ought to have a say in who becomes a member? Alternatively, does cultural membership need to be codified in a legal framework? Can a person be a member of two cultural groups? If so, if each group is given a different schedule of rights, then to which schedule does a bicultural individual have access?¹⁷⁴ Also, if an individual manages to successfully integrate into a cultural group, at what point is he or she entitled to try to change that

¹⁷² *Multicultural Citizenship* 23.

¹⁷³ *Multicultural Citizenship* 23.

¹⁷⁴ Actually, it seems as though a well-educated and socially active polyglot could be a member of several different cultural groups.

group? For example, a group member might endeavor to give an alternative historical narrative, or challenge traditional institutions. However, if learning a group's history and participating in its institutions are tied to membership, then to what extent can a naturalized group member make challenges to the very processes through which he or she became a member?¹⁷⁵ If we take the question of cultural membership seriously and we exclude descent as being the sole legitimate determinate of membership, then it seems as though what Kymlicka considers to be a liberal cultural group does not resemble what is generally thought of as a cultural group, but more a liberal state with a codified immigration policy.

Some of the confusion over Kymlicka's stance on group membership arises because he does not distinguish between corporate identities and the phenomenon of identification. Kymlicka wants to say that the latter can justify the former. However, a feeling of identification is not enough to determine one's political status (for one thing, feelings can change whereas political status according to Kymlicka is relatively static), so Kymlicka lists essential (and publicly demonstrable) criteria like language, knowledge of history and participation in cultural institutions. Although identification with a group may in some way be connected with the criteria that Kymlicka lays out, the connection is not clear or comprehensive enough to serve as a permanent principle of political organization.

Mosaic Multiculturalism and Cultural Narratives

The problems associated with determining the boundaries of cultural membership point toward a problem with Kymlicka's ontology of culture, which might be described as

¹⁷⁵ This is also a question for immigrants in liberal states.

a version of “mosaic multiculturalism”. Mosaic multiculturalism is an approach to cultural diversity that considers cultures to be clearly delineable groups that form a demographic (and possibly legal) mosaic within the boundaries of a single state.¹⁷⁶ One potential problem with this approach to cultural diversity is that although we can clearly delineate cultures with respect to certain characteristics (religion, origin, language, etc.) such characteristics do not necessarily encompass every aspect of an individual’s life.

Kymlicka’s concept of a societal culture as clearly delineable, comprehensive and institutionally complete is, according to Benhabib, an insufficient description for the diverse phenomena that fall under the term “cultural identity”.

Any complex human society, at any point in time, is composed of multiple material and symbolic practices with a history. This history is the sedimented repository of struggles for power, symbolization, and signification – in short, for cultural and political hegemony carried out among groups, classes, and genders. There is never a single culture, one coherent system of beliefs, significations, symbolizations, and practices that would extend “across the full range of human activities.”¹⁷⁷

Rather than viewing cultural diversity as a mosaic, an approach such as the one that Benhabib takes considers cultural diversity to be best described with the metaphor of a web comprised of competing narratives. According to such a view, culture is an interpretative project that involves coming to an understanding of ‘who we are’ (where ‘we’ remains a term that has yet, if ever, to be determined) as well as redefining identity in an effort to become ‘who we aspire to be’. The feeling that one has when one identifies with a group is articulated within an ongoing negotiation with others who also identify, as well as those

¹⁷⁶ See, *Multiculturalism: Building the Canadian Mosaic*, House of Commons Standing Committee on Multiculturalism, (Ottawa: 1987).

¹⁷⁷ *The Claims of Culture* 60.

who stand as outsiders. The narrative approach to culture reveals not a static system of institutional structures or essential principles of organization, but rather, a living "dialogue of cultures" that cannot be defined by *any* single principle. Furthermore, it reveals a dialectic between the preservation of a cultural past in the form of collective identification with ancestors and the recreation of the conditions of identification in the form of collective aspirations for future generations.

Multiculturalism, according to the Benhabib's view, is not primarily a question of legislating membership or assigning rights and preserving practices. Rather, multiculturalism focuses on a willingness to engage in a political dialogue across diverse systems of signification that serve as meaningful grounds upon which individuals and groups figure actions. This vision of multiculturalism is at the heart of Trudeau's "creative encounters" that he outlines in his foundational principles. At the political level, culturally significant practices and actions are articulated in such a way as to retain their cultural importance while at the same time be understood across cultural milieus.

Kymlicka tries to find a universal principle for legitimating the political recognition of cultural identity and a legitimate way to define cultural membership. In contrast, Benhabib's approach to cultural identity looks for the ways in which universally applicable principles of justice (which Kymlicka accepts) apply to diverse and dynamic cultural contexts and claims.

Kymlicka responds to critics who share Benhabib's view with skepticism over whether such an approach would "differ on concrete issues from liberal culturalism".¹⁷⁸ The thrust of his argument is that since he has a more theoretically complete approach to

¹⁷⁸ "Liberal Culturalism: An Emerging Consensus?".

multiculturalism, his approach is preferable. However, according to Kymlicka's own admission, his account is incapable of explaining many of the issues that are accounted for by Benhabib's narrative approach, such as the status of those who fall outside his descriptive scheme. Concerning those who are not recognized by his scheme, such as migrant workers or groups that lack sufficient numbers to sustain a societal culture, Kymlicka admits that his theory "says little about these groups".¹⁷⁹ Rather than take this to be a sign that his description of cultural identity is inadequate, Kymlicka argues that what his description includes are cases that, "provide models of *successful* ethnocultural accommodations".¹⁸⁰ His concern here is with promoting the descriptive approach that will be, in his view, most likely to encourage people to accept liberal culturalism (and so ameliorate ongoing injustices), as opposed to finding a descriptive approach that best captures the phenomenon of cultural identity.

Kymlicka's strategy of using clear cases to help with difficult cases can be a good approach and there are times when an overly detailed account can paralyze theoretical progress and practical applications. Furthermore, at some level, it is prudent to argue for political theories that might be acceptable to a general (and reasonable) population. However, without the descriptive framework to provide an analogical link between what Kymlicka identifies as successful and difficult cases, there is little to draw from the former that will help with the latter. If we follow Kymlicka's lead and insist on basing what he takes to be fundamental principles of multicultural justice on clearly delineable groups and permanent political status, then what relevance would such an approach have to groups

¹⁷⁹ "Do We Need a Liberal Theory of Minority Rights?"

¹⁸⁰ "Do We Need a Liberal Theory of Minority Rights?"

whose membership is not clearly delineable or whose political status ought not to be permanent (like ethnic groups who might qualify for temporary affirmative action)?

There is another reason why Kymlicka's response to narrative critics like Benhabib is problematic. Insofar as one of the main planks of his own position is that a culturally homogenous view of a state disadvantages certain groups, by treating cultures like states he politically disadvantages those who are at the margins of his descriptive categories. By treating cultural groups as states (clearly delineable groups) Kymlicka is moving (without answering) the above questions concerning minorities in democracies from the level of cultural groups within a state to the level of marginal groups within a politically recognized culture. The protection of vulnerable individuals from the dangerous exercise of collective political power, a concern that is supposed to be central to Kymlicka's project, becomes lost in his attempt to defend an essentialist cultural ontology.

Nation Building and Cultural Barriers

Kymlicka's third version of his position, which focuses on the process of nation building, is the most refined and attractive that he presents. In this section I present his argument and suggest how it can best be used to support multicultural policies. I conclude this section by defending the revised position that I propose against possible criticism.

Without claiming to have adequately solved the problem of groups and individuals who fall outside his ontological categories, Kymlicka builds on the foundation of his cultural ontology to construct his nation building argument. The argument can be summarized as follows:

- 1) Previous attempts to work out multicultural theories of justice assumed that if minority groups are to be treated fairly by states (given fair terms of

assimilation, reasonable accommodations, etc.) states must be culturally neutral.

2) However, in virtue of practical limitations and historical contingencies, states are not culturally neutral.

3) So, we ought to rethink our approaches to multicultural justice in such a way as to take into account the ways in which states promote particular cultures.

Kymlicka's basic argument is a good one. States operate in particular languages, promote particular curricula, deploy particular symbols and promote particular values. In order for a state to operate as a collective, it must have standard operational practices and it is often the case that aspects of such practices reflect a hegemonic culture. Kymlicka refers to the reflection of a culture in the practices and structures of public institutions as "nation building".¹⁸¹ Since not every culture can be included in state institutions, and states must have some common practices in order to function, Kymlicka claims that we ought to look at what kind of nation-building is acceptable, and determine fair terms under which minorities can be expected to integrate into a majority culture.

Although Kymlicka continues to argue that cultural membership ought to be protected because it is a precondition for freedom, he does not need to make this claim for his nation building argument to be persuasive. If one accepts that liberal state institutions cannot in practice be culturally neutral, then culture is relevant to questions of justice because it is unfair that only some have the advantage of having their cultural practices and beliefs reflected in public institutions.¹⁸² So the question is: what kinds of culturally significant practices and symbols are at best fair and at least tolerable in public institutions?

¹⁸¹ "The New Debate over Minority Rights" 23.

¹⁸² This premise presupposes that aspects of culture like belief and religion are not necessarily the result of choice or at least do not need to be justified and paid for in the same way that other kinds of choices (like what kind of car to drive) do.

Kymlicka rightly recognizes that many conflicts surrounding institutionalized culture occur at the level at which individuals interact with public institutions. In Canada, a great deal of this kind of interaction takes place at the level of frontline delivery of social services. Kymlicka takes the position that historically social services have been used as a carrot to encourage minorities to integrate into a majority culture.¹⁸³ Although this might be the case, questions concerning the development of strategies for promoting integration and political support are separate from questions of justice. The former concerns the efficacy of a policy and its democratic appeal whereas the latter concerns the justification for a policy. In this context, questions of justice should focus on the conditions under which a citizen can access social services.

Kymlicka's nation building argument is important because it focuses attention on the discrepancy between the ideals of liberal democracy and the reality of life within a liberal democracy. In Canada, the common rights and freedoms laid out in the Charter are consistent with accommodating diverse cultural beliefs and practices that may conflict with the ways in which social services are delivered. If citizens are allowed the freedoms of religion and belief (section 2.(a) of the Charter) and if every citizen is equal under the law (section 15 [1] of the Charter), then access to social services ought not to be hindered by differences between the majority culture and a minority culture, so long as the basic values of a free and democratic society are respected. In other words, individuals ought to be given as much freedom as possible within the constraints of a common legal and political framework – culture ought not to serve as a barrier to public institutions. This is not to say that every culture ought to be reflected in public institutions – this would be impossible in

¹⁸³ Kymlicka, "Multiculturalism", 329.

practice. Rather, the position that I am forwarding is that culture, religion and belief ought not to serve as barriers to accessing public institutions. There may be instances when cultural practices are incommensurable with laws and public institutions because of substantial concerns about safety. For example, when playing competitive hockey or riding a motorcycle cultural practices that make it impossible to wear a helmet pose a problem. In such cases it can be argued that safety concerns outweigh religious freedom. However, safety is not always what is at issue. For example, if because of religious belief an individual asks to be seen by a female doctor or a male police officer the main issue is not one of safety but rather of cultural mores concerning relations between the sexes. In such cases the general principle of civic equality that would entail the principle of not discriminating on the basis of gender must be weighed against the principle of religious freedom. Therefore, a principle or method of settling disputes between conflicting principles or rights must be established. I propose in later chapters that we take analogous cases as starting points for settling such disputes.

By focusing on barriers, as opposed to preserving a context for choice through politically recognized cultural membership, the Kymlicka's nation building argument can be maintained without the unnecessary theoretical baggage of an essentialist ontology of culture. I will use this modified version of Kymlicka's nation building argument to build a theory of cultural accommodation in chapters seven through nine.

Objections to the Modified Nation Building Argument

Against the approach that I am proposing one might argue that people can be accorded the same rights (of access, etc.) but then make cultural commitments that affect their opportunities for exercising rights. For example, wearing a turban will affect the right

to ride motorcycles given helmet laws.¹⁸⁴ This objection presupposes that a) we ought not to give any weight to the cultural or religious nature of practices when evaluating rules, and b) cultural practices are a matter of choice. Concerning a), Canadian courts do in fact give weight to practices in virtue of their religious nature at least. One might argue that religious freedom is a pragmatic concession rather than a moral principle and so any weight that we give to religious practices is out of pragmatic consideration. However, a proponent of the kind of accommodation that I am arguing for might grant that religious freedom is a pragmatic concession but assert that equal consideration is a moral principle. As such, we give religious freedom weight not necessarily because we value religion but rather because we value fairness.¹⁸⁵ This does not entail that all practices ought to be accommodated. Rather, it means that all things being equal, in cases where removing a cultural barrier through accommodation and not doing so each have similar practical consequences with respect to the public good, we have a moral reason to favour accommodation.

Concerning b), it is probably true that for most individuals cultural practices are chosen insofar as it is possible for most to behave otherwise. This makes accommodating culture unlike accommodating persons with disabilities. However, does this mean that cultural practices are like matters of taste? Is wearing a hijab like drinking a specific brand of diet cola? From the perspective of the government both practices are alike insofar as for the most part we are free to act on both our beliefs and tastes within justifiable limits.¹⁸⁶ It is often the case that multicultural theorists want to distance cultural practices from matters

¹⁸⁴ See Brian Barry's discussion of pragmatic exemptions in *Culture and Equality*, 50-54.

¹⁸⁵ An intermediate option is also possible here. We might value self-expression – religious or otherwise; for all, equally unless it causes harm in Mill's sense. What constitute harm might be considered controversial. However, I will leave the question of what constitutes harm for a future discussion.

¹⁸⁶ From the relative perspectives of individuals these may seem very different.

of taste because they feel that the latter vulgarizes the former. However, this view does not take seriously enough the degree of freedom that individuals enjoy in countries like Canada to pursue matters of taste or the kinds of justifications that are necessary to limit one from doing so. That is, without a good reason the government cannot interfere in individuals pursuing their tastes or practicing their culture without violating basic rights and freedoms. It is not that cultural practices are trivial. Rather, it is more that the kinds of rights and freedoms that protect matters of taste are not inconsequential.¹⁸⁷

Treating cultural practices like matters of taste will get us to a certain point, however it does not justify accommodating cultural practices in the workplace that go against rules like uniform requirements. There are times when the requirements of employment entail that one sets aside matters of taste. One way that matters of taste are different than cultural practices has to do with the way the latter are often connected with morally complex concepts like human dignity, piety, modesty, and duty. Although it would be impossible to adequately explore these concepts here it seems reasonable to accept the claim that these concepts add a dimension of moral significance beyond the rights and freedoms that support matters of taste. Although these complex moral concepts do not necessarily trump rights or public safety, they do add a weight to claims for cultural accommodation in cases where matters of taste are subordinate to job requirements.

Conclusion

How does one go about evaluating barriers to public institutions? One worry is that since there are so many cultural groups coexisting in Canada, and since there is nothing in

¹⁸⁷ It is important to note that not all self-expression, religious or otherwise, is a matter of taste.

principle to stop the number of groups from multiplying, accommodating cultural differences might entail that we are forced to entertain what might be considered frivolous claims. Where does one draw the line? Another worry is that it is not always clear what constitutes a cultural practice, as opposed to a habit or tradition. The distinctions here turn on the cultural significance of a practice. Does an individual practice 'x' because it has always been the way things have been done, because it is preferred over other alternatives, or because 'x' has the kind of moral significance that would entail an unreasonable hardship such as a loss of dignity, humiliation or dereliction of religious duty if it were disallowed? A third worry is that it is not clear exactly how much a citizen is obligated to adjust his or her own behavior in order to access public institutions. This is what is at the heart of current debates over "reasonable accommodation" in Quebec. How much conformity to a common operational system should a state demand of its citizens?

If we try to answer the above concerns by attempting to articulate what is essential to culture, cultural practices and citizenship, we face the same ontological problems as Kymlicka. However, public institutions require rules to operate and rules generally require fairly sharp definitions. Since questions of defining culture and cultural significance evidently resist such definitions, it seems unlikely that we could settle on a set of non-controversial definitions that would be adequate to be instantiated in the legal and operational structures of public institutions. However, given that we already have a history of fairly well functioning institutions, it is not necessary to start from scratch. We do not need to create a nation out of nothing. Since the nation-building argument relies on the premise that certain cultural practices are *already embedded* in public institutions, it seems both plausible and reasonable to approach the problem of cultural barriers by holding what

is already permitted in practice up against what is proscribed in the light of s. 27 of the Charter.¹⁸⁸ Consequently, the modified nation building argument, stripped of its ontological essentialism, can ground multicultural policies. This approach might not yield answers to every possible question that one might imagine but it will provide a solid foundation upon which to argue for accommodations in many cases that are currently receiving public attention.

¹⁸⁸ “This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.” *Canadian Charter of Rights and Freedoms*, Section 27.

CHAPTER 5 IDENTITY AND POWER

In her paper, "Together in Difference: Transforming the Logic of Group Political Conflict", Iris Marion Young argues that universal citizenship characterized by a single schedule of rights, freedoms and obligations, is incapable of remedying social inequalities such as the systematic exclusion of members of marginalized groups from public office. She suggests that some kinds of inequalities can be addressed by common citizenship, however in cases where injustices are linked to social categories like gender, sexual orientation and culture, those who are oppressed need to have some kind of differentiated status that is designed to ameliorate oppressive conditions. To this end, Young argues that certain political and legal measures, such as special representation within legislatures or veto power on specific policies affecting groups directly, ought to be considered. In this chapter I argue that although Young provides insight into how groups relate and the potential for power inequalities that this mode of relating potentially entails, when she tries to translate this insight into public policies she is forced to revert to using essentialist group identities.

Relational Identity

Young's descriptive approach to group identity challenges the logic of substantial group differentiation in an attempt to transform the way that political actors conceptualize group difference. She uses a deconstructive method of critical inquiry in order to show that social groups do not have clear borders *vis-a-vis* their membership, and the meaning of categories of identity depends on the context in which the categories are being deployed.

The method of deconstruction shows how categories which the logic of identity projects as mutually exclusive in fact depend on one another. The essence of the more highly valued or 'pure' side of a dichotomy usually must be defined by

reference to the very category to which it is opposed. Deconstructive criticism demonstrates how essentialist categories are constructed by their relations with one another, and bursts the claim that they correspond to a purely present reality. Deconstruction not only exposes the meaning of categories as contextual, but also reveals their differentiation from others as undecidable: the attempt to demarcate clear and permanent boundaries between things or concepts will always founder on the shifts in context, purpose and experience that change the relationships or the perspectives describing them. Allegedly fixed identities thus melt down into differentiated relations.¹⁸⁹

To illustrate her point Young offers the following example.

Think... of the social disruptions of an oppositional gender dichotomy. Homosexuality is the most obvious problem here. Enforced heterosexuality is a cornerstone of the gender edifice that posits exclusive opposition between masculine and feminine. The essence of man is to 'have' a woman and the essence of women is to depend on and reflect man. Men who love men and women who love women disrupt this system along many axes, proving by their deeds that even this most 'natural' of differences blurs and breaks down.¹⁹⁰

The appearance of what she sees as the unavoidable heterogeneity of any political identity, even those based on 'natural' differences, leads Young to focus on the ways that groups relate (as opposed to the substance of their constitution) in order to bring to light oppressive power relations.

According to Young, social justice through universal citizenship is an ideal that is unattainable, in part, because it rests on an essentialist logic of identity that fails to take into account the contextual and fluid nature of group difference. The logic of essential (substantial) identity that Young critiques conceives "difference as otherness" and tries "to

¹⁸⁹ Iris Marion Young, "Together in Difference: Transforming the Logic of Group Political Conflict", *The Rights of Minority Cultures*, ed. Will Kymlicka, (Oxford: Oxford UP, 1995), 159.

¹⁹⁰ "Together in Difference: Transforming the Logic of Group Political Conflict", 160.

make clear borders between groups.”¹⁹¹ She argues that in public life the essentialist approach to group difference forces minority groups to choose to either assimilate and become part of the majority or separate and form distinct political institutions. Young takes both options to be unacceptable.

In response to Young’s position, we might ask the following: If citizenship is defined by principles of fairness (such as those outlined in documents such as the Charter) why is accommodation not a good option for those who fall outside the norm? In other words, if the norm is defined in terms that are just and fair, then isn’t adherence to such a norm enough to promote an agenda of social justice?

Young provides a possible response to these questions by arguing that although in principle liberal democratic states might be constituted according to principles of fairness, in actuality these principles fail to ameliorate social inequalities that are based on differences like gender, ethnicity, religious belief, and sexuality. In practice, universal citizenship seems to stack the deck in favour of dominant groups whose values are currently reflected in public institutions and so maintains the status quo. For example, standardized tests for entry into prestigious postsecondary institutions might be biased in favour of individuals who have been raised in a particular cultural tradition. In order to address this bias, institutions might devise mechanisms targeted at members of disadvantaged groups. The justification for such mechanisms would include the claim that if unjust power relations are already imbedded in a society, then there may be times when applying a single standard to all individuals fails to remedy social inequalities.

¹⁹¹ “Together in Difference: Transforming the Logic of Group Political Conflict”, 158-159.

Section 15(2) of the Charter is an acknowledgement that there may be times when special mechanisms might be necessary to promote social justice.

Subsection (1) does not preclude any law, program or activity that has its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

S. 15(2) limits the scope of s. 15(1), which states that all citizens deserve equal protections and benefits from the law.¹⁹² This kind of equality can be limited if it can be demonstrated that doing so ameliorates an unjust disadvantage that is the result of group membership. This inequality is justified insofar as it is a response to a situation that is already unjust. Just as a surgeon must inflict some harm in order to heal her patient, s. 15(2) allows for the principle of civic equality to be violated if it can be demonstrated that it ameliorates an injustice that is judged to be sufficiently significant. In other words, s.15(2) can be interpreted as being consistent with Young's criticism of assimilation.

Young argues that separatism, the alternative to assimilation within the logical framework of essentialist identity, is also problematic. Although she rightly distinguishes between the desire of an oppressed group to form its own political institutions and the external imposition of segregation by a hegemonic group, she maintains that both phenomena arise from an essentialist ontology of identity that construes difference as opposition or "otherness".

Separatism is inward looking where chauvinism looks outward; separatism is a positive self-assertion where racism and anti-Semitism are negative; separatism of the oppressed is voluntary where their exclusion is coerced. Nevertheless, separatism also submits to a logic of identity structurally akin to that underlying

¹⁹² It is notable that there is no constitutional parallel to s. 15(2) in the United States.

conception of difference as Otherness. It aims to purify and enclose a group identity and thereby avoid political conflict with other groups.¹⁹³

Young challenges the will to purify a group identity with the empirical claim that, “most social groups today currently reside in patterns interspersed with other groups.”¹⁹⁴ Also, the terms of social group differentiation are contextual. “Groups that perceive themselves as very different in one context... often find themselves similar when they together encounter another group.”¹⁹⁵ That is, the terms of identification, in part, depend on the context in which people confront one another. Consequently, questions of history, collective memory and experiences of oppression, factor into the kind of identification that Young is describing. Finally, the will to purify a group identity fails to acknowledge internal group heterogeneity. Although individuals might identify with one group in a particular context they may identify with other groups (or wish to avoid identification altogether) in other contexts. For these three reasons, Young concludes that separatism is not a good response to group oppression.

In order to better respond to the problem of group oppression, Young proposes an alternative description of what it means to identify as a group. Rather than focus on the essential divisions of group membership, Young draws attention to the ways that groups form through processes of mutual identification(s) and the inequalities in political power that result from such identification(s). According to this approach, power is conceptually (though not necessarily historically) prior to the constitution of groups, i.e., when one is trying to address social injustice, what delineates groups are relations characterized by

¹⁹³ “Together in Difference: Transforming the Logic of Group Political Conflict.” 164.

¹⁹⁴ “Together in Difference: Transforming the Logic of Group Political Conflict”, 164.

¹⁹⁵ “Together in Difference: Transforming the Logic of Group Political Conflict”, 165.

domination and oppression. So, rather than trying to preserve a cultural heritage or protect the purity of a social group, Young's relational logic of identity accepts the inevitability of differences on multiple levels but rejects social inequalities that might arise out of the expression of such differences. She claims that,

[a] politics that treats difference as variation and specificity, rather than as exclusive opposition, aims for a society and polity where there is social equality among explicitly differentiated groups who conceive themselves as dwelling together without exclusions.¹⁹⁶

Young argues that social inequalities can be alleviated without running roughshod over the appearance of differences within a polity.

Heterogeneity and Differentiated Citizenship

If we accept explicitly differentiated groups into a political realm of discourse (granted that this differentiation is a function of inequalities in political power, oppression, and collective identification), how can we maintain the principle of civic equality that forms the foundation for universal citizenship? How do we reach a balance between s. 15(1) and s. 15(2)? Young suggests that the concept of a heterogeneous public is incompatible with universal citizenship, and since the former is a descriptive term (she takes it to be a fact) we ought to reconsider the latter normative term insofar as it is a theoretical response to a social reality.¹⁹⁷ Like Kymlicka and Taylor, Young argues for differentiated citizenship in the form of special political rights and special representation for oppressed minority groups within a polity. However, one might respond to Young's argument with the claim that even if one acknowledges group-based social injustices, it

¹⁹⁶ "Together in Difference: Transforming the Logic of Group Political Conflict", 165.

¹⁹⁷ Young says that the category of 'heterogeneous public' includes cultural diversity as one form of heterogeneity.

does not follow that it is just and effective to legally and politically differentiate oppressed groups. That is, one might accept Young's descriptive approach to group differentiation and social justice but reject the normative public policy that she derives from this approach.

In "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship", Young tries to translate her descriptive approach to group differentiation into public policy. She argues that there is a tension between the ideal of universal citizenship (conceived as universal political inclusion and participation) and two implied aspects of this ideal: a) universality as something general or held in common and b) universality as equal treatment.¹⁹⁸ Young characterizes a) as a demand for homogeneity that is implicit in the concept of a general will or common viewpoint. This sense of universality concerns the way that citizens relate to each other. Basing citizenship on the idea of a general will is problematic because it entails an unreasonable demand to conform to a majority world view. Young characterizes b) as the relationship that an individual has with the state, i.e., rules and laws. Young is concerned that insofar as a state cannot be culturally neutral, if universal citizenship implies only one kind of relationship with the state, then this will unjustly privilege those for whom the state was originally designed. In other words, immigrants and historically marginalized groups are at a disadvantage in a political and legal system based on equal treatment.

If universal citizenship is defined as the inclusion and participation of everyone and it implies a) and b), then it fails to include everyone on account of a) and it limits the participation of some on account of b). That is, those who do not conform to the general will are excluded from politics and those who lead lives that are significantly different from

¹⁹⁸ "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship", *Philosophy and Democracy*, ed. Thomas Christiano, (Oxford: Oxford UP, 2003), 288.

those for whom public institutions were designed cannot fully access or participate in these institutions. In order to promote inclusion and participation in public life, Young proposes: 1) mechanisms for group representation when the will of a group differs from the will of the majority and 2) special treatment in cases where groups are oppressed or disadvantaged.

One might argue against Young with the claim that we already have effective mechanisms for group representation in the form of interest groups and that such groups are free to lobby governments with rational arguments in order to achieve whatever social or political ends they may have. Young's policy recommendations are, in part, a response to what she sees as the failure of interest-group pluralism. The standard model of interest-group pluralism links a general assembly of elected members with groups of citizens with common interests. According to this model interest groups are seen as an outgrowth of free choice associations. For interest-group pluralism to work there must be many groups that are strong enough to compete for influence. The role of a judiciary is one of a neutral arbiter. The problem that Young sees with this model is that it can be the case that certain substantive claims are imbedded within political and legal procedures and these claims may constitute an unjust and possibly unseen bias.

Young is critical of interest group pluralism because she thinks that it wrongly privatizes differences. By constructing the political realm as a space of commonality, majority groups are privileged and citizens seem to face a "demand for homogeneity".¹⁹⁹ Young wants to bring minority group identities into the public realm and proposes to do this by providing, "mechanisms for the effective representation and recognition of the

¹⁹⁹ "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship", 289.

distinct voices and perspectives of those of its constituent groups that are oppressed or disadvantaged within it".²⁰⁰

Although Young emphasizes the importance of voice, she rightly points out that participatory politics tend to have the effect of silencing marginalized groups.²⁰¹ As Anne Phillips quips, "the people who go to meetings are often a pretty "unrepresentative" bunch!"²⁰²

Young also challenges the distinction between public and private. She takes the position that the personal is political, meaning differences that are invisible to difference blind liberalism can be politically significant and so ought to be publicly recognized (both in the epistemic and generative sense). Some liberals like Brian Barry warn that there are dangers associated with opening certain areas of an individual's life up to public debate. Liberalism protects individuals by privatizing difference and removing certain areas of a person's life, like their religion or choice of partner, from public debate. For Young, every aspect of an individual's life is political and so is legitimately a potential subject for public debate.

Considering that Young does not place limits on what is appropriate for public debate it is no surprise that she is concerned with protecting vulnerable individuals. However, an alternative solution is to limit what kinds of questions are open to public debate and focus on substantial group-based inequalities. However, since Young does not delimit a protected sphere of privacy she must design institutional mechanisms that are intended to amplify the voices of the oppressed.

²⁰⁰ "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship", 296.

²⁰¹ "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship", 294.

²⁰² Anne Phillips, "Democracy and Difference: Some Problems for Feminist Theory", *Philosophy and Democracy*, 316.

- 1) Self organization of group members so that they gain a sense of collective empowerment and reflective understanding of their collective experience and interests in the context of the society.
- 2) Voicing a group's analysis of how social policy proposals affect them, and generating policy proposals themselves, in institutionalized contexts where decision makers are obliged to show they have taken these perspectives into consideration.
- 3) Having a veto power regarding specific policies that affect a group directly, for example, reproductive rights for women or use of reservation lands for Native Americans.²⁰³

First of all, it is worth noting that none of Young's mechanisms will ensure that marginalized people *will* participate in political processes (more on this later). Secondly, veto power is an especially problematic mechanism. Why should we limit voting in this way? Is this not like saying that only convicted criminals should decide on acceptable punishments for crimes? Just because an individual has an interest in a decision does not mean they will make the wisest or fairest decision. Furthermore, there may be times when having a vested interest constitutes an illegitimate bias. Veto power goes far beyond consultation. It entails that those granted this power can stop any decision that they consider to be less than maximally advantageous to their own situation. Rather than promoting social justice or public goods this mechanism invites abuse.

In order to illustrate the problem with veto power for marginalized individuals let us imagine that the government wants to raise taxes on cigarettes. Let us also assume that there are enough regulations in place to minimize the negative effects that cigarette smoking has on non-smokers. Smokers are the group directly affected by the proposed tax increase. Clearly, reasons can be given in favour of taxing cigarettes that are justifiable in

²⁰³ "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship", 296.

a liberal democracy, even if they are not convincing to cigarette smokers. Likewise, there may be some democratic decisions that are justifiable and possibly the best of available options but are not convincing to members of a particular group that has an interest in the outcome of the decision. Although the position of the interested group matters, it is not the only important factor in policy decisions.

Young acknowledges that it appears as though special rights for certain groups seem to violate the liberal principle of equality, but tries to justify this violation by appealing to fairness. "There are a vast number of issues where fairness involves attention to culture and their effects."²⁰⁴ By appealing to fairness Young is suggesting that there is a common standard (fairness) according to which groups should be judged. However, at the same time she uses this common standard to argue against the possibility of holding vulnerable individuals up to a common standard (common citizenship). By claiming that we cannot get just outcomes by appealing to a common standard outlined by a universally applicable schedule of rights and freedoms while using a common standard of fairness to argue for this claim, Young is trying to have her cake and eat it too. This confusion is the result of Young's overly narrow definition of universal citizenship. As stated earlier, Young argues that universal citizenship entails equal treatment. Her claim is that fair treatment requires unequal treatment. However, upon closer examination it appears as though Young is not so much against universal citizenship as she is against unfair treatment. Since most can agree that everyone ought to be treated fairly, the absence of equal treatment in practice is reason to improve the rules of citizenship for everyone, not to throw out civic equality. One can accept Young's claim that currently important group

²⁰⁴ "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship", 304.

differences are not being adequately dealt with by public institutions and the prescription that this situation ought to be addressed, without concluding that differentiated citizenship is the way to go. There are two issues at stake here: 1) civic equality as universal consideration under a common set of rules and 2) the fairness of these rules. If groups are being marginalized because of current rules then it is the fairness of these rules that is in question not civic equality. By using fairness as a common standard for evaluating diverse cases, Young herself is suggesting a universalistic or common approach to political ethics upon which a more inclusive and just universal citizenship can be built.

Processes and Outcomes

Young gives a good account of identity by acknowledging the indeterminacy of group boundaries, the contextuality of identification, and the normative claim that in many cases it is wrong to ascribe an unwanted identity onto an individual or group. She is also right to focus her attention on the ways that social injustices and power inequalities can be connected to group identities and in some cases constitute group identity. However, her position breaks down when she tries to make the move from her description of identity to policy recommendations. When she tries to work at the level of political institutions, Young is forced back into an essentialist logic of group differentiation that not only sacrifices the principle of civic equality but also has the potential to lead to worse outcomes than those produced by universal citizenship.

If we are to accept the dynamic, non-essentialist description of identity that Young proposes, why solidify group identities within bureaucratic mechanisms by means of group representation and special legal status? Even if such mechanisms are designed to

ameliorate oppressive and unjust conditions, it seems as though they imply the kind of essentialist logic of identification that Young is arguing against, and what's more, raise the question of authentic group membership. For group-based policies to be enacted, individuals must be selected out of a general population to be recognized as being members of an oppressed group. This selection process shifts the emphasis from ameliorating injustices to the question of group membership. Within a bureaucratic structure this entails relatively well-defined criteria. Insofar as an individual will be judged according to rules to be either entitled or not entitled to special status, the logic of essentialist substantial identity is reintroduced to Young's political theory.

With her critique of universal citizenship Young is trying to simultaneously address issues of democratic representation and fundamental principles justice, however it is not clear that these two domains converge on the concept of group identification. The former concerns the outcomes of democratic processes whereas the latter concerns protecting individuals from the potential harm that he or she can experience at the hand of the state, other groups or individuals.

Young judges democratic processes to be unjust if they fail to yield desired outcomes, namely, egalitarian political relationships. She uses political representation as an indicator of political power. A lack of political representation for an identity group is, for Young, an indication that the group in question is marginalized. Consequently, mechanisms designed to ensure that marginalized groups are represented are the solution Young thinks necessary for unequal power relations between groups. Granted, there are many examples where a lack of political representation has in fact indicated political injustice. For example, historically, the absence of women from public office in Canada

can be, in part, explained by the unequal status that women had with respect to the state. It was not until 1917 that women won suffrage in Canada.²⁰⁵ However, it was not the lack of representation that was unjust. Rather, it was the inequality built into the procedures of political representation that were unjust. That is, it was unjust that women were not given the same legal status as men. It was a lack of civic equality, not the absence of special treatment that was indicated by the absence of women in political office.

Although she applauds the progress made by suffrage movements, Young remains concerned by the unequal distribution of public offices *vis-a-vis* identity groups.²⁰⁶ Unequal representation might indicate the presence of barriers for members of marginalized groups who might want to hold public office, but Young fails to take into account possible explanations for outcomes that have little or nothing to do with political processes. For example, a cultural or religious group might not place public life high on its scale of values and this will likely be reflected in a lack of elected representatives from these groups. The same can be said for any profession. If parents are not encouraging their children to pursue certain lines of work then chances are that fewer of these children will end up with these careers. In both cases it is possible for the process to be completely fair but the outcome will not yield mirror representation.

²⁰⁵ See *Women and Electoral Politics in Canada*, ed. Manon Tremblay and Linda Trimble (Oxford: Oxford University P, 2003).

²⁰⁶ Iris Marion Young, *Justice and the Politics of Difference*, (Princeton: Princeton UP, 1990), Chapter 6.

Representation and Difference

Young is also tying social justice to group representation with the assumption that mirror representation will somehow better the lot of marginalized groups. However, providing a political position for a member of a marginalized group does not necessarily lead to the amelioration of unjust social conditions for the group. Who is to say that a group member will not act out of self interest or an 'outsider' will not act in the best interest of the group? There is no clear connection between mirror representation of identity groups and improved social conditions for marginalized groups, nor is there a clear connection between a lack of representation of certain groups and social injustice. Being a member of a group does not mean that one will act in the interest of the group if empowered through group-specific political mechanisms.²⁰⁷

I am not suggesting here that we ought not to critically examine electoral processes in Canada or that some identifiable groups do not carry the burden of social injustices. Furthermore, there may be other benefits from mirror representation other than acting in a group's interest and these benefits might justify special electoral arrangements. What I am suggesting is that it is important to separate questions of fair processes from questions of outcomes and determine whether there is a clear causal link between the two. Young fails to make this distinction.

Young's rejection of universal citizenship is, in part, based on her rejection of the claim that it is possible for a state to be comprised of a general will that transcends difference. One might conclude from Young's rejection of a general will at the level of state politics that she would reject other political schemes that are based on a general will.

²⁰⁷ For a similar criticism see Anne Phillips' "Democracy and Difference: Some Problems for Feminist Theory", 314-316.

Instead, Young rejects the notion of general will based on common citizenship only to resituate it at the level of identity groups.

Different social groups have different needs, cultures, histories, experiences, and perceptions of social relations which influence their interpretation of the meaning and consequences of policy proposals and influence the form of their political reasoning.²⁰⁸

The generality that Young rejects at the level of citizenship is affirmed at the level of identity groups such that membership within an identity group gives one the legitimate authority to speak on behalf of that group. This position entails the claim that within the boundaries of identity groups there is homogeneity, or at least the kind of demand for homogeneity, that Young warns us against. However, according to Young's own account, no group is homogenous.

The question of group representation is connected with the broader question of political authority and legitimacy. Who is authorized to speak and make decisions on behalf of whom? Young seems to be committed to the claim that for a political representative to have a legitimate claim to speak on behalf of a group, he or she must somehow embody a general will or take on a general perspective, and this generality is a function of group membership. In cases where group membership is not a matter of choice (like religion, ethnicity or gender), this means that according to Young's scheme, political legitimacy is a function of externally ascriptive characteristics. This should give us reason to be suspicious of the kind of differentiated citizenship that Young is proposing.

The problem that Young is facing is, in part, the result of her use of a deconstructive method to ground her democratic theory and political ethics. According to

²⁰⁸ "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship" 292.

Andrew Vincent, the concept of difference in political theory is incoherent because of the indeterminacy that is part of its postmodern intellectual heritage.

In present difference theory there is *no* settled sense of exactly *what* particle is to be taken as different. In fact, there is often deep conflict between these particles, within difference-based arguments. For example, race, gender, beliefs, language, language games, culture, age, race, class, nation have all been singled out as key 'particles of difference'. Consequently, the concept of what is different is internally incoherent.²⁰⁹

In other words, it is never clear where we ought to draw the lines of difference. Social relationships are extremely complex and hierarchies have a tendency to emerge when people interact in groups. What counts as a particle of difference in one context may be irrelevant in another. Furthermore, it is not clear at what point differences are set aside to form an identity group. Clearly, identity groups are not comprised of identical people nor are they devoid of internal power hierarchies. So, basing the political organization of individuals on difference appears to be incompatible with the formation of groups.

Young leaves the definition of groups (what counts as a "particle of difference") up to "politics".²¹⁰ However the qualities of indeterminacy and fluidity that Young is using to critique the essentialist paradigm of identity are antithetical to the legal and bureaucratic institutions that she suggests might empower marginalized groups with a system of differentiated citizenship.

Given the apparent incoherence of the concept of difference in postmodern political theory, Vincent suggests that we ought to be cautious when making legislation based on difference.

²⁰⁹ Andrew Vincent, "What is so Different about Difference?", *Multiculturalism, Identity and Rights*, ed. Peter Sutch and Bruce Haddock, (New York: Routledge, 2003), 49.

²¹⁰ Young "Democracy and Difference" 319.

Society is punctuated by numerous opposing values which cannot be amicably combined in an individual life or society. There are therefore no uniquely right solutions. As Berlin put it, 'forms of life differ. Ends, moral principles, are many.' No ultimate commensurability is possible. This conception of liberal value pluralism thus emphasizes the tragic difference and contingency of values and beliefs. The *particles* of difference are thus individuals and their incommensurable beliefs.²¹¹

If we take the freedom of belief seriously then there is no reason to think that there will be a general will even within an identity group. Consequently, if the ideal of universal citizenship fails to live up to its promise because it does not include all citizens, so too does differentiated citizenship.

Conclusion

There is little doubt that Young forwards the cause of social justice with her critique of political usages of essentialist ontology. However, when she attempts to apply her insights to political processes she reverts to the essentialist ontology that she is criticizing. What this may show is a limit of the concept of a fluid and contextual identity in political processes. Insofar as mechanisms that rely on bureaucratic rules and legislation require clearly defined and relatively static categories, the picture that Young paints of identity groups is one that is incommensurable with political mechanisms. This is not to say that we should reject Young's insights. Rather, it calls for caution when trying to use group identity as a means for differentiating citizenship. In the next section I will explore how elements of Young's descriptive approach might best be reconciled with bureaucratic processes and legislation.

²¹¹ "What is so Different about Difference?", 50.

CHAPTER 6 NARRATIVE IDENTITY AND THE RULE OF LAW

In my analysis of Taylor, Kymlicka and Young, I argued that a narrative approach to describing cultural identity better reconciles the phenomenon of cultural identification with basic moral principles than does an essentialist approach. If one accepts that cultural groups are best described as webs of potentially conflicting narratives then this poses a serious problem for multicultural policy-makers and legislators that require clear distinctions and definitions.

By 'legislation' I mean a rule or set of rules that has the force of law as authorized by the government. By 'public policy' I mean a general approach to questions that inform the choices that government officials make concerning how the government will act. For example, with respect to the relationship between religious groups and the government, Canada's public policy has been to "[celebrate] the expression of various religions while recognizing the supremacy of none – the government plays a role of neutral accommodation".²¹² This policy informs the kind of legislation (or lack thereof) that the government creates as well as the bureaucratic rules that determine how government institutions operate

The question of how to define cultural groups is one of policy. Laws that concern how the government ought to treat cultural groups or what practices should be allowed are questions of legislation. As such, public policy concerns the direction a government will take whereas legislation is one of many political tools at the government's disposal to implement its policies. As well as directing legislation, public policy can also direct rules

²¹²Laura Barnett, "Freedom of Religion and Religious Symbols in the Public Sphere", Library of Parliament, Parliamentary Information and Research Services Revised 14 March 2006, <http://www.parl.gc.ca/information/library/PRBpubs/prb0441-e.htm>.

and regulations that concern the operation of governmental agencies and ministries. The relationship between policy and operational rules is similar to that between policy and legislation. One main difference concerns technical questions about aspects of rules such as their respective scope, jurisdiction and enforcement. Another importance difference is that legislation can define and limit the kind of operational rules an organization can implement.

In the following chapter I will argue that cultural groups are best described in terms of multiple and conflicting narratives. If one accepts this claim then what are the implications for multicultural policy? Firstly, it entails that the government should refrain, as much as possible, from attempting to define terms of cultural membership and the meaning of cultural practices because both are inherently contestable. Secondly, it suggests that with respect to some key normative responsibilities of the government, such as public safety, the administration of justice, political rights and human rights, the government ought not to delegate such responsibilities to cultural groups.

In order to accept the claim that narrative is the best way to view cultural identity - in the sense that it best coheres with the phenomenon of cultural identification, widely held moral values and political rights - we must first have a clear idea about what the concept of narrative identity entails including what key dimensions of identity that it manages to capture. This is the task of the first section of this chapter. Once the concept of narrative identity is fleshed out it must be held up against governmental procedures in order to determine if it can inform public policy and if so, how. The indeterminacy of narrative identity is antithetical to the kinds of distinctions according to which bureaucracies are structured and operate. In light of this I argue that the tension between narrative identity

and bureaucracy can best be resolved by using the former to establish boundaries for the latter. These boundaries are not presented as impermeable, but rather as operational norms that may be overruled when compelling reasons are present.

At this point it is worth asking the following question. What is narrative identity and why is it important to political philosophy? There are two dimensions of narrative identity that are worth discussing. First, there is a dimension of narrative identity that is the focus of psychological research into the concept of identity and the role it plays in explaining behavior. This kind of research yields empirical evidence about how personal identities form, are interpreted, and change. I present some of this research in the first section of this chapter. A second dimension of narrative identity is the focus of ethical, phenomenological and hermeneutic research that focuses on the conceptual links between moral principles, the concept of the self and the interpretation of texts. This kind of research is used to ground philosophical projects like those pursued by a broad range of authors.²¹³

In this section I begin by outlining the following empirical claims about narrative identity that are supported by psychological research.

- 1) Narrative identity is not static. It changes over time.
- 2) Narrative identity is an important concept for explaining human behavior.
- 3) Narrative identity is connected in an important (but indeterminate) way to individual well-being.

²¹³ Bhikhu Parekh *Rethinking Multiculturalism*, Seyla Benhabib *The Claims of Culture*, Amy Gutmann *Identity in Democracy*, Charles Taylor "The Politics of Recognition", Kwame Anthony Appiah *The Ethics of Identity*, Neil Bissoondath *The Age of Confession*, James Tully *Strange Multiplicity*, Patchen Markell *Bound by Recognition*.

After outlining the empirical facts, I work through narrative identity as a philosophical and moral concept. I elaborate the conceptual and moral aspects of the notion of narrative identity. I conclude by suggesting how these tensions might be managed by public institutions.

Psychological Explanations of Narrative Identity

Throughout this work I have been presupposing that narrative identities are 1) fluid, 2) important to our understanding of human behavior, and 3) connected in a significant way to one's well-being. In this section I provide empirical evidence to support these claims.

Narrative identity is a concept that has become central to psychological research into the construction of identity, the structuring of memory, and social cohesion.²¹⁴ Although there are many questions that have yet to be satisfactorily answered, there are some points that most researchers agree upon. 1) The creation of narratives is an essential activity of the mind. As such narrative is an essential concept for explaining and understanding human behavior.²¹⁵ 2) Personal identity is constructed by narratives that begin with the acquisition of language and fully emerges sometime during adolescence.²¹⁶

²¹⁴ See N. Alea and S. Bluck "Why are you telling me that? A conceptual model of the social function of autobiographical memory", *Memory* vol. 11 (2003), 165-178, H. D. Grotevant "The integrative nature of identity: Bringing the soloist to sing in the choir", *Discussions on Ego Identity*, (1993), 121-146, J. Kroger *Identity development: Adolescence through adulthood*, (2000), and Q. Wang "The emergence of cultural self-constructs: Autobiographical memory and self-description in European and American Chinese children", *Developmental Psychology* vol. 40, (2004), 1-38.

²¹⁵ Marshall Grossman "The Subject of Narrative and the Rhetoric of the Self", *Papers on Language and Literature*, Fall, vol. 18, issue 4 (1982), 398.

²¹⁶ Kate McLean writes,

3) Narrative identity is connected in a nontrivial way to individual wellbeing. 4) Both personal and collective narratives shape how we see others and the world. 5) Narratives, and hence identities, change over time.

According to Marshall Grossman,

The construction of narrative is an essential activity of the human mind. The articulation of experience into story is a primary process through which individual and collective subjects disclose themselves.²¹⁷

As the 'primary process' of narrative thought is developed one's sense of self emerges.

Among the first major developments in infancy and very early childhood is the awareness of the self-as-agent (the "I" or private, subjective sense of self) and the self-as-object (the "me" or public, objective self-as-known)... Beginning at around 2 years of age, the child's emerging facility with language allows him or her to begin constructing a "verbal self". It is during this time that the self-as-object emerges more fully. These children also show anxiety over their failures. For the first time, we see children responding to outcomes with specifically self-evaluative emotions, such as pride, shame, envy, and guilt. The younger child of one and a half years does not experience these emotions.²¹⁸

Two things are worth noting here. First, normatively salient emotions such as guilt and pride are fundamentally connected with the construction of what Grossman refers to as the

Meaning making is a kind of causal coherence used to integrate experiences, which emerges as late adolescents begin to think about constructing their life stories in order to explain how a past event led to or influenced another event or aspect of the self. Although the construction of identity and the meaning of past experiences are lifelong processes, there are different points in the life span when identity work and meaning making are heightened. The life story begins to emerge in adolescence because of the onset of formal operations, physiological maturity, and often demands for establishing oneself in the world through work, school, and family, demands that tend to allow for or even require meaning making.

"Late Adolescent Identity Development: Narrative Meaning Making and Memory Telling" *Developmental Psychology* vol. 41, no. 4, (2005), 683.

²¹⁷ 'The Subject of Narrative and the Rhetoric of the Self', 400.

²¹⁸ Richard Brinthaupt and Thomas Lipka, *Understanding Early Adolescent Self and Identity*, 3.

verbal self-as-object. This is important because it suggests a conceptual connection between value and narrative.

Secondly, there exists a gap between the self-as-agent and the self-as-object such that insofar as the former reflects on the latter, the two can never be co-extensive. The psychological distinction between the self-as-agent and self-as-object that emerges during childhood finds its philosophical corollary in phenomenology descriptions of the self, such as that of Merleau-Ponty.

The transcendence of the instants of time is both the ground of, and the impediment to, the rationality of my personal history: the ground because it opens a totally new future to me in which I shall be able to reflect upon the element of opacity in my present through which I live with apodeictic certainty, and since the lived is thus never entirely comprehensible, what I understand never quite tallies with my living experience, in short, I am never quite one with myself.²¹⁹

In its phenomenological form, the idea that one is not identical to oneself – that the self-as-agent is not identical with the self-as-object -- is connected with the phenomenon of consciousness reflecting on itself. When consciousness takes itself as an object of reflection, that which is doing the reflecting is never the same as that upon which it reflects. What this suggests is that the self-as-object can never be fixed because it is psychologically constructed by the self-as-agent, which exists in a state of constant flux.

Another aspect of identity that most psychologists and philosophers who study identity agree upon is the claim that identity is constructed from collective social narratives.

²¹⁹ Merleau-Ponty, *Phenomenology of Perception*, trans. Colin Smith, (New York: Routledge, 2000), 347.

Whatever culture we belong to, its narratives have influenced us to ascribe certain meanings to particular life events and to treat others as relatively meaningless. Each remembered event constitutes a story, which together with our other stories constitutes a life narrative, and, experientially speaking, our life narrative is our life.²²⁰

People are born into stories; their social and historical contexts constantly invite them to tell and remember the stories of certain events and to leave others unstoried... Discourses powerfully shape a person's choices about what life events can be storied and how they should be storied.²²¹

In other words, collective understandings expressed by narratives shape how we see ourselves, others and the world.

Understanding identity as a psychological phenomenon requires not only an understanding of psychological processes but also an understanding of the narratives that constitute a particular identity.

A narrative approach to identity suggests that language is a text out of which identities are constructed, justified, and maintained. Biographies are studied as life stories in an attempt to understand how people make sense of their lives and give meaning and coherence to them. Narrative approaches to identity can be regarded as attempts to interrelate internal psychological processes and societal messages and demands.²²²

In order to understand identity in relation to social phenomena one must expand the study of identity to include the study of the interpretation of texts, history and sociology.

Recent research in the psychology of identity supports the claim that personal identity is not static and this fluidity is connected to the way identity is narrated and interpreted. How individuals view themselves and others has been shown to change over the course of one's life.

From a study of identity that compares the autobiographical narratives of

²²⁰ Jill Freedman and Gene Combs, *Narrative Therapy: The Social Construction of Preferred Realities*, (New York: Norton & Company, 1996), 32.

²²¹ *Narrative Therapy: The Social Construction of Preferred Realities*, 42-43

²²² Jane Kroger, *Identity Development*, (Thousand Oaks, Sage Publications, 2007), 22.

participants in two diverse age groups (late adolescence and over 65), Kate McLean concludes that the way that individuals narrate their own lives changes as they age. During adolescence, a time in which “identity development takes center stage”, McLean finds that narratives more often focused on change, whereas later in life narratives indicated stability.²²³

Younger and older people appear to have different self-representations, with younger people constructing the self more in terms of change and older people constructing the self more in terms of stability.²²⁴

MacLean’s study suggests that the relationship between our changing cognitive capacities to understand who we are and where we fit into the world, and the changing circumstances that we are confronted with constitute two distinct impetuses that destabilize identity. A third destabilizing force is our capacity to reevaluate past experience. MacLean claims that that this last capacity is developed over time.²²⁵ Against these destabilizing forces, ‘older adults attempt to maintain a coherent and continuous sense of self’.²²⁶ These attempts do not ultimately overcome the forces that destabilize identity. Rather, they give a sense of order and continuity to change. One thing to take from MacLean’s findings is evidence for the claim that narrative identity is not static.

Narrative is also relevant to human behavior insofar as it shapes how individuals view their own identity in relation to collective narratives. By collective narrative I mean a narrative that is perpetuated over time across a large population. Stereotypes are examples of a kind of collective narrative. A recent study that investigates ‘racial distancing

²²³ Kate C. McLean, “Stories of the Young and the Old: Personal Continuity and Narrative Identity”, in *Developmental Psychology* vol. 44, no.1, (2008), 254.

²²⁴ “Stories of the Young and the Old: Personal Continuity and Narrative Identity”, 260.

²²⁵ “Stories of the Young and the Old: Personal Continuity and Narrative Identity”, 261.

²²⁶ “Stories of the Young and the Old: Personal Continuity and Narrative Identity”, 261.

behavior' (avoiding interacting with individuals perceived as being of a different race) finds a correlation between the fear of appearing to be racist and distancing behavior. The irony that this study reveals is that greater awareness of and sympathy for the amelioration of racial inequalities fails to produce behavior that differs (in certain aspects) from that of racist subjects. In other words, social behavior and the inequalities that result from such behavior have endured even though attitudes about racial hierarchies have changed.

The researchers suggest that part of the explanation for this result is the way that the white subjects viewed themselves in relation to black individuals in the context of an ongoing racial narrative. They claim that,

A stereotype threat approach to interracial contact does not locate problems in the "hearts and minds" of prejudiced agents. Rather, it suggests that certain features of an interracial context can create identity threats that lead to distancing.²²⁷

The collective narrative of the 'white racist' is said to threaten the self-identification of the white subjects such that they attempt to distance themselves from situations in which they might be portrayed as stereotypical racists. This study supports the claim that in order to understand human behavior we must take seriously narratives and the role they play in the formation and interpretation of personal identity. This should give us reason to proceed with caution when moving from interpretations of behavior, such as cultural practices, to public policies. At the same time, a thoughtful examination of practices may reveal unacknowledged presuppositions and normative claims that go beyond the explicit intentions of the practitioner.

²²⁷ Paul Davies, Phillip Atiba Goff, and Claude Steele, 'The Space Between Us: Stereotype Threat and Distance in Interracial Contexts', *Journal of Personality and Social Psychology*, vol. 94, no. 1 (2008), 105.

Empirical research also suggests that there is a link between the way that individuals interpret their own identities in relation to social structures and their sense of personal well-being. According to Linda Drew and Merrill Silverstein who look at the relation between family roles and well-being in seniors,

inter-generational role identities have been linked to well-being of great-grandparents who had living children and grandchildren... Starting from the premise that the self-evaluation of roles and their components is crucial in the formation of identity and self-concept, it has been demonstrated that a global construct of family role enactment has consequences for psychological health in later life. Specifically, the aspect of meeting role expectations and finding meaning in role enactment has implications for positive well-being.²²⁸

In other words, the psychological well-being of individuals is connected in a non-trivial way to one's sense of identity within a social structure comprised of interpersonal relationships.

To summarize, psychologists tell us that a) personal identity is not static, b) narrative plays an integral role in the constitution of identity, such that it is important to explanations concerning human behavior, and c) the interpretation of one's own identity within a social network is important to psychological well being. What are the ethical implications of these empirical claims? First, a) suggests that if the government tries to fix dimensions of a person's identity that are connected with how they view themselves, such as in religious or cultural terms, this misconstrues the phenomenon of personal identification. Secondly, if narratives are important to understanding human behavior and if public policy needs good explanations of human behavior, it follows that policy makers ought to take some kinds of narratives seriously. Finally, if one's sense of identity is

²²⁸ Linda Drew and Merrill Silverstein, "Inter-generational role investments of great-grandparents: consequences for psychological well-being", *Aging and Society* vol. 24, (2004), 106.

connected in a non-trivial way to individual well-being and if part of the government's role is to act for the sake of the well-being of its citizens, it is not unreasonable to suppose that there may be times when the government ought to take identity claims seriously.

The Narrative Limits of Culture

The ongoing controversy, in Canada (and elsewhere), over various kinds of head and face coverings that some Muslim women wear, illustrates how diverse pre-understandings of action can cause problems for the government. One interpretation of the coverings is that they signify an unjust inequality of political power between men and women. Another interpretation is that women who cover themselves are taking control of how their bodies are viewed in public. A third interpretation is that the coverings are required by divine authority. These are only three of several possible interpretations and it is possible that practitioners may accept more than one. One might add to the list a fourth interpretation that construes head coverings as a political statement of solidarity and resistance against what is seen as unwanted pressure to assimilate – a reaction against what are seen as misinterpretations of head coverings. Which interpretation should policy-makers and legislators take to be authoritative when making rules or policies? Is this an area that the government and public institutions should endeavor to go? Is it possible to settle this interpretive question once and for all? Is it even necessary to do so?

Narrative as a descriptive approach to identity brings into relief the epistemic limitations we face when dealing with human affairs. The meaning of head coverings and many other cultural practices is, at best, polysemic. Consequently, narrative as a mode of communicating the meaning of practices is a double-edged sword for political theory. It

brings into relief certain aspects of our lives that have moral worth while at the same time, suggests that important questions concerning identity and the meaning of action may be ultimately unanswerable.

Narrative identity gives us reason not to take particular interpretations of culture as authoritative when making decisions about public policy. This claim expands on one made by Barry, namely that negative reactions to culture are not a reason to discriminate.

I think we have to say bluntly that one of the costs of cultural heterogeneity is that, in implementing anti-discrimination legislation, we simply cannot afford to ask if negative reactions to behaviour are well-founded or not, provided the behaviour in question does not actually get in the way of the efficient discharge of the task in hand, narrowly defined.²²⁹

Barry's claim is not that no negative reaction to cultural practices is ever justified. Rather, he is saying that such reactions are, in most cases at least, not relevant to an individual's status as an employee or a citizen. Likewise, the semantic ambiguity of cultural practices does not pose a problem for the government because in most cases the cultural meaning of a practice is irrelevant to legislation and public policy.

When designing cultural policies one might ask who is authorized to speak as a narrator of a cultural identity. There are two dimensions to this question. First there is the issue of representation and who is authorized to represent others. It can be the case that conflicting voices will claim to represent the views of a cultural group and this might lead those who wish to accommodate cultural groups wondering how to go about doing so. One worry is that cultural entrepreneurs - those who seek to profit from making cultural claims - may drown out the voices of less ambitious or more community minded cultural members. If a group of individuals who identify as a cultural group wish to elect on their behalf a

²²⁹ *Culture and Equality*, 60.

spokesperson or representative to communicate a commonly held position, then we might say that the spokesperson is authorized to speak on the behalf of this group of individuals. The principle that authorizes the speaker is the consent of those who are being represented. Such a speaker may be recognized (in the generative sense) to have standing with respect to interactions with the government. However, the authority of the representative is limited to those who have explicitly or in some cases implicitly consented to being represented.

The second dimension to the question of authoritative narratives is the issue of authoritative knowledge. That is, who has sufficient knowledge of a cultural group to contribute to its narrative identity? One concern is that the beliefs and practices of a group will somehow be misrepresented in a way that portrays them in an unjustly negative light or perpetuates negative stereotypes.

As a possible remedy to this last problem we can evaluate authorities in cultural narratives the same way we would evaluate authorities in other domains. For example, we might expect an authority on a particular novel to be one who has read the novel, has some knowledge of literary theory and the writing process, or has had experience in the subject matter discussed. Although there is no precise formula for who counts as an authority, those who claim to be authorities are held up to some critical process of public judgment. Likewise, the credentials of a cultural authority can be decided as a matter of public judgment.

With respect to cultural narratives, an authoritative voice in the epistemic sense is one that is deemed to be worthy of being heard and considered. This entails that cultural

narrative authority is never a question that is entirely settled.²³⁰ To say that authority is never settled does not mean that everyone is authorized to speak as an 'x', where 'x' designates a cultural group, nor does it mean that there are not cases where it is clear that some voices are unworthy of being heard. Just as is the case with those who claim to be literary authorities, when making reasonable judgments about the authority of a cultural narrator we might consider factors like expertise, experience and interest.

This last point can be illustrated by looking at an issue that came up with disturbing frequency in the Taylor Bouchard Commission on Reasonable Accommodation. In the public hearings it was often the case individuals would comment on minority religious practices without demonstrating any knowledge of these practices. In such cases the beliefs and practices of minority groups were misrepresented in a way that appeared to be designed to demonize practitioners. This led many practitioners to publicly respond in a way that was intended to better represent how they view themselves and their practices and to dispel the negative image that was projected onto them.²³¹ These kinds of responses do not preclude the possibility that other authoritative voices will have a different view of things. However, if authority is construed as being worthy of being considered it is not inconsistent to accept that there may be multiple conflicting authoritative cultural narratives.

²³⁰ This is not to say that we are never entitled to challenge a specific view of narrative identity. One might argue, for instance, that a narrative is motivated by self-interest or "false consciousness" in such a way (or to such an extent that it can be discounted? To say that narrative authority is not entirely settled does not entail that we are not entitled to make judgments about authority. We can reject some narratives for various reasons without asserting that there is only one authoritative narrative.

²³¹ Caroline Touzin, 'Entre le mythes et la réalité' *Le Droit* Lundi 26 Novembre (2007), 18.

At this point one might legitimately ask why the concept of narrative identity is even relevant to public policy. If narrative identity and, by extension, the meaning of cultural practices are polysemic, how is it possible to make cultural policies? The best response to the indeterminacy of identity and meaning is to resist the urge to fix either in legislation. In terms of public policy this entails that questions of cultural identity and the meaning of cultural practices are left unanswered by the government. This is not to say that it is not important to try to answer such questions. Rather, the claim being made here is that the government is not the right instrument for pursuing such questions and if it does so it represents an unjustified restriction of individual freedom and may lead to the kind of undesirable consequences that are suggested in preceding chapters.

Culture and Bureaucracy

In liberal democracies like Canada, most public institutions are intensely bureaucratic. One defining feature of bureaucracies is that they operate according to rules and procedures that are, ideally, impartial and impersonal. As such, bureaucracies seem to be the antithesis of any kind of identity-based politics. How can bureaucracies recognize (in the epistemic sense) diverse cultural identities if they are, by design, impersonal? Is this apparent incommensurability between bureaucracies and the recognition of cultural identity a problem? As we saw in chapter three, if the government attempts to differentiate legal and political status according to cultural identity then it risks reifying identities and possibly creating new and static identities through legal recognition (in the generative sense). This limits the capacity of individuals to freely choose with whom they identify. However, it seems clear that there are some cases where culture is relevant to the way that

bureaucracies operate. In such cases, a narrative approach to identity can bridge the gap between bureaucratic institutions and popular concerns.

For example, if a bureaucratic operational system requires that individuals work or receive service on religious holidays it may impose a burden on religiously minded individuals. It is already the case that many Christian holidays have been accommodated by bureaucratic institutions by either closing down offices at Christmas or allowing people the option of taking time off for Holidays. The idea behind such accommodations is that it is unreasonable to ask people to give up important aspects of their lives (such as religious holidays) for their work. This is not to say that there are never times when people might be asked to work on religious holidays. Services that are designated as essential are deemed important enough to outweigh religious observances. However, given that certain religious practices have been accommodated it seems fair that other analogous practices be considered. In order to determine what constitutes a relevantly analogous practice, it may be necessary to go beyond the limited bureaucratic description of what is recognized as a religious practice and be receptive to the rich descriptions that cultural narratives can offer. Such descriptions do not act as reasons for justifying accommodations, but they do situate hitherto unrecognized practices in a context in which they can be considered in a fair light. Consequently, as both the clientele and the workforce of bureaucracies diversify operational systems that have hitherto appeared impartial (but in fact reflect particular cultures and religions) may need to be changed in response to this diversification.

It is safe to say that almost nobody likes dealing with bureaucracy. When faced with bureaucratic procedures one might feel the impulse to scream, *'I am a person not a number!'*. It may be the case that this impulse is a response to the feeling that bureaucratic

procedures somehow reduce our complex and idiosyncratic situations to a predetermined script. That is, the rich and meaningful contours of our lives appear to be smoothed out by boxes to check and rules to follow. Bureaucracy seems to ignore the complexity of our lives and to make matters worse, can make what one might consider to be simple aspects of our lives overly complicated.

Before we propose to do away with bureaucracies altogether it is important to consider what kinds of things they do well and what alternative methods we have at our disposal to carrying out these tasks.

Many critics of bureaucracy assume that they will get better service if the government were to do away with bureaucratic procedures. However, this assumes that the service agents will respond favorably to each client. It might be tempting for us to hope that everyone we encounter will find us charming and do their utmost to offer us top quality service. However, the reality is that there are times when an individual might rub someone the wrong way or worse, might encounter a government official or coworker who is bigoted or biased. Bureaucratic procedures protect against such situations by regulating the responses that an official can give. This regulation also guards against corruption by taking governmental authority out of the hands of the individual behind the desk and putting it into the desk itself (the office).

Another benefit of bureaucracy is that if it is designed well it can be very efficient. By limiting the range of inputs and responses, bureaucratic structures can deal with incredible amounts of information. Efficiency has moral implications when dealing with matters that concern the well-being of individuals. Of course, there are some areas (like policing, frontline healthcare and education) where we might prefer complex and fine-

tuned responses over efficiency. However, complex and sensitive responses require high levels of training, skill, staffing and in many cases, wages. One can argue that bureaucracy helps the government get the most out of its resources in areas where fine-tuned responses are not required.

A further benefit of bureaucracy is that it is predictable. Once we learn the rules and procedures of an institution we know what to expect. We can then make important decisions based on the predictability of bureaucratic procedures.

One thing that bureaucracy does not do well is direct itself. Bureaucracy is a good tool for achieving certain kinds of ends but it is not a method for making decisions. That is, it cannot tell us what ends we ought to pursue.

Another limitation of bureaucracy is that it is often ill-equipped to deal with novel situations that were not anticipated by its designers. Many of the claims for cultural accommodation that are made have to do with practices that were likely unknown to bureaucratic designers. Consequently, it is conceivable that there may be times when rules and procedures need to be redesigned in light of changing circumstances. That is, we may want to consider cultural accommodations.

Conclusion

There is a conceptual tension between narrative identity and bureaucratic rule. Bureaucracies are unable to recognize fluid and polysemic identities and narrative identities collapse into reified objects when they are defined by rules. If there is not agreement about what constitutes an 'authentic' identity then how can rules be put into place to accommodate such an identity?

Seyla Benhabib uses the following example to illustrate what can go wrong when polysemic identities are defined by bureaucratic rules.

A most spectacular example of the creation of cultural unity through various external discursive interventions is provided by the Hindu practice of sati, according to which a widowed wife immolates herself by ascending the funeral pyre of her husband.²³²

Benhabib goes on to describe how sati had once been a marginal practice came to be viewed as an obligation when it was legally protected by British colonial rulers. This had the effect of making the practice *more* common where it might have otherwise remained at the margin of Hindu practices.²³³ On the other hand, governments cannot operate without rules. For example, if special tax rules are to be applied to religious organizations the government must be able to minimally define what constitutes a religious organization for the application of such rules.

For the most part, in a liberal democracy the jurisdictions of narrative and bureaucratic domains are separated into 'public' and 'private' spheres. However, there may be times, such as when receiving social services or seeking employment, when one's narrative identity intersects with bureaucratic structures. 'Who' one is comes to have a substantial impact such that it becomes relevant to rules and regulations. In such cases there may be compelling reasons to accommodate an individual.

Narrative identity can also direct bureaucracies by articulating the unique needs of an individual or a community. Although cultural narratives may be polysemic and variable over time, there may be common and persistent themes that point toward injustices. Social

²³² *The Claims of Culture* 5.

²³³ There is no way of knowing what the effect of ignoring sati or outlawing it would have been. However, it is clear that sanctioning gave it a more central place in Hindu cultural practices than it had previously held.

problems like poverty, racism and violence may be connected to common cultural narratives such that addressing the former requires an understanding of the latter. In such cases, the variability of cultural narratives over time serves as a beacon of hope for better circumstances. In such cases narrative plays an instrumental role in improving the effectiveness of a bureaucratic agency or social service by articulating the experience of a community in need.

CHAPTER 7 ACCOMMODATING CULTURES

In his famous article “The Clash of Civilizations?” in *Foreign Affairs* Samuel Huntington predicted that post-Cold War conflicts would erupt along cultural lines.

During the Cold War the world was divided into the First, Second and Third Worlds. Those divisions are no longer relevant. It is far more meaningful now to group countries not in terms of their political or economic systems or in terms of their level of economic development but rather in terms of their culture and civilization.²³⁴

If the ethnic conflicts in former Soviet territories were not enough to bring supporters into Huntington’s camp, the attacks carried out on the World Trade Center on September 11th 2001 certainly made people take notice of Huntington’s thesis and in particular question whether Muslims can integrate into ‘Western’ societies like Canada. However, according to pollster Michael Adams, the vast majority of Muslims who have immigrated to Canada have successfully integrated socially, economically and politically.²³⁵ Nevertheless, the “Clash of Civilizations” thesis endures as a counter-narrative to Canada’s multicultural policies.

Since 9/11 the world has witnessed several acts of violence that have caused some to challenge the wisdom of supporting multiculturalism and have focused much of the discussion on Islam. For example, on November 2nd 2004 Theo Van Gogh was murdered in Amsterdam for making a controversial film about Islam. In London, on July 7th 2005 52 victims and 4 bombers were killed in what appeared to be a terrorist attack carried out in the name of Islam. All but one of the bombers were ethnic minorities born in the UK and the remaining bomber had immigrated as a child. On September 30th 2005 the publication

²³⁴ Samuel P. Huntington “The Clash of Civilizations?” *Foreign Affairs* vol. 72, no. 3, Summer (1993), pp. 22-49

²³⁵ *Unlikely Utopia*, 87-110.

of a series of cartoons depicting images of Muhammad in an article entitled “Muhammed’s Ansigt” (the face of Muhammad) sparked riots that led to several deaths.²³⁶ In October of 2005 riots erupted in the suburbs of Paris provoked by the accidental electrocution of two boys of North African descent who were allegedly being chased by police. What these incidents are supposed to show is that multiculturalism is a failure and that by ‘catering’ to minority groups liberal democracies have allowed violent fundamentalism to breed within the fertile ground provided by liberal freedom. Since accommodation did not prevent terrorist attacks it is argued that a new hard line approach ought to be taken toward compelling minority groups to assimilate to a majority way of life. The fear expressed by this line of reasoning is that liberal values are under threat and so ought to be defended by forcing cultural minority groups to assimilate. That is, we must limit freedom in order to protect it.

In January 2007 this fear took on a public manifestation in Hérouxville, a small town in rural Quebec, in the form of a code of conduct that discouraged cultural practices (not just Islamic practices) like wearing veils, carrying kirpans and religious animal slaughter. The code also perpetuated negative cultural and religious stereotypes with references to stoning women and other practices that are abhorrent to any reasonable person, regardless of culture.²³⁷ In response to the public outcry over Hérouxville, the Premier of Quebec commissioned sociologist Gerard Bouchard and philosopher Charles Taylor to study the question of reasonable accommodations of cultural minorities in Quebec. A similar study published in 2005 by the British Commission for Racial Equality

²³⁶ “Muslim Cartoon Fury Claims Lives”, *BBC World News*, Monday 6 February (2006), http://news.bbc.co.uk/2/hi/south_asia/4684652.stm.

²³⁷ “Normes d’ Hérouxville”. *Grandquebec.com*, (2007), <http://grandquebec.com/multiculturalisme/normes-en-place/>.

entitled, "Citizenship and Belonging : What is Britishness?", was conducted to address concerns about the effectiveness of Britain's multicultural policies.²³⁸ Like the report on Britishness, the Bouchard-Taylor commission is a governmental response to public fears about the alleged negative consequences of accommodating religious, cultural and ethnic minority practices.

The Bouchard-Taylor commission has recently published its findings which I comment on in an attached appendix. For now, it is worth addressing some possible arguments against accommodating cultural difference. After showing these arguments to be unconvincing I present a vision of 'Canadian' values that sets aside grand cultural identity narratives and focuses on achieving modest but important goals such as ensuring that every Canadian has access to basic goods like healthcare, meaningful work, education, and a safe environment. I conclude by arguing that multiculturalism is a success if it can help us achieve these goals.

One might question my approach because I am conflating Quebec's multicultural policies with those of the Canadian federal government. It is true that Quebec regulates immigration and has jurisdiction over several areas that are relevant to multiculturalism. However, insofar as the Quebec government's policy is to view the province as a, "pluralistic society that respects the diversity of various cultures from within a democratic framework" the theoretical differences between Canadian federal multiculturalism and what Quebec calls 'interculturalism' are not significant for the purposes of my argument.²³⁹

²³⁸ *Citizenship and Belonging: What is Britishness?*, (London: Commission for Racial Equality, 2005).

²³⁹ Michael Dewing and Marc Leman, *Canadian Multiculturalism*, (2006) Library of Parliament, Parliamentary Research and information services.

Why should minority cultural practices be accommodated in a liberal society like Canada? Why is it unfair to expect newcomers to follow the established rules of the host society? One might argue that if someone chooses to immigrate to a country then he or she is obligated to assimilate to the rules and regulations of that country. The argument for assimilation presupposes that, a) every immigrant chooses to immigrate and, b) citizens ought not to seek to change rules or regulations that they believe to be flawed in some way. However, many immigrants do not choose to immigrate. War and political instability often force people to leave their country of origin. But even for those who do choose to immigrate, there is no reason to assume that they do not have the right to question rules and laws. In a free and democratic society, all citizens have the right to challenge laws and regulations that they judge to be flawed. Not all challenges will necessarily be successful but the merit of a challenge is independent of one's right to make a challenge. In light of this, the argument for assimilation is unconvincing.

Another reason why cultural accommodations should be considered is that in order for public institutions to be fair they must be impartial. Although we have left the question of whether culture is always morally arbitrary unanswered there are some cases when, clearly, it is. For example, when a patient is brought into an emergency room with serious trauma it would be wrong for a doctor to refuse to treat the patient because he or she was a member of a particular cultural group. Civic equality as a political right guards against this kind of treatment and is instantiated in section 15 (1) of Canada's Charter of Rights and Freedoms.²⁴⁰

²⁴⁰ Section 15 (1) of the Canadian Charter of Rights and Freedoms reads;

Although impartiality is essential to just public institutions, in practice no public institution can be completely culturally impartial. For the sake of factors such as time, efficiency, and cost, public institutions operate in a limited number of languages, recognize a limited number of holidays, deploy a limited number of symbols, etc. Furthermore, it is inevitable that because of historical contingencies, only certain cultural practices will become imbedded in public institutions. Consequently, in a culturally diverse society like Canada, equal treatment according to a single standard or set of rules inevitably imposes undue burdens on only some individuals.²⁴¹ For example, norms of dress have become codified in public institutions according to particular cultural standards and traditions. This has led to conflicts such as the famous petition by a Sikh Royal Canadian Mounted Police officer to be allowed to wear his turban with his dress uniform.

The fact that particular cultural practices are imbedded in Canadian public institutions to the exclusion of others has led some to argue that given the culturally diverse population in Canada, the principle of civic equality construed as equal treatment fails to bring about equality in practice. The argument is that outcomes of equal treatment sometimes end up falling short of what the spirit of the principle of equality intends.²⁴² In order to address this concern section 15 (2) of the Canadian Charter of Rights and Freedoms is a provision that allows for special treatment if its purpose is to ameliorate

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

²⁴¹ The standard test for undue burdens is whether a person has chosen the circumstances that have led to his or her being burdened. Culture is in some cases viewed as an unchosen circumstance.

²⁴² See *Which Equalities Matters?*.

disadvantageous conditions that are the result of choice insensitive circumstances such as ethnicity, gender, sexual orientation, or religion.²⁴³

A further reason to accommodate cultural practices is that the kinds of things that are often associated with cultural groups have the potential to be sources of violence. Religious freedom is one political right that developed out of the desire to end violent conflicts between religious groups. I am not suggesting that a government should allow itself to be blackmailed by potentially violent groups. However, there have been instances where otherwise peaceful populations have become violent when issues involving cultural identity were not adequately addressed.²⁴⁴ Given how easy it is for cultural groups to engage in violent conflicts it is prudent to at least take the possibility of cultural accommodation seriously.

Are cultural minority groups demanding houseguests?

Although Canada has a history of accommodating diverse cultural practices there is still opposition to the idea of reasonable accommodation. One possible argument against cultural accommodation is a thought experiment that uses an analogy between houseguests and minority groups.²⁴⁵ In the thought experiment we are asked to imagine a houseguest

²⁴³ Subsection 15. (2) of the Charter reads;

(1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

²⁴⁴ See Amartya Sen's *Identity and Violence*, W. W. Norton & Company, New York, 2006.

²⁴⁵ In November of 2005 I presented a version of this chapter at UNESCO in Paris. A member of the audience offered the demanding houseguest argument as a challenge to my own position. Since then, I have encountered this argument with some frequency in conversation.

who makes what seem to be intuitively unreasonable demands (like breakfast in bed or Egyptian cotton sheets). We are expected to take the position that although we are willing to provide certain essentials for our guest we are not about to cater to every extravagant request. The argument then makes an analogical link between the demanding houseguest and minority groups that request accommodation. Just as it would be unreasonable for us to be expected to buy expensive sheets at the request of our houseguest, so too is it unreasonable for us to be expected to accommodate minority cultures by changing existing rules. Some versions of the argument use annoying behavior (like playing loud music at night or demanding silence during the day) to make the houseguest seem overly demanding. The force of the argument is the commonsense idea that a good houseguest does not make overly demanding requests to his or her host.

The first step in evaluating this argument is to ask whether there really are limits to what a houseguest can reasonably request of his or her host. Although people might be willing to admit varying degrees of generosity most would place a limit on such generosity. Likewise, the whole idea of reasonable accommodations is that there is a limit to what a minority group can reasonably expect from the majority. On this point the demanding houseguest argument passes the first sniff test.

Next one needs to look at the strength of the analogy being proposed. The host is analogous to a majority population that supports current rules and regulations. This population need not be a homogenous cultural group. It merely needs to give its approval (in some form or other) to the status quo. The houseguest is analogous to those who are making claims for cultural accommodation. As such, cultural claimants are portrayed in the argument as visitors who rely on the patience and generosity of their hosts, both of

which can be revoked. It seems reasonable to accept the claim that guests who make themselves a nuisance may eventually wear out their welcome and be sent packing. Likewise, the 'overly demanding houseguest' argument sometimes concludes with a challenge for those who are not willing to assimilate to return to their country of origin.

Should minority groups who ask for accommodations really be portrayed as demanding guests? If we take civic equality seriously then minority groups comprised of Canadian citizens should have the same status vis-a-vis the law as other citizens. Even if we allow that new immigrants face a period of adjustment during which time they are obligated to adapt to some features of their new country, many requests for accommodation come from individuals who were born in Canada. Furthermore, at some point it is reasonable to say that the adjustment period for new immigrants will eventually end and then they have the same status as other citizens. Therefore, the demanding guest analogy doesn't hold. Members of minority groups are not like guests.

One might amend the analogy by replacing the demanding guest with a demanding housemate. We might imagine a house shared by six people where one of the six makes demands on the other five. Here we have a classic dilemma of democratic decision making and the protection of minorities. What kinds of decisions ought to be determined by democratic means and what kinds of decisions should be determined by principles (usually evaluated in a judicial setting)? One role that constitutional documents like the Canadian Charter of Rights and Freedoms play is that they protect certain areas of an individual's life against democratic decisions. For example, even if the entire country wants me to keep quiet, I have the right to speak my mind (provided that what I say is not hate speech). So, to return to our revised analogy, we might say that the majority in the house can determine

things like when quiet hours are or how to furnish common areas but there remain areas (like diet, clothing, etc.) that we would not expect to be determined by majority rule. Likewise, insofar as the Charter protects certain areas of an individual's life there may be reasons for accommodating certain cultural practices if they fall within such areas.

At this point we have reason to reject the demanding guest argument because members of cultural minorities are not like guests. Furthermore, with respect to the outvoted housemate argument, democratic processes may support the maintenance of the status quo for certain things but there still remain areas, like religious practices, where individual rights are protected from majority rule. Both the demanding guest argument and the outvoted housemate argument fail to show that we are never obligated by principles of fairness to accommodate cultures.

The Road to Hell

Another argument against cultural accommodation is that accommodation will start us down a road that leads to terrible consequences. A newspaper's account of an exchange between Hérouxville councillor André Drouin and sociologist Gérard Bouchard illustrates how this argument is playing out in public debates. After proposing that Canada, "amend the Canadian Charter of Rights and Freedoms to ban all kinds of religious accommodations", Drouin was challenged by Bouchard and the following exchange was reported to have taken place.

"Which is more significant," he [Bouchard] asked Drouin, "the fact that there are 950 municipalities in Quebec your size that have refused to follow your code of life, or the fact that there are four or five that have given you their moral support?"

Drouin replied that his supporters are discreet for a reason: "People are afraid of being taken for a moron, an idiot and an imbecile," he said.

"Not in your case, evidently. You're immune to all that by now," Bouchard said, to general laughter.

Drouin was emphatic. "I warn you: I don't want to live in hell here," he said.

"Mr. Drouin, I notice that you talk often about hell - you know, there are people who think you've already lived there, and others who'd like to send you back," Bouchard told him with a chuckle.

"I've already worked in hell," Drouin shot back, referring to places like Saudi Arabia, where he once did a stint as an engineer for a multinational.²⁴⁶

Although Bouchard treats Drouin's argument with appropriate levity, the argument persists in coffee shops across both Quebec and the rest of the country. For this reason it is worth taking seriously.

For the argument to be convincing it must show that there is some causal chain that links certain kinds of cultural accommodations with a negative consequence like Canada becoming an oppressive regime. I suspect that most reflective individuals will find it difficult to see how accommodating diverse codes of dress, diet and religious observances will lead to an erosion of the kind of freedom and legal protection that Canadians currently enjoy. The latter would take an act of legislation that has no causal link with the former.

Another way to interpret the argument is that even if legislation that protects our liberal democratic rights remains in place, allowing certain cultural practices will mean that we will be living in a *de facto* 'hell'. The resemblance that citizens who publicly display cultural differences carry to images of 'hellish' foreign lands seems to give rise in some segments of the population to anxiety over losing Canada's identity or key values. The

²⁴⁶ Jeff Heinrich, "Herouxville has a radical solution for it all", *The Montreal Gazette*, Thursday, October 25, <http://www.canada.com/montrealgazette/diversity/story.html?id=99d70055-3bad-4231-a5e6-4d8df331df02&k=14937&p=1>.

implicit argument behind this anxiety is something like 'where there is smoke there is fire'. The smoke represents visible expressions of culture difference and the fire is reprehensible behavior that would make a place 'hellish'. The smoke argument differs from the road to hell argument in that in the former expressions of cultural difference are considered to be consequences of supporting a set of values rather than the cause of illiberal legislative changes. Cultural accommodation would be like ignoring the smoke as opposed to setting the fire. The idea that there is some cultural force that will overrun Canada and transform it into an unjust and oppressed society seems to motivate the claim that we ought not to ignore the smoke and so we should not allow *any* signs of cultural difference. This claim is beyond the scope of the debate over cultural accommodation because in most settings there are little if any rules about how a person dresses, prays, eats or speaks. Limiting the freedom of individuals to expressions of cultural difference in any aspect of their lives would be unjustifiable in a liberal democracy.

An Eye for an Eye (or a Prayer Room for a Crucifix)

A third possible argument against cultural accommodation is, since Christian practices (like prayers), symbols (like Christmas trees and crucifixes), and in some cases language ('merry Christmas') are no longer allowed in public institutions then neither should we allow Muslim prayer rooms, kosher food, hijabs, or kirpans.²⁴⁷ When I have encountered this argument in conversation it is sometimes accompanied by a declaration that the arguer feels like a 'third-class citizen'. Seething under the surface of this argument

²⁴⁷ This is an argument that I have encountered with some frequency when discussing cultural accommodation with federal civil servants.

appears to be an implicit resentment of the removal of Christianity from the place it has traditionally held in Canadian public life. This resentment is often directed at visibly non-Christian groups who are expected to endure the same treatment that Christians have allegedly been subject to.

It is interesting that this argument entails the same result as arguments for secular public institutions but the former maintains the value of at least one religion in public institutions. Those who are upset about the displacement of Christianity in public institutions are directing their ire at the wrong groups. Arguments for cultural accommodation may in fact support some Christian practices in public institutions. However, what they do not support is investing governmental authority in any religious institution.

There are two major weaknesses to the 'crucifix for a prayer room' argument. First, it conflates religious authority in public institutions with religious practices, customs, and observances of individuals who participate in public institutions. Accommodating minority religions in public institutions does not entail that we should run such institutions according to religious authority. Rather, it is an acknowledgement that many people find value in religious practices and so accommodating some practices is a way to protect this value. As such, the Canadian policy on religious practices, "has been to promote multiculturalism by celebrating the expression of various religions while recognizing the supremacy of none."²⁴⁸ It would be equally as fair to be publicly indifferent to all religious expression but this policy would unnecessarily conflict with the views of many Canadians. There is

²⁴⁸ Laura Barnett, *Freedom of Religion and Religious Symbols in the Public Sphere*, Revised 14 March 2006 Library of Parliament, Parliamentary Information and Research Service <http://www.parl.gc.ca/information/library/PRBpubs/prb0441-3.htm>.

no significant cost to allowing individuals the freedom to identify as members of a religious group in the workplace so long as this identification does not substantially infringe on the rights of others or the functioning of the workplace. Canada's policy of 'celebrating' religious expression supports greetings like 'merry Christmas', 'happy Hanukah', and 'happy Eid', prayer rooms for all faiths and flexibility to allow for diverse religious holidays. What Canada's policy does not support is an official religion.

The allegation of unfair treatment of a Christian majority by a government that accommodates religious minorities conflates visible signs of private religion with an official religion. Just because religious symbols and language appear in public does not make them public. Our private choices appear in public all the time. What makes these decisions private is that they are protected from unwanted interference. Choices that are a matter of public interest are determined through official processes (like voting, legal review, committee, etc.). By taking the position that it has no official religion, the Canadian government is stating that religion will not play a role in decision making procedures concerning questions of public interest. Consequently, allowing crucifixes, prayer rooms, hijabs, turbans and yarmulkas in the workplace is consistent with Canada's multicultural policy so long as no one religion is favoured over others and religious reasons are not used to justify decisions concerning public interests.

Conclusion

If we take the kinds of rights that are outlined in the Charter seriously then it follows that cultural accommodations ought to at least be considered. In a world without diverse cultures or with perfectly designed bureaucracies (if such a thing is possible) accommodations would be unnecessary. However, since (in Canada at least) the

population is culturally diverse and bureaucracies are less than perfect, in the interest of justice we should be open to the possibility of cultural accommodations. When deciding on questions of accommodation the actual nature of the conflicting practice and rules in question need to be considered and their respective practical consequences must be weighed. In the next chapter I suggest how we might go about deciding what practices ought to be accommodated.

CHAPTER 8 EQUALITY, HARM AND RELIGIOUS FREEDOM

On October 21 2005, Balpreet Singh, a University of Ottawa law student was ordered off of a VIA train for wearing a kirpan. Navdeep Bains, who at the time was a Liberal MP and the Prime Minister's parliamentary secretary, described the incident as "unfortunate and unacceptable".²⁴⁹ Bains framed the issue as a conflict between attempts to insure public safety and to protect religious freedoms that are included in the Charter. He was quoted as saying that, "people ought to know the difference between a weapon and the Sikh religious artifact".²⁵⁰ The policy of VIA, a crown corporation, is that "all kinds of weapons [are prohibited] from its trains and the kirpan falls under a ban on weapons that includes "collectibles, antiques and those of a ceremonial nature".²⁵¹ It seems that both VIA and Bains have expressed legitimate concerns. The kirpan is both an object with a potentially dangerous use and a religious symbol, and so is subject to multiple legal and cultural descriptions. Bains's solution is to educate Canadians about the Sikh religion. Although education is not a bad idea, there is nothing to suggest that recognizing the religious significance of what a kirpan means to a Sikh will change the minds of non-practitioners who are concerned with its instrumental use. To put it bluntly, one might ask what difference one's religious identity makes to the fact that the kirpan is a blade? In this chapter I argue that religious identity matters insofar as it is a reason for considering a request for accommodation, but it is insufficient for justifying accommodation. In order to justify special accommodation based on cultural claims one must appeal to universally

²⁴⁹ "Liberal MP calls VIA's banning of ceremonial sword 'unacceptable'", *The Ottawa Citizen* October 26th 2005, C1.

²⁵⁰ "Liberal MP calls VIA's banning of ceremonial sword 'unacceptable'", C10.

²⁵¹ "Liberal MP calls VIA's banning of ceremonial sword 'unacceptable'", C10.

applicable principles, however, such appeals ought to take into account the specific context in which a claim is being made.

The question of allowing kirpans on VIA trains is one of many potential issues that arise when trying to reconcile cultural claims for special treatment with the liberal principles of equality and freedom. There are three fundamental rights and freedoms at issue with the kirpan case. First, there is the freedom of religion, which can include the freedom to engage in certain kinds of practices. The Charter guarantees religious freedom in s.2(a). Second, there is the right of civic equality that guarantees that every citizen is given equal legal protection and consideration, as well as equal access to public institutions.

Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.²⁵²

Thirdly, there is the question of the government's responsibility to maintain public safety. Public safety is relevant not only to accommodating kirpans but also to questions concerning whether a parent has the right to refuse medically necessary blood transfusions for religious reasons.

Religious freedom, civic equality, and public safety can be used to form arguments both for and against accommodating orthodox Sikhs. For example, by focusing on the freedom of religion, one can argue that forcing Sikhs to choose between public transportation and adhering to a religious rule is unfair in that it limits an orthodox Sikh's freedom to live *as* an orthodox Sikh. On the other hand, by focusing on the importance of

²⁵² Section 15 (1) *The Canadian Charter of Rights and Freedoms*.

universally applicable laws, one can argue that civic equality entails that we hold everyone, regardless of culture or religion, to the same standard. Between these opposing positions there is significant room for discussion.

Is it possible to reconcile civic equality with special accommodation? If we restrict our notion of civic equality to 'one rule for all' then the question of special accommodation seems to be a non-starter. However, there are good reasons for broadening the scope of equality. As stated earlier, no political system is perfect. Allowing for the possibility of accommodation in certain cases can act as a remedial measure when what is otherwise a good and just political system fails. One kind of failsafe that can be both fair and effective is Amy Gutmann's conceptualization of "equal consideration" according to which cultural practices are judged by their practical effects. Concerning this point Gutmann writes,

Civic equality and equal freedom fairly applied across cultural identities require that distaste for cultural practices that strike us as offensive not become pretext for suppressing practices when we tolerate analogous ones in our own culture that are more familiar and therefore less jarring to our aesthetic sensibilities.²⁵³

One of the arguments that has been put forward in favour of allowing kirpans is that non-Sikhs are not searched for weapons before they get on a VIA train. So, it is argued, what is *really* at issue is not the possibility that someone will be attacked, (since anyone could be carrying a knife), but rather, it is the cultural aesthetics of the kirpan that some non-practitioners find offensive. This argument illustrates an important point, but it does not address exactly what degree of safety is required on a train and the possibility that the kirpan case might shine a spotlight on the need for greater security. However, the equal consideration argument does seem to point out an inconsistency, where Sikhs are being

²⁵³ Amy Gutmann *Identity in Democracy* 199.

held to a higher standard than non-Sikhs. The 'one rule' approach to civic equality glosses over such inconsistencies.

In the first section of this chapter I examine the claim that equality is more complex than it might first appear. In light of this complexity, I argue that a 'one rule' approach like the one Barry argues for misses important issues. In the second section I outline what is at stake with religious freedom claims and what role religious content ought to play in the evaluation of such claims. In the third section I argue that the practical effects of religious practices are the most important factor in evaluating claims for special treatment. This position is consistent with the one expressed in *Multani (guardian of) v. Commission scolaire Marguerite-Bourgeoys* in that it maintains that in religious freedom claims, we ought not to demand a higher degree of security from minority groups than we would from the majority.

Equality

Civic equality is a fundamental principle of justice. However, how it is construed depends on what is considered to be of value in both the public and the private realms. For example, some groups in France give out free food to homeless people. They treat every homeless person the same by providing everyone with the same soup. However, the soup contains pork, and so observant Jews and Muslims are excluded. The pork soup has come to be known as "Identity soup" and is being used by the Bloc Identitaire, a right-wing French group, to make some sort of point about preserving what they consider to be a

'French' identity.²⁵⁴ Evidently, it is possible to design situations where the principle of equality is used to exclude, humiliate, or hurt an identifiable group.

In his paper "The Rushdie Affair", Bhikhu Parekh examines four different interpretations of the principle of civic equality in order to show that what is often taken to be a straightforward concept can be complicated when minority cultures are involved.

First, there is the conservative view, according to which the state is not to persecute or suppress any religion but remains at liberty to privilege one that is an integral part of its history and identity. Secondly, there is the strong liberal view that the state should protect all religions equally. Thirdly, there is the weak liberal view that it should protect no religion. And fourthly, we have the Muslim view that the state should protect all religions; but if for some reason it cannot, it should protect the one under threat in the same way that it grants extra protection to individuals under threat or in special need.

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Before I begin my analysis of civic equality, I will clarify that the "Muslim view" to which Parekh refers is that of some British Muslims who were arguing for a ban on Salman Rushdie's *Satanic Verses*, which they considered to be offensive in its depiction of Islam. One argument for the ban was made on the grounds that the Church of Britain had enjoyed the protection of Blasphemy laws long enough to become secure in its position, so revoking the law against Blasphemy at a time when Islam was being attacked would be unfair.²⁵⁶ This view is not uniquely Muslim, but rather, is the line of argument that Muslims used in a particular case. Any minority religious group that perceives itself to be under threat can argue for some kind of protection by taking the same approach that British

²⁵⁴ *Ottawa Citizen* Feb. 19 2005, A2.

²⁵⁵ Bhikhu Parekh, "The Rushdie Affair", *The Rights of Minority Cultures*, ed. Will Kymlicka, 313.

²⁵⁶ "The Rushdie Affair", 313.

Muslims took in the Rushdie affair. So, I will refer to what Parekh calls the “Muslim view” as the vulnerable minority view.

To resume my analysis, I begin by drawing attention to the fact that only the strong and weak liberal views are interpretations of a ‘one rule’ approach to civic equality. The conservative view is a justification of privilege based on the alleged value of national identity and/or collective history. An argument can be made in favour of the conservative view, but such an argument must show that there are good reasons why the civic inequality that is entailed by privileging one religion and merely tolerating others is justified. It seems odd that Parekh would include the conservative view, even with his proviso that he is unconcerned with the “validity” of the view, under the heading of civic equality given that if it is justifiable it is a case of justifiable *inequality*.

The vulnerable minority view is an example of equal consideration that focuses on the practical effects that rules have on minority groups. The rationale is that because of unjust discrimination, some groups are worse off than others. In order to remedy the conditions that are caused by unjust discrimination, the vulnerable minority view entails that some kind of special accommodation or privilege is justifiable. This view draws an analogy between religious minority groups and other kinds of minority groups. This analogy holds if the discrimination that a religious minority is experiencing is based on the mere fact of being a member of a particular religious group, and not the practical effects of religious practices. The logic behind giving special treatment to minority groups is that categories like skin colour, gender, sexuality, and national or ethnic origin, are not good reasons for treating people differently. When people *are* discriminated against by a majority group because of arbitrary features it is arguably a legitimate move to offer some

kind of protection. However, discrimination can be justified if it is based on legitimate criteria like conduct, ability (in the case of employment), or language proficiency (again for employment). For example, it is legitimate to require that a firefighter be capable of carrying 50 kilograms up a flight of stairs. If an individual, for whatever reason cannot carry 50 kilograms up a flight of stairs, then it is legitimate to exclude this individual from consideration for employment as a firefighter.²⁵⁷ If the discrimination in question is based on the harm or potential harm that is associated with a religious practice, then the discrimination might be legitimate. Furthermore, the vulnerable minority view requires a fairly comprehensive understanding of exactly what is going on (what is the problem), what caused the unjust situation, and how to fix the situation. This is not always easy or even possible to sort out.

In the case of the Rushdie affair, the kind of protection that Muslims are asking for is not connected to a practice, but rather to a belief that is connected with a Muslim's sense of dignity and self worth. That is, the claim is that Muslims are being singled out just for being Muslim, and so the analogy holds in this case. However, this says nothing about the legitimacy of the claims for special protection. In order to sort out these claims, one needs to address the particular legal system in which the claim is being made. In Britain, a complaint was made against the *Satanic Verses* according to Britain's Blasphemy laws. My concern here is not to evaluate this claim. Rather, what I want to emphasize is that the vulnerable minority view assumes that, a) a minority is being unjustly discriminated against and, b) the cost of this discrimination outweighs the cost of violating the principle of civic equality.

²⁵⁷ British Columbia, (*PSERC*) v *BCGSEV* (1999) 3. S. I. R. 3

Both the strong and weak liberal views are interpretations of the principle of the “one rule” approach to civic equality. The strong view implicitly affirms the value of religious institutions whereas the weak view merely tolerates the presence of religious institutions. Arguments can be made for either position. However, the strong liberal view faces the problem of simultaneously affirming the value of contradictory beliefs. In order to maintain a strong liberal view, one must get clear about what exactly is the value of supporting religion as such. For the weak liberal view, there is the practical political problem of a religious majority that might resist a government’s attempts to remove religious symbols and practices from public institutions.

In the Canadian political landscape, one can find all of the four abovementioned views. The conservative view, (which has been successfully challenged in many cases such as with the issue of Sunday shopping), is present in many Canadian public institutions. For example, many municipalities use public money to put up Christmas decorations on city streets, and many Christian holidays like Easter and Christmas are universally observed by government institutions, regardless of the religious status of employees. The strong liberal view can be observed with policies like the tax free status that religious institutions are granted. By exempting religious institutions from the obligation to pay certain kinds of taxes the government is providing a form of support. The weak liberal view can be observed in the Ontario government’s rejection of legally binding religious arbitration. In this case, the Ontario government’s response to a request by some Muslim groups to make Shariah law legally binding in some jurisdictions (mainly pertaining to family law) the government chose to not only reject the request but also to repeal its support for arbitration for other religious groups. The vulnerable minority view is

expressed in s. 15(2) of the Charter which allows for the possibility of sacrificing equality before the law ("one rule" equality) in order to ameliorate unjust conditions.

An argument for upholding the ban on kirpans is based on a weak liberal view with an emphasis on the kind of equality that is guaranteed in s. 15(1). What is probably the strongest version of this argument appears in Brian Barry's *Culture and Equality*. One proposed remedy for religious discrimination is to exempt certain individuals from a law that has the effect of restricting a religious practice. One of the rationales behind this argument is that there is something unjust about distributing legal burdens according to religious affiliation. In the case of religious discrimination, the burden takes the form of restricting one's freedom to express and enact a religious identity. Barry's claim is that civic equality does not entail that laws have the same degree of impact on every citizen. This means that we ought to resist making accommodations that are based on religious freedom or the freedom to assert a kind of identity if such accommodations undermine a good law or policy. Individuals are free to associate in groups and perform religious practices within the broad limits of what is legally sanctioned. What falls outside of these limits does so for good reason and so, it is argued, should remain outside the protection of the law.

Barry uses the simple but effective example of the unequal impact that laws have on the ability of a criminal to live as a criminal. The argument is that a person who chooses to live as a criminal is burdened by laws against being a criminal more than those who choose to live as non-criminals. Since there are good reasons supporting criminal laws, and these reasons pose no threat to liberalism, the unequal impact of criminal laws on criminals is

justified.²⁵⁸ If we bring Barry's argument to bear on the question of religious exemptions it seems like there is no good theoretical reason to support exemptions. The kinds of reasons (safety, security, fairness, etc) that support criminal laws in a liberal society are not challenged by the criminal's freedom to pursue what he or she considers to be a good life. Likewise, the rationale behind policies such as weapon bans has little if anything to do with different conceptions of a good life. Barry's analogy is not intended to equate religious practices with criminal practices. Rather, it is intended to show that the reasons for upholding a law are different than the reasons for valuing a practice, religious or otherwise. So according to Barry's position, if one wants to challenge a law one ought to focus more on the rationale behind the law and less on competing conceptions of what constitutes a good life.

Barry's egalitarian argument is not necessarily at odds with arguments for religious freedom. It can be the case that a law that is challenged by a claim to religious freedom is unjust for everyone. For example, in *R. v. Big M Drug Mart Ltd.*, the Canadian Supreme Court upheld the ruling that the Lord's Day Act, which prohibited the sale of goods on Sundays, "infringe[d] on the guarantee of freedom of conscience and religion in s.2(a)".²⁵⁹ The court ruled in favour of protecting the rights of both non-Christians who were adversely affected by being forced to follow a specifically Christian law, while at the same time did nothing in the way of preventing observant Christians from voluntarily abstaining from shopping on Sundays.

In its ruling the court stated that,

²⁵⁸ *Culture and Equality*, 32-34

²⁵⁹ Supreme Court of Canada *R. v. Big M Drug Mart Ltd.*, (1985) CanLII 69.

The Lord's Day Act, to the extent that it binds all to a sectarian Christian ideal, works a form of coercion inimical to the spirit of the Charter. The Act gives the appearance of discrimination against non-Christian Canadians. Religious values rooted in Christian morality are translated into a positive law binding on believers and non-believers alike. Non-Christians are prohibited for religious reasons from carrying out otherwise lawful, moral and normal activities. Any law, purely religious in purpose, which denies non-Christians the right to work on Sunday denies them the right to practise their religion and infringes their religious freedom. The protection of one religion and the concomitant non-protection of others imports a disparate impact destructive of religious freedom of society.²⁶⁰

What was at issue with *R. v. Big M Drug Mart Ltd* was the coercive nature of the Lord's Day Act that infringed on an individual's freedom to observe or ignore what was clearly a Christian rule. That is, the power of provincial law was used to force people into a religious practice. It is important to notice that the reason why the law was deemed unjust was *not* that it infringed on one religious group in particular, but rather, what was at issue was the protection of religious freedom and the freedom of conscience as universal and fundamental rights.

In the case of allowing Sikhs to carry a kirpan on a VIA train, the egalitarian argument entails that the ban on weapons is upheld. It is clear that this decision would affect Sikhs more than others, but equality of impact is not implied by civic equality. However, Barry fails to look at how a rule is actually enforced. If a rule is selectively enforced for one identifiable group and not others, then the "one rule" approach is not egalitarian. Barry can insist that rules ought to be enforced or abolished. This is fine. However, one must be cautious when holding out for perfect equality while in the meantime, minorities are being burdened. It is sometimes a good idea to compromise laudable egalitarian principles in the face of practical concerns about implementing

²⁶⁰ *R. v. Big M Drug Mart Ltd.*

policies. Barry does in fact concede this point when he accepts that there may be pragmatic reasons for some accommodations.²⁶¹ For Barry, a pragmatic reason for accommodation is one that is derived from weighing the expected cost of accommodation in terms of violating the principle of civic equality as well as the practical consequences of allowing certain kind of behavior, against the cost of not accommodating a practice. The upshot of Barry's pragmatic accommodations is that accommodating one practice does not set a precedent for other analogous practices because the reasons for accommodation are linked to a particular context. Furthermore, there is nothing to say that what is accommodated now for pragmatic reasons will not later be prohibited when the cost of prohibition is lower. In this sense, Barry's pragmatic accommodation is not unlike an exemption based on a 'grandfather' law.

Given that Canadian public policy does not have a consistent position with respect to civic equality it follows that public policy ought to be made consistent or cultural accommodations ought to be at least considered. The former option carries with it a high price of implementation. However, the latter is relatively easy to implement if cultural practices are given equal consideration in light of analogous practices that are already permitted.

Freedom

A variation of the vulnerable minority view is the argument from religious freedom. The rationale behind the religious freedom approach is that whenever possible, religious practices should be accommodated. Now, what is meant by "whenever possible" is open to debate, but if all things are equal (meaning that non-practioners are not unjustly burdened

²⁶¹ *Culture and Equality* 51.

with either security risks or other high costs of accommodation) then religious freedom trumps civic equality. The argument based on religious freedom for an exemption from or the abolition of a law goes as follows. *Religious freedom entails that we ought not to discriminate according to one's religion. Laws that have the effect, intentional or otherwise, of restricting practices that are fundamental to a religion, discriminate according to one's religion. Consequently, we ought not to enforce laws that restrict practices that are fundamental to a religion.* This argument does not specify whether the conclusion entails special exemptions or the rejection of the restrictive law altogether, nor does it specify of what kind of law and what kind of practice is at issue.

One might ask why the Charter contains a specific reference to religious freedom. One answer is that religious freedom is a Western inheritance from religious warfare in the 16th Century. Religious freedom is a way to lower the stakes of political conflict by separating religious institutions from state institutions. The reasoning behind the separation is that if the state is granted jurisdiction over the political affairs of a population and the 'souls' of believers are left to religious institutions, then a space for political compromise will open, and so violent conflict will be avoided. More generally, religious belief remains a crucial part of self-expression, etc., for many. In the case of the religious wars of the 16th Century, the separation of church and state did in fact resolve a serious conflict. Today, religious freedom still helps to diffuse the potential for conflict between strongly held beliefs by separating these beliefs from public discourse.

Evidently, religious freedom and the separation of religious and state institutions have instrumental value in that they deflate what might otherwise be violent confrontations. However, when a religious group argues for accommodation by invoking the principle of

religious freedom, the rationale behind such an argument is not to protect the state from the effects of conflicting religious beliefs. Arguments for exemptions usually focus on the connection between religious beliefs, identity and conduct. According to the *Canadian Charter of Rights Decisions Digest*,

the purpose of s. 2(a) is to ensure that society does not interfere with profoundly personal beliefs that govern one's perception of oneself, humankind, nature, and, in some cases, a higher order of being. These beliefs, in turn, govern one's conduct and practices.²⁶²

In other words, s. 2(a) is, in part, intended to protect a dimension of freedom that is connected to one's identity and entails a separation between public and private spheres as well as limitations on the power of public institutions to coerce individuals.

The religious freedom argument is different than an argument that is based on the value of religion. One might argue that religion is valuable because it is true, or that it brings about social goods associated with belonging to a spiritual community, or that it promotes worthwhile charitable causes, etc. These kinds of reasons for valuing religion are different than the reasons for valuing religious freedom. The value of religious freedom is independent of the values promoted by particular religions. Religious freedom is not an affirmation of the value of the content that is protected, but rather it protects a space in which an individual can value, explore, challenge and practice such content. By content I mean such things as the truth of beliefs, the significance of practices, and the value one derives from 'being religious'.

From the perspective of public institutions, the truth of a belief ought to be irrelevant to the validity of a claim for religious exemption because a state cannot, a)

²⁶² *Canadian Charter Digest*, (Canadian Legal Information Institute, 2004), accessed May 2005, www.canlii.org/ca/com/chart/s-2-a.html.

simultaneously affirm the truth of many conflicting religious claims or, b) verify such beliefs. However, as commentators like Amy Gutmann have argued, religious groups can be instrumentally valuable insofar as they enhance democratic justice. She writes,

Far from failing to respect basic human rights, some religious arguments have greatly contributed to furthering the cause of democratic justice. Many examples show how religiously based beliefs can contribute to combating injustice.²⁶³

Two things are important to Gutmann's position. First of all, she is not endorsing the value of religion as such, but rather she is endorsing the social good that can result from the organized action of religious groups. Second, the results of such action are judged according to public standards and not those of a particular religion.²⁶⁴ This means that the standards of evaluation are not specific to the religious group, but can be recognized by any reasonable person.

Although the kind of position that I am describing is one that favours content neutrality in that goods that are specific to practitioners are not recognized as public goods, public institutions to some degree must be literate in religious semiotics in order to judge whether a claim is covered by the kind of freedom that is expressed in s.2(a). This entails that public institutions cannot be blind to religious content. For example, before a Canadian court will accept a freedom of religion claim an individual must show that,

he or she has a practice or belief, having a nexus with religion, which calls for a particular line of conduct, either by being objectively or subjectively obligatory or customary, or by, in general, subjectively engendering a personal connection with the divine or with the subject or object of an individual's spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the

²⁶³ *Identity in Democracy*, 167.

²⁶⁴ The role of combating injustice is not the primary justification for protecting religious freedom. However, insofar as many religious groups can and do combat injustice, this role is further reason to be open to some role for religious groups in democracies.

position of religious officials; and 2) he or she is sincere in his or her belief.²⁶⁵

Before I comment on the connection between religious beliefs, practices, and the divine, I will first draw attention to the abovementioned clause that separates an individual's religious freedom from religious authorities, regardless of whether they are sacred texts or religious officials. This clause is important, because without it, decisions concerning religious freedom could be delegated to religious authorities. By separating an individual's religious freedom from religious orthodoxy, the freedom to challenge one's own religion is maintained as a feature of religious freedom.

To return to the question of religious content, there must be some understanding by policy and decision makers concerning the meaning of symbols and practices in order to recognize them *as* symbols and practices. Furthermore, if an individual wants to invoke s.2(a), the practice in question must be recognized as religious. From this it follows that Bains is right when he highlights the importance of education for the resolution of cultural conflicts. However, education plays a role in recognizing what counts as a claim – it does nothing in the way of resolving the conflict between the claimant and public institutions.

Practices and their Effects

Kirpans

With respect to religious practices, the structures of religious and public semiotics are related but not identical. There are two descriptive levels to both semiotic structures, namely, the objective and the symbolic. For example, at the objective level we can

²⁶⁵ Supreme Court of Canada, *Syndicat Northcrest v. Amselem*, (2004), SCC 47.

consider a kirpan as a blade that has the potential to be put to certain kinds of use, and at the symbolic level we can understand a blade as a religious artifact that signifies an orthodox Sikh's willingness to fight against injustice. For the practitioner, the emphasis is on the symbolic meaning whereas for public institutions, the emphasis is on the object's effect. However, it would be a mistake to say that the primacy of either the meaning or the effect entails that we can do away with the secondary levels of description. *Multani (guardian of) v. Commission scolaire Marguerite-Bourgeoys*, illustrates how both structural levels are operative in claims for religious exemptions. In 2001, Gurbaj Singh Multani (Gurbaj Singh), a Quebec high school student was prohibited from wearing his kirpan at school. A compromise was suggested by the Commission scolaire Marguerite-Bourgeoys that would allow Singh to wear "the symbolic kirpan as a pendant or in any other form of a material that would make it harmless".²⁶⁶ However, Singh rejected this option because it was "not in keeping with [his] religion".²⁶⁷ For Singh, even though his reason for wearing the kirpan was its symbolic meaning, it was still important to him that the object be a blade that was not rendered harmless. The school board's main concern was the potential for the blade to be put to violent use. However, by suggesting that Singh wear a symbolic kirpan, the school board recognized that the meaning of the blade was important enough to consider a possible compromise. It was not *what* the kirpan meant to Singh that was important to the school board, but rather it was *that* the kirpan carried a symbolic meaning of the nature that made it the kind of object that might be protected by s. 2(a).

²⁶⁶ Human Rights Comm., *Multani v. CSMB*, (2005), f. 1, 2005.

²⁶⁷ *Multani v. CSMB* (2005) f. 1.

It seems clear that the freedom outlined in s. 2(a) is at times at odds with the equality in s. 15(1). The Charter was written with the understanding that there are times when liberal principles, instantiated as rights and freedoms, will clash. There are three sections that can be used to make an argument in support of accommodation, namely s. 1, s. 15(2), and s. 27.

S.1 limits Charter rights and freedoms.

The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limitations prescribed by law as can be demonstrably justified in a free and democratic society.

That is, within the Canadian context, no freedom is absolute.

The second pertinent section acknowledges the possibility that an unreflective application of the principle of civic equality might lead to certain kinds of injustices. In commenting on the civic equality asserted in s.15(1), s.15(2) states that,

Subsection (1) does not preclude any law, program or activity that has its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

In other words, there may be times when in the interest of fairness, 'one rule' civic equality must be set aside. The applicability of s.15(2) hinges on the amelioration of unfair conditions. That is, it is judged in terms of expected consequences.

The third section that is important to an argument for accommodation is s. 27, which states that,

This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

Although it is not clear exactly what it means to 'preserve and enhance' a multicultural heritage, s. 27 suggests that all things being close to equal, we should give some weight to accommodating cultures.

When evaluating whether kirpans should be accommodated on VIA trains one should ask the following questions: a) Is carrying a kirpan an important religious practice for orthodox Sikhs? b) What burden is entailed by being denied access to public transportation? c) How dangerous is a kirpan to other passengers? Question a) has been answered in the affirmative in *Multani v. Commission scolaire Marguerite-Bourgeoys*. Question b) is empirical and can be answered by an analysis of available alternative modes of transportation. If such an analysis yields the conclusion that being unable to access public transportation would result in a significant burden, then one must weigh such a burden against the cost of c).

How should one evaluate the potential danger that a kirpan poses? One might look at the potential harm that an object like a kirpan might pose and conclude that the risk of such harm is unacceptable. However, such an approach fails to take into account what is already accepted. In *Multani v. Commission scolaire Marguerite-Bourgeoys* the question was raised as to whether Sikhs were being held to a higher standard than non-Sikhs. That is, if in one context a certain degree of safety is maintained, it is unfair to ask that some are required to maintain a higher degree of safety. For example, airplane security is very high. Consequently, all passengers are searched and virtually all objects that can be used as knives are prohibited. The ban on all weapons, including *kirpans*, has not been challenged by Sikhs in North America. In the case of airplane security, the rule (no weapons), the treatment of individuals (searched for weapons) and the effect (not allowed to carry

weapons) are universally applied. Ideally, this is how Barry thinks rules ought to be applied. However, the fairness of the airplane case hinges on the fact that the rule which requires a high level of security corresponds to the way people are treated. The same cannot be said of the VIA case.

To date, VIA passengers are not searched for weapons before boarding trains. This means that a person is capable of carrying a concealed weapon aboard a train. Of course, it would be better if no one broke the rule against carrying weapons, but security mechanisms are not in place to detect rule breakers. One can conclude that either VIA demands a lower level of security than that demanded by airlines, or VIA is failing to insure a sufficient level of security. If the former is the case, then it seems to be unfair to demand absolute security from Sikhs and demand very little security from non-Sikhs.

To illustrate this point, one might consider a case where a non-Sikh farmer and an orthodox Sikh attempt to board a VIA train. The farmer carries a pocket-knife (a tool carried everywhere by every farmer that I ever met growing up in rural Ontario) concealed in her pocket, while the Sikh carries a *kirpan* strapped to his chest. Is it fair to allow the farmer to board with the concealed blade while the Sikh is denied access to the train? At the practical level, allowing the Sikh to board the train would be analogous to allowing the farmer to board. Both the Sikh and the farmer carry knives in accordance with their culture or tradition. However, the situations differ at the symbolic level. The Sikh displays his knife because it is intended to be a symbol of his beliefs, whereas the farmer conceals her knife because she considers it has no public significance for her. If the Sikh is prohibited from carrying his blade while the farmer is allowed to carry hers, then this is a case of unequal treatment that is passed off as the universal application of a regulation. When a

rule is not universally enforced, or is practically unenforceable, selective enforcement based on cultural identification amounts to unjust discrimination. The solution would be to enforce the rule, get rid of the rule, or make accommodations for kirpans.

It may be the case that trains are like airplanes and so should maintain a high degree of safety. If this is so, then the prohibition of all weapons ought to be enforced. If this is not the case, there are still good reasons why the rule should stay. For one, even if the rule is unenforceable, it can send a denunciatory message and gives those who are responsible for security of VIA trains a range of options when a situation involving a weapon occurs. Not enforcing a ban on weapons is different than allowing weapons. If the rule stands but is not enforced, then the fair thing to do is accommodate Sikhs. This would lead to inequality at the theoretical level but equality at the practical level and would be consistent with s. 15(2) of the Charter. Since what is at issue with the question of kirpans is their practical effect, it seems right and fair that the kind of equality that is maintained is at the practical level.

A similar argument was used in the Multani case. To justify its prohibition of kirpans on school property the Marguerite-Bourgeoys school board argued that the kirpan posed a safety risk that outweighed the religious freedom of Multani. In order to support its position the school board pointed out that in Canada and elsewhere there have been cases where potentially harmful religious practices have been prohibited on similar grounds.²⁶⁸ However, on closer examination it is clear that the school board was holding Multani to a much higher standard than other students with respect to school safety. Rather than look at

²⁶⁸ For example, in cases where the religious beliefs of parents put their children at risk (such as with the refusal of life-saving blood transfusions) the courts have tended to favour the prevention of serious harm over religious freedom.

what kinds of objects were already allowed at school in order to compare the new object (the kirpan) with what was allowed, the school board considered the kirpan in isolation. The fact that a hockey stick or a pair of scissors - both objects allowed on school property - arguably pose a greater safety risk than a kirpan, was not considered. In its ruling in Multani's favour the Canadian Supreme court stated that,

[t]he risk of G [Multani] using his kirpan for violent purposes or of another student taking it away from him is very low, especially if the kirpan is worn under conditions such as were imposed by the Superior Court. It should be added that G has never claimed a right to wear his kirpan to school without restrictions. Furthermore, there are many objects in schools that could be used to commit violent acts and that are much more easily obtained by students, such as scissors, pencils and baseball bats.²⁶⁹

The court argued that objects that pose a level of risk that is similar to or even greater than that posed by a kirpan (worn in such a way as to restrict access) have been and will continue to be allowed at school. Given that the kirpan does not pose a greater risk than objects that are already allowed at school and given that religious freedom is viewed as a basic political right, kirpans worn with some restrictions should not be prohibited from publicly funded schools in Canada.

In the Multani case there are two things that are noteworthy. First, in making its comparison the court focused on the level of risk that was already accepted by school policies rather than other religious practices. If the school implemented a level of security that was similar to that of an airliner or a prison, the kirpan would not be accommodated.

Secondly, although the religious status of the kirpan was not considered to be enough to warrant a level of risk that was significantly higher than what was already

²⁶⁹ Supreme Court of Canada, *Multani v. Commission scolaire Marguerite-Bourgeoys*, (2006), 6 [7].

tolerated at school, it did play a role in the judgment. In response to the worry that allowing kirpans would mean that every child would be entitled to bring a knife to school, it was acknowledged that some weight was given to the importance of religious practices as is consistent with s.27 of the Charter.

One might take issue with this last point and question whether the value of religious practices should be given any weight at all. Sports and crafts have some value that has the potential to be relevant to each student.²⁷⁰ However, a kirpan only has value to members of a particular religion. The claim is that proponents of accommodation must demonstrate that there is some public value to religious and cultural practices as such, without appealing to the meaning of these practices. A school might be willing to accept certain risks to promote crafts and sports but why should it do so for reasons of religious identity?

In order to answer this objection we need to clarify how the analogy between kirpans and other dangerous objects like scissors and hockey sticks is being used. The purpose of the analogy is not to show that kirpans serve some valuable purpose in schools (or any other public institution). Although in its ruling the Canadian Supreme Court makes reference to the value of cultural diversity, this is not the primary justification for allowing kirpans. It is the value of religious freedom - a public value that is already articulated in Canadian law (section 2 (a) of the Charter) - that justifies allowing kirpans in public schools. Since religious freedom is something that is already accepted as having public value and since carrying a kirpan is a practice that is recognized by all parties involved as being a religious practice, the burden of proof is on those who would prohibit the kirpan to demonstrate their case by appealing to potential risks. It is at this point that the analogy

²⁷⁰ This is not to say that every student will actually be interested in sports or crafts.

with scissors and hockey sticks comes in to demonstrate the level of risk that the school has demonstrated that it is willing to tolerate. The value of carrying the kirpan has already been established. What is at issue is whether there is a compelling reason to limit religious freedom. Since religious freedom has significant public value and schools have demonstrated a willingness to tolerate a level of risk, it follows that kirpans, worn with some restrictions, ought to be allowed.

Religious Clothing

Religious clothing, particularly head and face coverings, has proven to be a source of conflict in Canada. In 1990 a Sikh RCMP officer won the right to wear his turban with his dress uniform in place of the traditional Stetson hat. This ruling was challenged and upheld by the Supreme Court in 1995. In 2007 controversy in both Quebec City and Ottawa centered on the question of whether women ought to be compelled to remove their veils at polling booths.²⁷¹ During the same year girls wearing hijabs (head scarves) were not allowed to play in various sporting events.²⁷²

In each of the above cases an important aspect of an institution appears to conflict with a religious practice. Veils challenge the ability of Elections Canada to verify the identity of voters. Hijabs may elevate the risk of injury that goes with playing certain kinds of sports and so challenges the ability of regulators to insure the safety of the players. We might add turbans to the list of potentially dangerous clothing in cases where helmets are

²⁷¹ "Canadian PM Opposes Muslim Veil Decision", *USA Today*, updated September 7 2007, retrieved February 5 2008, http://www.usatoday.com/news/world/2007-09-09-canada-muslim-veil_N.htm?csp=34.

²⁷² "Winnipeg Girl Banned From Judo Tournament for Wearing Hijab", *CBC.ca*, updated November 19 2007, retrieved February 5 2008, <http://www.cbc.ca/canada/manitoba/story/2007/11/19/judo-hijab.html?ref=rss>.

deemed necessary. I suggest that with the method outlined above these issues can be reasonably resolved.

The issue of voting while wearing a veil (niqab) is one that first came up in Quebec's 2007 election and later that year in a federal by-election. In both cases the respective election agencies ruled that voters could wear a veil while voting so long as they had documentation to certify their identity. The reasoning behind this policy is that the verification procedure that veiled voters would go through is sufficiently analogous to that which voters go through when they cast their ballots by mail.²⁷³ Public opposition to the policy in both cases was enough to prompt Premier Jean Charest and Prime Minister Stephen Harper to use their powers to change the policy.²⁷⁴

What has at times been portrayed as a clash of values is actually a technical question concerning how best to prevent voter fraud. Faces happen to be a fast, easy and cheap way to verify one's identity but fingerprints, dental records, sworn testimony and DNA are possible alternatives. In other words, the issue is not one of whether a woman ought to cover her face in public. This point is important to make because much of the public opposition to accommodating niqabs has focused on questions concerning the semiotics of the niqab and not the verification of identity.

If we accept that voters abroad can have their identity verified with paperwork then it follows that other voters might use the same method. That solution is simple enough. However, I suspect that the issue over niqabs in voter booths is something of a red herring.

²⁷³ See clause 223 of Bill C-2 (the Canadian Elections Act).

²⁷⁴ "Tory Bill Would Require Veiled Voters to Show Faces", *CTV.ca*, updated October 26 2007, accessed February 5 2008, http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20071026/veiled_women_071026/20071026?hub=Canada&s_name=.

To date, there are no reports of a person in Canada refusing to show her or his face for the purpose of identity verification by government officials. The niqab voting policy was one that was written without consulting with any women who wear a veil. Anecdotal evidence suggests that there is little opposition from women who do wear a veil to the idea of showing their faces to government officials.²⁷⁵ That is, the controversy over niqabs is a tempest in a teapot. Yes, they should be allowed but since nobody is asking for accommodation there is no reason to do so.

The issue over wearing head coverings that pose a safety risk can be resolved by a) looking at the level of risk that is accepted in the context in question, b) evaluating the risk that a head covering carries and c) looking at possible alternative head coverings that do not substantially elevate the level of risk to the wearer in the context in question.

It is important to measure b) against a). Many sports carry a risk of injury and it may be the case that head coverings such as hijabs only marginally (if at all) elevate the risk. Although I am not an expert in risk assessment, it seems to me that the potential risk posed by hijabs while practicing judo is greater than that posed by hijabs in soccer. How much risk we are willing to accept is a question that I am not prepared to answer but we can use what is currently allowed as a measuring stick in the absence of a sufficient analysis of tolerable risk. The option of modifying head coverings to ameliorate the situation is justified by the weight that religious practices are already given in virtue of s. 2a. Consequently, if it is possible to come up with an alternative article of clothing that

²⁷⁵ From conversations that I have had most women express that they would prefer to show their face to a female official but would be willing to be identified by a male official. Of course, this evidence is anecdotal and cannot withstand rigorous criticism. However, it does support a hypothesis that niqabs in voter booths is something of a 'non-issue'.

satisfies both the demands of safety and those of religious observance this is the preferable resolution.

Blood Transfusions

Life-saving blood transfusions represent a clear case where the risk of substantial harm outweighs religious freedom. Canadian courts have consistently ruled against parents who want to withhold blood transfusions for their children for religious reasons.²⁷⁶ Such cases illustrate the limits of compromise as well as the emotional turmoil that enforcing such limits entails for those involved. The government has a responsibility to step in when parents are unwilling or unable to adequately promote the well-being of their children. However, in the case of blood transfusions, members of some religious groups hold the belief that receiving a blood transfusion goes against divine law. Such situations are rare but tragic cases of incommensurability. The tragedy results from a terrible situation that arises through no fault of parents or the government. Parents most certainly do not want harm to come to their children, but neither do they want their children to be estranged from what they believe to be the divine. Although the right thing for the government to do is to enforce the rule that protects the child from substantial harm, it is important to acknowledge the loss that enforcing such a rule entails for parents.

Conclusion

The liberal notion of religious freedom has been a practical compromise from its first implementation in 16th century Europe. So, taking a position that does not allow for

²⁷⁶ Supreme Court of Canada, *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, (1995).

the compromise of weighed principles misses much of the value of religious freedom.²⁷⁷ If we are to take seriously religious freedom, then we ought to seek to expand such freedom whenever possible. In other words, all things being close to equal, we should accommodate diverse cultural practices.

The fact that a practice has cultural significance does not entail that it ought to be allowed. However, such significance does give us reason to consider accommodations. Once it is determined that a practice is worthy of consideration, the practical consequences of the practice in question are what is at issue. When faced with innocuous practices like head coverings and dietary rules, or even practices that carry some degree of cost or risk, the principle of fairness compels us to consider such practices in light of generally applicable principles as well as analogous practices that are already allowed in the context in question.

The approach to accommodation that I have suggested provides a generous degree of freedom without trampling over the basic values of democratic justice. It also provides a method for weeding out xenophobic and racist claims that are disguised as arguments for civic equality. However, one component of accommodation that I have not discussed is the general desire and willingness to get along with citizens who may have values and beliefs that are substantially different than one's own. This is perhaps the most important factor in the success of any multicultural political project. In the next chapter I examine how informal solutions to intercultural conflicts can supplement formal legal solutions. I argue that although the former cannot always be legislated or legally enforced, they can be actively supported by government policies.

²⁷⁷ Religious freedom is also an important dimension of free expression.

CHAPTER 9 MULTICULTURALISM AS NEIGHBOURLINESS

In his address to parliament concerning the principles of multiculturalism, Prime Minister Trudeau made reference to “creative encounters” and suggested that such encounters ought to be facilitated by the government as part of Canada’s multicultural policy.²⁷⁸ This principle expresses a degree of faith in the ability of citizens to peacefully work out their differences in the spirit of a common good. Although the kind of solutions arrived at through such creative encounters rarely lead to rules or principles that are legally enforceable, they can exhibit a moral position that ought to be actively supported by the government. In this chapter I examine how creative encounters can supplement formal legal solutions to cultural conflicts.

Although formal cultural accommodation represents a positive step toward social justice, an effective multicultural policy cannot end there. At least in Canada, much of the heavy lifting of multiculturalism is done informally. By informal multiculturalism I mean policies that are not directed at creating and enforcing rules and rights. Rather, informal multiculturalism focuses on creative but unenforceable solutions to cultural conflicts and problems.

For example, the problem of racism is formally addressed in anti-racism legislation, however, racism can (and unfortunately does) still exist beyond the reach of legislation. Presumably, even in jurisdictions that have anti-racism legislation, racists still find ways to harm individuals within the boundaries of legally permitted behavior. For example, a racist teacher might find opportunities within the accepted rules that govern his or her profession to be overly harsh to students who are identified as being members of particular groups.

²⁷⁸ Pierre Elliot Trudeau, “Announcement of Implementation of Policy of Multiculturalism within Bilingual Framework,” House of Commons, Ottawa, October 8 1971.

The students may suffer from such targeting yet may lack the evidence of wrong-doing necessary to sanction the teacher. Furthermore, even in cases where rules do apply, enforcing rules can prove to be very difficult given the burden of proof required to demonstrate racial discrimination. For example, it can be very difficult to demonstrate that the reason a person did not get a job is because of racial prejudice. One possible solution to this problem is to make racist behavior socially unacceptable. Racists may still think like racists but they will hopefully refrain from acting like racists. Public forums designed to facilitate dialogue about racism, funding for art projects (including novels and films) that address issues of racism, and creating anti-racism educational programs (both in schools and as public service announcements) are all ways that racism can be informally addressed. In the example of the racist teacher, if a school has a policy of actively promoting racial and cultural diversity that includes training in sensitizing school staff and students to the subtle ways that racism can manifest, this might make it more difficult for racist teachers to act on their beliefs.

Of course, the effectiveness of informal multiculturalism depends on the uptake of the population. This is a key feature of Hooker's rule-consequentialism.²⁷⁹ Andrew Light also takes the general acceptability of moral principles into account in his moral arguments.²⁸⁰ Brian Barry suggests that most Canadians are "hostile" to the idea of multiculturalism when he argues that multiculturalism is a policy being sold by intellectual

²⁷⁹ Hooker takes into account the cost of getting the vast majority of the population to accept a code, *Ideal Code, Real World*, 32.

²⁸⁰ Light is concerned with not only value theory but also the degree to which various theories can motivate people to behave morally. "Taking Environmental Ethics Public" in *Environmental Ethics: What Really Matters, What Really Works*. eds David Schmidts and Elizabeth Willot, (Oxford: Oxford University P, 2002), 556-566.

elites to an unconvinced population.²⁸¹ However, recent polling suggests that “85 percent of Canadians [say] that multiculturalism [is] important to Canadian identity.”²⁸² It is unclear whether respondents are acknowledging a fact or endorsing a norm. However, if we take the former response in conjunction with the fact that ‘75 percent of Canadians believe that overall, immigrants have a positive influence on the country’, we begin to see a picture in which the fact of cultural diversity is viewed by Canadians as positive.²⁸³ Barry might claim that this is just a sign that the Canadian government has been successful in pulling the wool over the eyes of its citizens – that it has ‘sold the illusion’.²⁸⁴ Admittedly, public acceptability is different than rationally defensible justification. Though, if Barry had been looking at a statistic that showed broad support for multiculturalism when he wrote *Culture and Equality*, I doubt that he would have changed his position regarding the justifications for multicultural policies.

One way to look at informal multiculturalism is with the analogy of being a good neighbour. Just as good neighbours are able to accommodate differences in the interest of maintaining healthy relationships and promoting a common good (such as a friendly neighbourhood or maintaining high property values) so too might citizens of diverse cultural backgrounds resolve differences. Of course, some neighbours fight and end up in court. Likewise, some cultural conflicts will arise that result in court cases. However, most neighbours do not end up in court, even though most could if every right was pressed

²⁸¹ *Culture and Equality*, 293-294.

²⁸² *Unlikely Utopia*, 20.

²⁸³ *Unlikely Utopia*, 13.

²⁸⁴ See Neil Bissoondath’s *Selling Illusions*.

to its limit.²⁸⁵ The kinds of informal arrangements that good neighbours make in order to accommodate each other can serve as a model for how many (but certainly not all) cultural conflicts might be addressed. Narrating cultural accommodation in terms of neighbourly relationships brings out salient common moral dimensions and de-emphasizes concerns about the content of religious and cultural beliefs.

The informal multiculturalism that I am advocating frames conflicting interests with the following formulation of a cost-benefit moral principle.²⁸⁶ *In cases where action (z) involves little cost to party (a) and can provide a comparatively large benefit to party (b), it is reasonable to say that (a) ought to do (z).* This familiar principle is applicable to many contexts, however it is particularly salient to cultural conflicts. Although it is not a principle that deserves to always be legally enforced, it is a good moral principle that can be actively supported by the government and when possible, justify rules that *are* enforceable.

In cases where a small compromise by one party can provide a comparatively large benefit to another party there is intuitive appeal to favouring the compromise. The question of whether to compromise or not is related to a broader moral question concerning obligations of beneficence and non-maleficence. The latter is a fairly straightforward moral obligation that can be instantiated in law, whereas the former is more complicated. Just as there are limits to what a houseguest can expect there are limits to how much beneficent behavior a moral theory can demand. However, if the cost of acting

²⁸⁵ Imagine if every bylaw infraction was pursued to its fullest. I suspect that virtually every property owner in Canada would be facing some sort of litigation.

²⁸⁶ This moral principle is not unlike the one that Peter Singer argues for in 'Famine, Affluence and Morality', *Philosophy and Public Affairs*, vol. 1, no. 1 (Spring 1972), pp. 229-243.

beneficently is quite low in comparison with the outcome, then one can argue that beneficence approaches the level of a moral obligation in such cases. For example, if donating a dollar would provide a life-saving vaccine for a child then one can argue that we are morally obligated to donate that dollar.²⁸⁷ This line of reasoning is used to justify taxation to support those who are worst off. One might also argue in favour of cultural accommodations that entail little if any cost to non-practitioners but would likely yield a significantly greater benefit to practitioners. Of course, the question of whether this moral argument can be used to justify legally enforceable rules will depend on what the actual costs and benefits are, as well as what kind of precedent may be established.

One might object to the cost-benefit approach with the familiar line that the relative costs and benefits of practices and accommodations are neither measurable nor comparable. I grant this point in principle but maintain that in practice such comparisons can be made in some cases. In response to this criticism one might argue that the relative costs and benefits in a particular situation can be negotiated. If so, much of the work that needs to be done by interested parties will focus on communicating their respective interests and an honest attempt to understand the interests of others.

The plausibility of the cost-benefit principle depends on a general concern for the well-being of others, rather than fundamental principles of justice. This is why its policy implications are properly understood as 'informal'. The actions entailed by this principle sometimes go beyond what can be reasonably legislated or legally enforced. Nevertheless,

²⁸⁷ If this example is unconvincing we might change it to lower the cost and raise the benefit. If we agree it is the case that at some point that we are morally obligated to incur some cost to achieve some benefit for another then the question is one of how to calibrate our obligations of beneficence and not whether we have any such obligations at all. Although it is an important question, determining the method of comparing costs is beyond the scope of this paper.

when considered in terms of what is likely to produce the best consequences in cases of cultural conflict, the cost-benefit principle has merit.

Informal principles are not intended to replace formal principles of justice. Rather, they supplement formal principles and, hopefully, reduce our reliance on formal processes which, at times, create situations where only one party can win.

Since informal principles rely on a general willingness to get along, they will not be convincing to those who are not interested in peaceful co-existence in a culturally diverse society. However, given that most Canadians seem to support the idea of multiculturalism it is worthwhile to articulate guiding principles for living in a culturally diverse society.

YMCA Windows

In September of 2006 a YMCA frosted its windows at the request and expense of a neighbouring synagogue.²⁸⁸ The concern was that young male students of Hasidic Jewish faith were able to view people in exercise attire. Members of the synagogue had no legal right to demand that the windows be frosted because the YMCA was not breaking any laws. When the YMCA's management agreed to frost the windows they did so as good neighbours. According to the director, "it was never our intention to hide women who are training... we wanted to protect the privacy of our members while respecting the wishes of our neighbour."²⁸⁹ It would be hard to find a way to legally mandate the YMCA to frost its windows. Furthermore, the potential abuse of such a law is reason to reject a legislative solution. However, if both parties value good neighbourly relationships, and if the

²⁸⁸ "Montreal YMCA drops tinted windows after members protest", *CBC.ca*, updated Monday, March 19, 2007, accessed January 27 2008, <http://www.cbc.ca/canada/montreal/story/2007/03/19/qc-ymcawindows20070318.html#skip300x250>.

²⁸⁹ "Montreal YMCA drops tinted windows after members protest".

government values the societal benefits that are derived from such relationships, it is worth pursuing mutually acceptable options.

The YMCA case is sometimes used to demonstrate how minority groups can be overly demanding and illiberal. However, this characterization looks at the situation through a 'clash of civilizations' lens and misses the moral salience and value of coexisting as neighbours. It is not unusual for a neighbour to request some sort of compromise with another neighbour that goes beyond what is legally obligated. If a compromise is made it is done for the sake of the neighbour making the request and in recognition of the value of being a good neighbour.

I will use an example to illustrate what is involved in being a good neighbour. Let us imagine a situation where two neighbours share a common wall between their homes. One neighbour has a fussy newborn and the other neighbour watches movies on his home theater system in order to review them for a national newspaper. As it turns out, the sound from the home theater system carries through the common wall at a sufficient level to wake the fussy newborn. After a few days of having her baby awoken by her neighbour's movie-watching the new mother approaches her neighbour with a request to turn down the volume. She even offers to purchase a pair of high-quality wireless headphones so that her neighbour will still be able to review his movies. How should the neighbour respond?

One possible response is to inform the new mother that there is no legal obligation to turn down the volume of the movie during certain times of the day and on the basis of this lack of legal obligation, refuse the request for compromise. After all, the reviewer is not responsible for the well-being of the baby or its mother and the auditory impact of a movie is an important dimension of his review. Furthermore, one of the reasons why the

reviewer is childless might be precisely because of his concern that children would interfere with his professional life. Also, he might point out that the baby's crying often keeps *him* up at night.

An alternative response would be to accept some form of compromise for the sake of the well-being of the baby and the mother. Taking the well-being of his neighbours into account does not mean that the reviewer's own interests are unimportant. Rather, it means that he is willing to measure his interests against what he takes to be those of his neighbours when making decisions about how he should act. One criticism of consequentialist moral theories is that it does not allow one to give preference to one's own interests or those of one's loved ones over others. I am not suggesting here such a principle. Rather, I am suggesting that the interests of others are given some weight.

If the reviewer accepts that the interests of his neighbours matter, even though he is not legally obligated to turn the volume down the principle of cost-benefit suggests that there is some value to finding an alternative way to watch movies that does not disturb the baby. He might decide that even if this alternative is somewhat less effective than the surround sound experience, the benefit is relatively much greater. For this reason to be compelling the reviewer must place some value on the well-being of his neighbours.

One of the advantages of the second response is that there is the potential that both neighbours will benefit. The newborn and its mother will immediately benefit from getting more sleep (a precious commodity for both). Also, the reviewer may find that he is less often disturbed by the baby's crying. Furthermore, he might be able to convey a new aspect to his readers by focusing on how the movie sounds through headphones. Finally,

what is potentially most beneficial is the ongoing goodwill that a creative compromise might initiate.

This approach to moral problems is similar to that which is suggested by Anthony Weston in *Creative Problem-Solving in Ethics*.

Usually we're taught to think of ethics as a realm of judgment – of deciding what is right and wrong. And of course such judgments are very important. Maybe it's even true that some situations really have no creative possibilities, and all we can do is "bite the bullet," as some moralists are fond of saying, and stick to difficult or seemingly harsh judgments come what may.

Through many years of thinking about ethical issues, though, I have learned that the insistence on judgment alone is very often a dead end. The most constructive ethical thinking may require us to look beyond immediate controversies and difficulties. There are more creative possibilities even in the old familiar issues than we usually imagine.²⁹⁰

The kind of creativity that Weston is talking about is not unlike Arendt's concept of natality and the 'creative encounters' Trudeau cites, in that each concept relies on a degree of optimism and faith in our capacities to create unexpected but satisfactory solutions to moral problems. Although it would be foolish to rely solely on this kind of faith, one ought not to underestimate the important role that informal creative solutions play as a supplement to legal processes.

An important dimension of creative solution is the weighing of the respective costs of each party. There are situations where the cost of accommodation is too high. For example, we might imagine the newborn living next door to a construction site. It would be unreasonable to expect construction work to stop for the sake of a baby's nap. This exposes a limitation of my argument, namely, that not all costs and benefits are measurable and comparable. Although this limitation is important, it does not follow from it that we

²⁹⁰ Anthony Weston *Creative Problem-Solving in Ethics*, (New York: Oxford, 2007) vi.

can never weigh costs and benefits. Rather, it suggests that we ought to be cautious when attempting to do so.

It is unfortunate that, in the case of the YMCA windows, protests from members prompted the director to reverse his decision and replace the frosted windows with clear glass.²⁹¹ It was reported that some members were offended at the synagogue's request and this led the YMCA to press its legal right to have clear windows. I suggest that this response is analogous to the movie reviewer choosing to press his right to keep up the volume and represents a failure to look at the creative possibilities that the situation presented. The YMCA members chose to see the request of their neighbour as unreasonable and an offense to their sense of civil liberty rather than an opportunity to incur a modest cost (diffracted light) for the sake of the well-being of others. The alternative that was rejected had the potential to benefit the members of the synagogue as well as some members of the YMCA who were concerned about being watched. Furthermore, it may have strengthened the relationship between members of the synagogue and members of the YMCA. Sadly, these benefits were not deemed to be compelling reasons to compromise.

One thing that the YMCA case illustrates is that informal solutions are fragile and rely on mutual goodwill. There seems to have been goodwill between the YMCA and the synagogue based on the synagogue's willingness to pay for the changes and YMCA's willingness to allow the changes. However, at some point the issue ceased to be about neighbours and became one of clashing cultures and irreconcilable ideologies. This seems to have had the effect of inflating the value of undiffracted light to that of a symbol for

²⁹¹ "Montreal YMCA drops tinted windows after members protest".

gender equality and civil liberties. Once the stakes elevated to this level how could the windows remain frosted? Would this not challenge the liberal values that support the Charter and structure Canadian civil society?

There were creative processes involved in the final decision to reinstall the clear glass. However, rather than being directed at finding a solution that all parties could live with, the creative energy of some was directed at refiguring the situation into an archetypal narrative where the traditions of a 'backward' *other* is portrayed as a threat to 'enlightened' liberal values. When characterized in this way the only possible solution is one in which either the progressive forces of liberal freedom or the regressive forces of 'otherness' prevail. That is, victory for one entails a loss for the other. When a neighbour ceases to be a neighbour and becomes a symbol of an opposing ideology there is the risk that common interests are lost in the battle for ideological supremacy. The transformation of a neighbour into a symbol of an opposing ideology is often the first step in the worst kinds of civil strife.

One possible retort to my depiction of the YMCA case is that it does not take into account the cosmopolitan urban context in which the conflict took place. That is, the Synagogue was not situated in a predominantly Hasidic community – it was (and remains) part of a densely populated multicultural urban setting in which people of different beliefs and mores interact on a daily bases. Furthermore, one might argue that I have not given enough weight to the right of the YMCA members to appear in public in ways that are consistent with the norms of "decency" that have, reasonably, come to be accepted in the period since the 1960's Quiet Revolution in Quebec, in other words the norms of a secular liberal society, and that I have given too much weight to the Haisidic Jews' concerns that

rely on different and very particular norms.²⁹² I can respond to these criticisms in the following way. First, the enriched description of the urban setting may add new and important information to the case in a way that affects the ultimate judgment about the request for accommodation, such that it perhaps ought not to be granted. However, this is not a criticism of my theory but rather a criticism of its potentially mistaken application: new facts can and maybe should alter judgments. Appealing to a richer description of the context in which the dispute arose is consistent with my theoretical position even if it challenges a particular application of my theory.

Secondly, it may be impossible to weigh the value that each party places on their respective interests. It may be that both agree to disagree, and the matter is then left to the law. In the case of the YMCA windows this is not a tragic outcome, nor does it seem to have caused irrevocable damage to the relationship between those who attend the synagogue and YMCA members.

It would have been (and still is) possible to look at the situation with the YMCA windows as one between neighbours who share a common space and have common interests in virtue of this shared space. Like any neighbours they will have different views on various issues but this need not preclude the possibility of reaching a solution that is at least minimally satisfactory to both parties. It may be that the best solution was in fact to leave the windows clear. However, the best way to *arrive* at this solution would have been to consider the matter in a local context as opposed to a clash of civilizations.

²⁹² I thank Jacob Levy for these astute criticisms.

Danish Cartoons

In February 2006 Syed Soharwardly filed a complaint against Ezra Levant and Richard Bronstein – the publishers of the *Western Standard* and the *Jewish Free Press* respectively. Both publications had reprinted controversial cartoons depicting the Prophet Muhammad that had first appeared in the *Jyllands-Posten*, a Danish newspaper. Months after their initial publication in Denmark, the cartoons were used as propaganda by some militant leaders in the Middle East to promote anti-Western sentiment. The ensuing violence and the controversy it sparked drew international attention. In Europe and in parts of North America, the cartoons were portrayed as arguments for the freedom of expression. In Muslim countries and in many Muslim communities, the cartoons were viewed as an attack on fundamental religious beliefs. Thus far, the consequences of the publication of the cartoons have included several deaths, an alleged plot to assassinate one of the cartoonists, attacks on Danish embassies, and boycotts on Danish products.

Should the cartoons be republished? This question can be interpreted in at least two ways. First, it can be read as a question concerning the right to publish the cartoons, i.e., a question of the limits of free expression. If it is the case that there is no justification for a right that protects the publication of such material then the solution for the Danish cartoon problem is one that can be solved through formal (legal) means. Interpreted as a question of rights the response of liberals such as Ronald Dworkin is that the freedom of expression includes the right to ridicule and so those who republished the cartoons had (and have) the right to do so.

Free speech is a condition of legitimate government. Laws and policies are not legitimate unless they have been adopted through a democratic process,

and a process is not democratic if government has prevented anyone from expressing his convictions about what those laws and policies should be.²⁹³

As a precondition for legitimate government, free expression is a right that ought to be taken seriously. Dworkin disagrees with some other liberals over the limits of free expression. Canada has laws against hate speech such that that which is designated as hate speech is not protected by the freedom of expression.²⁹⁴ Dworkin opposes such limitations. However, since it does not appear as if the cartoons are instances of hate speech (according to Canadian law at least), both those who support Dworkin's position and those who support some limitations on the freedom of expression that are in line with those established by Canadian law agree that the right to republish the Danish cartoons is protected by the right to free expression.

If the right to republish the cartoons is protected by the right to free expression then the government ought not to censor the images. If the case of the Danish cartoons is framed as a question of the freedom of expression vs the freedom of religion, it seems clear that the latter ought not to be limited by the former. Does this mean that the cartoons should be republished? Should more be commissioned and published? Should Canada's national newspapers create a daily cartoon strip that depicts the Prophet Muhammad?

A second way to interpret the question of whether to republish the cartoons is to look at the expected consequences of doing so. It is not inconsistent to say that one has a right to publish the cartoons but one ought not to exercise this right. That is, it would be wrong for a government to censor the images but that all things considered, it is the right

²⁹³ Ronald Dworkin, 'The Right to Ridicule' *The New York Review of Books* vol. 53, no. 5, updated 03 23 2006, retrieved 03 24 2006, www.nybooks.com/articles/18811.

²⁹⁴ Supreme Court of Canada, *R. v. Keegstra*, (1990), 3, 697.

thing to do for those who might publish the images to censor themselves. This is the position that Dworkin takes. Although he argues in favour of the right to publish the cartoons, Dworkin's view is that all things considered, the decision to not republish the cartoons is the right one.

Reprinting would very likely have meant – and could still mean – more people killed and more property destroyed. It would have caused many British and American Muslims great pain because they would have been told by other Muslims that the publication was intended to show contempt for their religion, and though the perception would in most cases have been inaccurate and unjustified, the pain would nevertheless have been genuine.²⁹⁵

It is unclear whether Dworkin would support the claim that the cartoons ought to have never been published, but considering that the cat is already out of the bag, this question is not as relevant as that of republication. Given what has happened after the initial publications (and republications) of the cartoons, in order to avoid further loss of life and psychological pain it is best not to republish the cartoons.

Most major media outlets in Canada chose not to republish the cartoons, presumably in part because of concerns about provoking further violence and insulting people.²⁹⁶ This was an instance of a successful application of the cost-benefit principle. However, is self-censorship enough? Should the press avoid publishing anything that may potentially insult members of religious groups? The Danish cartoons illustrate the limitations of legally unenforceable moral principles. We might agree on moral principles that prohibit the republication of the cartoons but maintain, as Dworkin does, that we must

²⁹⁵ *R. v. Keegstra*, 697.

²⁹⁶ It is also reasonable to assume that in some markets at least, the fear of boycotts and public backlash may have played a role in the decision not to republish the cartoons.

legally protect free speech. If the government protects the latter does this mean that it must remain silent on the former?

Although the 'cost-benefit' moral principle that I use to justify some cultural accommodations may not always be legally enforceable, the government has several tools at its disposal to promote it. Public education campaigns, funding for research projects directed at resolving intercultural conflicts, and public forums are all ways that the government can work toward influencing the behavior of its citizens without violating basic rights. The same kinds of tools are used to promote public goods like health, safety and education. So, although the government may not be able to enforce the cost-benefit moral principle, it need not remain neutral on the merit of the principle.

It is worth noting that Soharwardly and Bronstein settled their dispute with a handshake.

Some Limitations

Contrary to the position of much of the philosophical literature, multiculturalism as normative public policy is more than just political and moral rights. For it to be successful it is predicated on a general willingness to consider the well-being of others who may have substantially different world views than those of the majority.²⁹⁷ Such considerations do not entail that minority practices (even benign ones) ought to always be accommodated at the expense of others, nor can accommodations justified by the moral principle of being a good neighbour necessarily be legally enforced. Nevertheless, this is the position that culturally diverse liberal democracies such as Canada are in.

²⁹⁷ It goes without saying that those who hold minority views will no doubt find that they have to adapt to some conventions of the majority. The degree to which many who hold minority views adapt is often overlooked by members of the majority.

In response to the potential conflicts that can arise from cultural diversity the government has two responsibilities. First, it must interpret basic principles (such as rights and freedoms) in light of its diversifying population. Secondly, it must work toward promoting the moral principle of neighbourliness as a prophylactic against cultural conflicts that have the potential to lead to violence. The first task is a question of justice and the second task is one of harm reduction.

The way that neighbourliness should be applied as a moral principle will depend on the relationships and weighed interests in particular situations. However, the cost-benefit principle that I have articulated is one possible way to frame culturally diverse values and interests. Although this principle is not foolproof, the fact that Canadian courts are not clogged with fighting neighbours suggests that there is some merit to using neighbourly relationships framed as competing and converging interests as a model for finding agreement between diverse parties who share a common space.

One limitation to using cost-benefit as a moral principle is that it can be difficult to compare costs. Although we may be willing to grant that incurring a modest financial cost is justified to provide life-saving vaccines, cases of cultural conflict might not be so intuitively obvious. A further complication is that in some cases the relative costs and benefits are subject dependent, meaning what is recognized as a cost for one party might not be recognized as a cost for another. The hope presented by the good neighbour analogy is that each party shares a common interest in maintaining civil relationships.

Another concern is that mischievous individuals might try to gain an unfair advantage or profit by making insincere or frivolous cultural claims. As the cliché goes, the squeaky wheel gets the grease. Although this is a genuine problem, it is not unique to

the context of cultural accommodation. Although this problem is not a sufficient reason to reject the cost-benefit principle it is something to guard against. Ultimately, those involved will have to make judgments concerning the intentions and sincerity of each party.

Finally, insofar as the principle of neighbourliness is not always legally enforceable, it relies on agreement. If this is the case, are we not back where we started? The progress that has been made in the preceding section toward resolving cultural conflicts is measured in terms of the degree to which such impasses are refigured in terms of common interests derived from the fact that each party shares a common space. This strategy is intended to deflate ideological claims and grand cultural narratives in order to focus attention on the practical dimensions of accommodation. There is no guarantee that this approach will be successful, but it is at least reasonable and so potentially acceptable to reasonable people.

CONCLUSION

In the preceding work, I demonstrate that some kinds of multicultural policies are consistent with the principle of civic equality. Such policies include: a) a willingness by the government to reevaluate the formulation of laws and rules in light of a changing population and unanticipated circumstances; b) the active promotion by the government of the moral value of tolerating benign differences and, when warranted by cost and feasibility, accommodating such differences; and c) the funding of research initiatives directed at increasing inter-cultural awareness and resolving cultural conflicts. Policy a) is a matter of justice whereas policies b) and c) are matters of morality and harm reduction.

In order to support my argument for multicultural policies, I demonstrate that notwithstanding the theoretical difficulties we might face when trying to define the term 'culture', many of the kinds of differences that are commonly considered to be 'cultural' are relevant to legal and political institutions insofar as an understanding of such differences is necessary to understand the behavior of citizens. So, contrary to what some opponents of multiculturalism claim, culture should matter to the government.

Many theorists, including Charles Taylor, Will Kymlicka, and Iris Marion Young, have attempted to articulate how culture ought to matter to the government. Finding each of the abovementioned author's position problematic, I suggest a way to improve on them by drawing on the concept of narrative identity. I suggest that questions of cultural identity constitute a conceptual limit for legislators. In other words, if we accept that identity is contestable, mutable, and indeterminate, then it follows that it ought not to be subject to legislation. However, the potential harm that can be caused by some expressions of culture, i.e., cultural practices, is clearly determinable. Consequently, I argue that

legislators ought to focus on the risk of harm that cultural practices pose, as opposed to cultural identity.

One way to evaluate cultural practices in terms of harm is to take the position that no risky practices ought to be sanctioned. This position is consistent with the principle of minimizing the risk of harm, however, it has the potential to lead to injustices if minority practices are held to a higher standard than majority practices. In order to guard against this kind of injustice, I argue that legislators ought to use what is already accepted in practice as a guide for determining what kinds of newly considered practices ought to be allowed and under what kinds of restrictions.

As well as formal solutions to cultural conflicts, I also examine informal solutions that for various reasons may not be legally enforceable. I argue that in cases where a modest cost can bring about a substantially greater gain, there is a degree of moral force to the claim that said cost ought to be incurred. I suggest that if this principle were to be applied to many of the cultural conflicts that have been making headlines, most could be amicably resolved. Ultimately, this claim is empirical and its plausibility rests on its results. However, the cost-benefit argument is sufficiently strong and the expected consequences are sufficiently reasonable and desirable to make the active promotion of the cost-benefit principle justifiable as a multicultural policy.

There are dimensions to the issues raised in this thesis that go beyond the scope of the present work but need to be addressed in the future. One such issue is the position of Aboriginal Canadians in Canada *vis-a-vis* the government and public institutions. It is worth exploring how the approach to cultural identity that has been outlined in this thesis applies to past, current, and future policies concerning the status of Aboriginal Canadians.

A second issue is the role that numbers and history play in the evaluation of cultural claims. The way that cultural claims are considered by cultural theorists is in part determined by how many people are thought to be cultural members (or practitioners) and how long the practice in question has existed. In general, practices that have more practitioners and longer histories are given more consideration than those that have few practitioners and relatively short histories. Cases of new or idiosyncratic practices present a genuine problem for the theoretical position that I have presented. Insofar as questions of justice ought not to be determined by numbers and insofar as I have based my position on considerations of fairness, my theory says little about utterly new and/or very small cultural groups. If pressed, my theory may be consistent with accommodations for such groups that are perhaps unreasonable, that is, if history and numbers are not taken into account. However, I have offered no reason why it is fair to give special weight to history, in the sense of what has previously been accepted, and to numbers, in the sense of discounting or giving little weight to the demands that come from a very few. Consequently, an examination of the role that history and population play in the evaluation of cultural claims is a question that is in need of further consideration.

Finally, this thesis is intended to contribute to an ongoing discussion concerning cultural diversity, politics, public policy and ethics. My hope is that though I may not be right in every respect, I have at least advanced some issues and clarified some outstanding problems. Furthermore, I hope to provide a strategy for diffusing cultural tensions that respects universal moral and political principles but is sensitive to culturally diverse ways of life.

APPENDIX

Work on the first draft of this thesis began in 2005 and ended in early 2008. During this period several events, both in Canada and abroad, have contributed to public debates concerning multicultural public policy.²⁹⁸ In Quebec, several well publicized incidents prompted the Quebec Government in February 2007 to commission a public inquiry led by Gérard Bouchard and Charles Taylor, into "reasonable accommodations".²⁹⁹ The result was a report, issued on May 21st 2008 and available online at The Consultation Commission on Accommodation Practices Related to Cultural Differences website.³⁰⁰ Although the report has a sociological emphasis, it speaks directly to many of the subjects explored in this thesis and so deserves some comment. The position that has been argued for in this thesis is consistent with that outlined in the Bouchard-Taylor report. Because of this general level of agreement, the report is addressed in this appendix.³⁰¹

The mandate of the Bouchard-Taylor commission was to:

a) take stock of accommodation practices in Québec; b) analyse the attendant issues bearing in mind the experience of other societies; c) conduct an extensive consultation on this topic; and d) formulate recommendations to the government to ensure that accommodation practices

²⁹⁸ I have examined some of these events, such as the publication of the Danish cartoons.

²⁹⁹ Included in this list of events are the Supreme Court ruling in the Multani case, a controversy in Montreal over wearing a hijab while playing soccer, a conflict between a Synagogue and a YMCA over frosting windows, and a controversy over veils in election booths.

³⁰⁰ The Consultation Commission on Accommodation Practices Related to Cultural Differences, <http://www.accommodements.qc.ca/index-en.html>, May 21 2008.

³⁰¹ If the Bouchard-Taylor report had presented a position that was radically different from the one that I have argued for, I would have been obligated to either argue against it or revise my own position.

conform to the values of Québec society as a pluralistic, democratic, egalitarian society.³⁰²

Before commenting on the recommendations of the Bouchard-Taylor report I will summarize the position on cultural accommodation that has been defended in this thesis: 1) Any practice (x) that is sanctioned, i.e., endorsed, according to an established set of generally applicable rules implies that any other practice (y) that is analogous in relevant ways should also be allowed. 2) In cases where action (z) involves little cost to person (a) and can provide a comparatively large benefit to person (b), it is reasonable to say that (a) ought to do (z). Proposition 1) was argued for in terms of fairness and desired outcomes. Both principles were intended to respond to inequalities and social problems that can arise in a culturally diverse society.

In chapters 7 and 8, a method for evaluating and administering accommodations in a formal legal framework was presented. It was argued that there may be times when justice demands certain forms of accommodation. Chapter 9 explored how cultural accommodations might play out in an informal framework. It was suggested that narrating cultural accommodation in terms of neighbourly relationships might bring out salient common moral dimensions and deemphasizes concerns about differences between religious and cultural beliefs. This narrative strategy was designed to strike a balance between the freedom of belief, conscience and religion on the one hand, and social unity on the other.

The Bouchard-Taylor report clearly favours informal solutions to cultural conflicts (such as those explored in chapter 9) over legal solutions.

³⁰² Gérard Bouchard and Charles Taylor, *A Difference Dialogue Makes, Building the Future: Time for Reconciliation Abridged Report*, Québec: Gouvernement du Québec, 2008, 10.

From the standpoint of accommodation, we will emphasize as much as possible citizen action and the responsibility of individual and community interveners to encourage deliberation, free initiative and creativity in the analysis of situations. Almost without exception, we will give priority to this type of solution rather than external solutions in the form of new legislation or new organizations. This guideline will lead us to favour the dejudicializing and decentralization of the process of handling requests for adjustment.³⁰³

Like the position defended in this thesis, Bouchard and Taylor manifest a faith in the ability of citizens to find creative solutions to problems that might arise. They rest their faith on the claim that, “the foundations of collective life in Québec are not in a critical situation,” and the observation that there is a general openness to diversity amongst Quebecers.³⁰⁴ It is upon these foundations that Bouchard and Taylor suggest we build future civil relationships. Likewise, the position of this thesis takes collective life, described by one of its smallest social structures, that is, a neighbourhood, as a starting point for finding solutions to cultural conflicts. Although the public hearings on accommodations by the Bouchard-Taylor Commission revealed a degree of ignorance and prejudice in some individuals, Bouchard and Taylor reported that they observed a general “openness to the other” in Québec society.³⁰⁵ Evidently, there are signs that suggest favorable social conditions in Quebec for informal solutions to cultural conflicts. If such is the case then this makes the position of this thesis all the more plausible.

One noteworthy phenomenon that Bouchard and Taylor observed is a discrepancy between what kinds of accommodations are actually being requested (and in some cases

³⁰³ *A Difference Dialogue Makes, Building the Future: Time for Reconciliation Abridged Report*, 12.

³⁰⁴ *A Difference Dialogue Makes, Building the Future: Time for Reconciliation Abridged Report*, 12.

³⁰⁵ *A Difference Dialogue Makes, Building the Future: Time for Reconciliation Abridged Report*, 5.

made) in Quebec and what has been reported by various news media. Bouchard and Taylor take great care to debunk what they suggest are myths, by presenting the facts in several cases. Their hypothesis is that most Quebecers would be more open to cultural accommodations if they had accurate information about what kinds of accommodations have been made and what is in fact being requested. This is an empirical claim that will no doubt be tested in the coming months and years.

The limited scope of this appendix does not allow for a complete examination of the entire list of recommendations in the report. However, one recommendation that is particularly relevant to this thesis is to avoid 'cookie-cutter' solutions to cultural conflicts and instead, trust in the ability of managers to make good judgments.³⁰⁶ To this end, the Report calls for assistance for individuals who are charged with the task of making judgments on accommodations. This assistance might take the form of clarification of complicated issues and reliable information. This recommendation places government institutions in a facilitative role directed at supporting local solutions to local problems. This approach avoids grand narratives about 'clashing civilizations' and focuses on particular contexts and common interests. According to this approach, cultural accommodation is not viewed as an inherently or necessarily socially divisive force. Rather, accommodation is viewed as a tool designed to remove barriers to public life and so has the potential to act as a unifying social force. This is a view that is entirely consistent with what has been argued for in this thesis.

One question that is raised in the report that is not addressed in this thesis is that of the status of the French language in Quebec. This omission in the thesis was intentional

³⁰⁶ *A Difference Dialogue Makes, Building the Future: Time for Reconciliation Abridged Report*, 33.

because the question of language goes beyond the scope of this current project. However, I will be investigating the status of French in Quebec in the context of increasing cultural diversity in an upcoming project.

The reception of the Bouchard-Taylor report was mixed in Quebec. Politicians criticized it for ignoring the plight of what has been portrayed as an endangered Quebecois culture and identity.³⁰⁷ Others expressed their appreciation of having their own place in Quebec recognized (both in the epistemic and generative senses of the term). It is too early to comment on the impact of the report but it has successfully framed the ongoing debate concerning cultural accommodations in such a way as to make progress toward multiple satisfactory resolutions possible.

³⁰⁷ "Minority Report 'misses the point', PQ says", CBC news, Friday May 23 2008, <http://www.cbc.ca/canada/montreal/story/2008/05/23/qc-boutaypqreax0523.html>.

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